



30 August 2013

Final Action Report

Case group M. v. Germany

Report on compliance in Germany with the leading judgment handed down by the European Court of Human Rights of 17 December 2009 as well as 11 other judgments concerning the retroactive extension of preventive detention, or retroactive preventive detention orders

I. Introduction

- 1 The present Report refers to the following decisions:

Case group 1: Retroactive extension of preventive detention

Application No.	Case	Judgment dated	Judgment final on	Violation of
19359/04	M.	17 December 2009	10 May 2010	Articles 5 and 7
30060/04	J.	14 April 2011	14 July 2011	Articles 5 and 7
17792/07	K.	13 January 2011	13 April 2011	Articles 5 and 7
20008/07	M.	13 January 2011	13 April 2011	Articles 5 and 7
27360/04, 42225/07	S.	13 January 2011	13 April 2011	Articles 5 and 7
4646/08	H.	24 November 2011	24 February 2012	Articles 5 and 7
21906/09	K.	19 January 2012	19 April 2012	Article 5

Case group 2: Retroactive preventive detention order, resp. placement order

Application No.	Case	Judgment dated	Judgment final on	Violation of
61272/09	B.	19 April 2012	19 July 2012	Article 5
6587/04	H.	13 January 2011	13 April 2011	Article 5

Case group 3: Retroactive preventive detention order following placement in a psychiatric hospital

Application No.	Case	Judgment dated	Judgment final on	Violation of
61827/09	K.	7 June 2012	7 September 2012	Article 7
65210/09	G.	7 June 2012	7 September 2012	Article 7
3300/10	S.	28 June 2012	28 September 2012	Article 5

2 On 11 March 2013, the Federal Government has submitted a comprehensive report on the measures taken by way of complying with the leading judgment handed down by the European Court of Human Rights on 17 December 2009 as well as 11 further judgments concerning the retroactive extension of preventive detention, or the issuance of preventive detention orders. In said report, which is included herein by reference, the Federal Government stated that the Federal Constitutional Court (*Bundesverfassungsgericht*, BVerfG) had set a deadline of 31 May 2013 for the implementation of what is termed the “distance requirement” between the execution of preventive detention and the execution of prison sentences. This deadline has expired and we hereby submit our report, by way of amending the most recent Action Plan, on the modifications of the law performed at the *Land* level, as well as on the measures taken in judicial practice by way of complying with said distance requirement:

II. Modifications of the law at the *Land* level

3 As already described in the most recent Action Plan, the working group of the *Länder* has developed, as per the instructions of the Conference of the Ministers of Justice of the *Länder* and with the participation of the Federal Ministry of Justice (BMJ), the statutory basis for creating new provisions regarding the execution of preventive detention orders as well as special regulations applying to the execution of prison sentences where preventive detention has been ordered or reserved. In this context, the ruling handed down by the Federal Constitutional Court (BVerfG) on 4 May 2011 and the guidelines established by the federal legislator (specifically in section 66c of the new version of the Criminal Code (*Strafgesetzbuch*, StGB)) were included. The proposed statutory basis is not intended to be a draft for a model law; instead, it is an example serving to show which wording fundamentally might be used in order to put into law the new provisions deemed necessary for the future execution of preventive detention and for the future execution of prison sentences where prisoners are subject to a preventive detention order, or where such an order has been reserved. Subsequently, it was up to the *Länder* to decide whether and in which form the modifications were to be included in the laws specific to the various states.

4 Accordingly, the *Länder* have modified their laws as follows:

5 On 1 June 2013, the Act on Creating a Constitutional Statutory Basis for the Execution of Preventive Detention in Baden-Württemberg (*Gesetz zur Schaffung einer grundgesetzkonformen Rechtsgrundlage für den Vollzug der Sicherungsverwahrung in Baden-Württemberg*) entered into force (promulgated in the Law Gazette of the *Land* of Baden-Württemberg (*Gesetzblatt des Landes Baden-Württemberg*, GBl. BW) 2012 no. 17, p.

581). According to it, persons in preventive detention are entitled to individual socio-therapeutic, psychotherapeutic, and psychiatric treatment. Moreover, the law provides for the continuing obligation of the institution at which the sentence is being executed to instill in the detainees a willingness to cooperate and to promote such willingness. Detainees have the right to prepare their own food. They are allowed to move about freely – outside of the quiet hours at night – in the interior areas reserved for their use and in the appurtenant outside grounds. Measures serving to ease the execution of the sentence are to be granted as soon as any mandatory grounds preventing them have ceased to exist, and to the extent as this is the case.

- 6 On 1 June 2013, the Act on the Execution of Preventive Detention (*Gesetz über den Vollzug der Sicherungsverwahrung*, BaySvVollzG) of 22 May 2013 entered into force in **Bavaria** (promulgated in the Law Gazette of the *Land* of Bavaria (*Bayerisches Gesetz- und Verordnungsblatt*, BayGVBl. 275). This Act replaced the regulations in place until 31 May 2013 concerning persons in preventive detention set out in Articles 159 through 164 of the Bavarian Act on the Execution of Prison Sentences (*Bayerisches Strafvollzugsgesetz*, BayStVollzG). Specifically, the detainees now are entitled to a claim to individual treatment, they have the comprehensive right to move about freely, the right to wear their own clothing and use their own linen, the right to prepare their own food, the right to maintain far-reaching contacts to persons outside of the institution, they are paid significantly higher wages, respectively pocket money, and have a fundamental entitlement to measures being taken that serve to ease the execution of the sentence. Within the institutions themselves, the Bavarian Act on the Execution of Preventive Detention (BaySvVollzG) grants detainees exceptionally far-reaching freedom to move about, also – other than during the quiet hours at night – in the outside grounds.
- 7 In **Berlin**, the Act on the Execution of Preventive Detention in Berlin (*Gesetz über den Vollzug der Sicherungsverwahrung in Berlin*) entered into force on 1 June 2013. Its stipulations meet the requirements made of any preventive detention accommodations in order for them to be in compliance with the German constitution by creating a clear distance to the execution of prison sentences; also, it is consistently geared towards the objectives of the execution of the sentence by designing said execution as one focusing on therapeutic treatment and oriented by freedom, allowing detainees to live in dignity and far-reaching autonomy. Accordingly, this Act stipulates that detainees are entitled to be offered therapeutic measures individually tailored to their needs, inasmuch as standard therapeutic methods are insufficient or do not hold out any promise of success. The law provides for measures serving to motivate the detainees to cooperate in achieving the objectives pursued by the execution of the sentence and to promote such cooperation. As a general rule, the

detainees' accommodations will be structured as residential communities. Outside of the quiet hours at night, detainees may move about freely in the areas of the institution, including the outside grounds, reserved for their use. The law provides for them to have the option of preparing their meals themselves. Furthermore, the Act takes account of the detainees' need for social contact, in particular to their families, by increasing the minimum visiting hours to at least ten hours per month, and also provides for intra-mural, long-term visits. Finally, the opportunities to test a person in preventive detention (whether the person might cease to commit any unlawful deeds once released) by easing the execution of the placement have been significantly expanded.

- 8 The *Land* Parliament of **Brandenburg** has signed into law the Brandenburg Act on the Execution of Preventive Detention (*Brandenburgisches Sicherungsverwahrungsvollzugsgesetz*, BbgSVVollzG) on 16 May 2013 as an independent Act, and this has entered into force on 1 June 2013 (promulgated in the Law Gazette of the *Land* of Brandenburg (Gesetz- und Verordnungsblatt für das *Land* Brandenburg, GVBl. I no. 17).
- 9 In **Bremen**, the Act on the Execution of Preventive Detention (*Bremisches Sicherungsverwahrungsvollzugsgesetz*, BremSVVollzG) was promulgated on 31 May 2013 in the Law Gazette of the Hanse City of Bremen (*Gesetzblatt der Freien Hansestadt Bremen*, Brem. GBl 2013 no. 32) and entered into force on the following day. Based on an administrative agreement with the *Land* of Lower Saxony, preventive detention orders issued against persons from Bremen are executed in Lower Saxony.
- 10 In **Hamburg**, the Act on the Execution of Preventive Detention (*Hamburgisches Sicherungsverwahrungsvollzugsgesetz*, HmbSVVollzG, promulgated in the Law Gazette of Hamburg (*Hamburgisches Gesetz- und Verordnungsblatt*, HmbGVBl 2013, p. 211 et seqq.) entered into force on 1 June 2013.
- 11 In the **Land of Hesse**, the Act on the Execution of Preventive Detention (*Hessisches Sicherungsverwahrungsvollzugsgesetz*, HSVVollzG) entered into force on 1 June 2013, which is characterized, *inter alia*, by the following guidelines:
- 12 The execution of preventive detention is structured such that it focuses on therapeutic treatment and is oriented by the principle of freedom. Detainees are entitled, following a careful examination regarding their options for treatment and the definition of a correction and prevention scheme, to scientifically sound therapeutic measures. Treatment and care are provided by multi-disciplinary teams. The detainees are granted eased access to socio-

therapeutic measures. The willingness to cooperate is to be continually instilled in the detainees and is to be promoted. Detainees may wear their own clothes and prepare their own meals. Any extra-mural contacts the detainees may have are effectively supported. Accordingly, the minimum visiting hours have been increased to ten hours per month, and intra-mural long-term visits have been provided for by the law.

- 13** In **Mecklenburg-Western Pomerania**, the Act on the Execution of Preventive Detention in Mecklenburg-Western Pomerania (*Gesetz über den Vollzug der Sicherungsverwahrung in Mecklenburg-Vorpommern*, SVVollzG M-V) entered into force on 1 June 2013 (promulgated in the Law Gazette of Mecklenburg-Western Pomerania (*Gesetz- und Verordnungsblatt für Mecklenburg-Vorpommern*), GVOBl. M-V 2013, p. 348). The Act focuses on designing the execution of preventive detention, as demanded by the Federal Constitutional Court (BVerfG), as oriented by the principle of freedom and focusing on therapy. The Act stipulates that detainees have a statutory entitlement to therapeutic treatment specifically tailored to their needs.
- 14** On the one hand, the Act takes account of the need to safeguard the distance requirement, which is oriented by the principle of freedom, by having preventive detention executed in a ward of the facility that is separate from those wards in which prison sentences are executed. On the other hand, the distance requirement is met by aligning, to the greatest extent possible, the circumstances of life given in preventive detention to those of life outside of prison walls. Thus, the Act gives detainees far-reaching freedom to move about within the institution. Furthermore, detainees are to be allowed to design their accommodations individually and to prepare their meals themselves. The law places the correctional authority under obligation to not alienate the detainees from life in general society, and instead to promote their relationships to partners outside of the facility, for example by allowing generous visiting hours and short periods of leave under escort.
- 15** **Lower Saxony** has implemented the requirements established by the Federal Constitutional Court (BVerfG) by signing into law the Act Newly Providing for the Execution of Preventive Detention in Lower Saxony (*Gesetz zur Neuregelung des Vollzuges der Unterbringung in der Sicherungsverwahrung in Niedersachsen*) on 12 December 2012 (promulgated in the Law Gazette of Lower Saxony (*Niedersächsisches Gesetz- und Verordnungsblatt*, Nds. GVBl. 2012, 566). As a result, the execution of preventive detention has been provided for since 1 June 2013 in the Act on the Execution of Preventive Detention in Lower Saxony (*Niedersächsisches Sicherungsverwahrungsvollzugsgesetz*, Nds. SVVollzG).

- 16** The Act Providing for the Execution of Preventive Detention in **North Rhine-Westphalia** (*Gesetz zur Regelung des Vollzuges der Sicherungsverwahrung in Nordrhein-Westfalen*) of 30 April 2013 (*Sicherungsverwahrungsvollzugsgesetz - SVVollzG*) entered into force on 1 June 2013. It implements the requirements made by setting forth clear and understandable rules for the execution of preventive detention that is oriented by the principle of freedom and consistently focuses on therapeutic treatment. The law centers on treatment: detainees have a legal claim to scientifically sound treatment and therapy measures being made available to them. Immediately upon a detainee being committed to the institution, a comprehensive examination is performed regarding potential treatment, which serves as the basis for a detailed correction and prevention scheme. Multi-disciplinary treatment teams are responsible for the diagnosis and treatment, while experts from outside of the institution executing the detention order may be involved. A significant aspect additional to the detainees' claim to treatment is the continuing obligation of the institution to instill in the detainees the willingness to cooperate in the measures and to promote it.
- 17** As far as compliance with the distance requirement is concerned, the restrictions imposed on daily life are reduced to those that are absolutely essential. Contacts to parties outside of the institution that are decisive for reintegrating detainees are effectively promoted.
- 18** In the **Rhineland-Palatinate**, the *Land* Parliament signed into law the *Land* Act on Further Developing the Correctional Services, Preventive Detention, and Data Protection (*Landesgesetz zur Weiterentwicklung von Justizvollzug, Sicherungsverwahrung und Datenschutz*) on 8 May 2013. It entered into force on 1 June 2013. Its Article 2 consists of the *Land* Act on the Execution of Preventive Detention (*Landessicherungsverwahrungsvollzugsgesetz, LSVVollzG*).
- 19** In the **Saarland**, the Act on the Execution of Preventive Detention in the Saarland (*Gesetz zum Vollzug der Sicherungsverwahrung im Saarland, Saarländisches Sicherungsverwahrungsvollzugsgesetz – SLSVVollzG*) of 15 May 2013 entered into force on 1 June 2013 (promulgated in the Law Gazette of the Saarland (*Amtsblatt des Saarlandes*) Part I, p. 146). Based on an administrative agreement with the *Land* of the Rhineland-Palatinate, preventive detention orders issued against persons from the Saarland are executed in the Rhineland-Palatinate.
- 20** In **Saxony**, the Act on the Execution of Preventive Detention in the Free State of Saxony (*Gesetz über den Vollzug der Unterbringung in der Sicherungsverwahrung im Freistaat Sachsen, Sächsisches Sicherungsverwahrungsvollzugsgesetz – SächsSVVollzG*; promulgated in the Law Gazette of Saxony (*Sächsisches Gesetz- und Verordnungsblatt*) no. 5/2013, p. 294 et seqq.) has entered into force on 1 June 2013.

- 21 The statutory objective pursued by the execution of preventive detention is to mitigate the threat to society posed by detainees such that the execution of the preventive detention can be suspended on probation at the earliest possible date, or can be declared terminated. The execution of the sentence is intended to protect the general public against further crimes.
- 22 The law takes account of the requirements that preventive detention, in order to be constitutional, must meet: it must be consistently oriented by the above execution objectives, and must create a clear distance to the execution of prison sentences by structuring its implementation in a manner focused on therapeutic treatment and oriented by the principle of freedom, allowing detainees to live their lives in dignity and, for the most part, autonomously even if their placement is long-term.
- 23 On 1 June 2013, the Act of 13 May 2013 on the Execution of Preventive Detention in **Saxony-Anhalt** and Modifying the Act on the Implementation of the Act on Placement for Therapeutic Treatment (*Gesetz über den Vollzug der Sicherungsverwahrung in Sachsen-Anhalt und zur Änderung des Gesetzes zur Ausführung des Therapieunterbringungsgesetzes in Sachsen-Anhalt*) entered into force.
- 24 In **Schleswig-Holstein**, the Act on the Execution of Preventive Detention and Modifying Further Acts (*Gesetz über den Vollzug der Sicherungsverwahrung und zur Änderung weiterer Gesetze*) entered into force on 1 June 2013. This Act has put in force the Act on the Execution of Preventive Detention (*Sicherungsverwahrungsvollzugsgesetz Schleswig-Holstein*, SVVollzG SH). Moreover, as per 1 June 2013, a state treaty has entered into force with Hamburg, on the basis of which preventive detention orders issued against persons from Schleswig-Holstein are executed in Hamburg.
- 25 In **Thuringia**, the Act Creating and Modifying the Execution Laws Applying for Thuringia (*Gesetz zur Schaffung und Änderung der für Thüringen geltenden Vollzugsgesetze*) entered into force on 1 June 2013. This includes, in Article 2, the Thuringian Act on the Execution of Preventive Detention (*Thüringer Sicherungsverwahrungsvollzugsgesetz*, ThürSVVollzG).

III. Practical measures serving to comply with the distance requirement

- 26 In order to ensure that the execution of preventive detention is clearly distinguished from punitive imprisonment and that the distance requirement is met, the following measures have been taken in the practical administration of judicial measures:

1. Detention facilities, construction measures

27 In particular by taking comprehensive construction measures, the *Länder* have significantly improved the accommodations in which persons in preventive detention are placed. While they differ from one *Land* to the next, they all have three objectives in common:

- Accommodation in larger spaces allowing for privacy,
- Improved opportunities for recreational activities and sports (also in outside grounds),
- Greater ability to freely move around the institution (for example by the doors to the detainees' accommodations not being locked during the daytime).

All in all, the structural changes correspond to the new, overall concept of preventive detention, which is based on therapeutic principles and oriented by the concept of freedom.

28 The individual *Länder* have implemented the following measures:

29 In **Baden-Württemberg**, male persons in preventive detention are detained in the Freiburg penal institution. On four storeys of a building constructed in 2001, which has been designed with a separate entrance, 63 individual accommodations housing persons in preventive detention were completely refurbished and equipped with new furniture; each of them has a separate bathroom with a venting system of its own. One of the rooms was adapted to the needs of the disabled and correspondingly equipped. The floor space of each accommodation amounts to at least 14 m². On each of the storeys, there is a communal kitchen and a generously proportioned common room. Moreover, the detainees have available four re-built spaces serving occupational therapy, kinesitherapy, and art therapy, as well as a newly designed, accessible courtyard traversed by a brook. Additionally, the detainees have the opportunity to use the comprehensive infrastructure available in the penal institution in terms of school education, professional training, work, and recreation.

30 During the daytime, detainees may move about freely. As a general rule, the courtyard is open in the mornings and afternoons. In the summer months, from May until the end of September, the opening hours are extended, at the longest until 8:00 P.M. During their free time, the detainees have the opportunity to take part in a sports group, in games evenings or to participate in a courtyard project; they can also prepare their meals with each other or barbecue.

31 In the Schwäbisch Gmünd penal institution, the single woman in preventive detention in Baden-Württemberg was assigned to smaller, separate accommodations with a kitchen of her own and a shower; this unit is located in a spatially separate area of a storey reserved for

convicted offenders serving their sentences, which is not occupied. The spaces were ready for occupancy in mid-June 2013.

- 32** In **Bavaria**, the new facility for preventive detention complying with the new statutory requirements built on the grounds of the Straubing penal institution was completed on 31 May 2013. On the details: The new building, which is structurally separate from that serving the execution of prison sentences, has a capacity for 84 detainees. The detainees are lodged in residential communities comprising a maximum of twelve members. Each residential community has a communal kitchen, a utility room, a group room, an area for encounters, and a recessed balcony. One of the residential communities is designed and equipped to accommodate the needs of the disabled. Each room is 15 m² in size; the rooms in the barrier-free residential community are 20 m² in size. Each of the rooms has a work area with an induction cooktop for two pots, a refrigerator, sink, and kitchen cabinets. Besides a bed, closet, shelves, table, and chair, each of the units has a separate bathroom with a shower stall and a towel radiator. The detainees are allowed, within reason, to equip the units with their own furnishings and may lock the doors to their rooms. The preventive detention facility has expansive outside grounds with a communications yard, an exercise courtyard, and a relaxation courtyard and has been equipped correspondingly, for example with a table tennis table and sun loungers. Additionally, an outside sports field as well as a sports / callisthenics room are available exclusively for use by the detainees. Furthermore, the facility for preventive detention has spaces for occupational therapy, a medical care unit, a visitor center, as well as numerous therapy rooms for individual and group sessions, besides administrative and office spaces.
- 33** In **Berlin**, it is planned to accommodate the detainees in a building to be newly constructed on the grounds of the Tegel penal institution; the building is to have four to five storeys set back one behind the other. In total, 60 individual rooms are being constructed, distributed across three upper storeys; each of the storeys will be comprised of two residential units of ten rooms each. The ground floor will house the corresponding functional departments for security, administration, therapy, medical services, and intra-mural long-term visits. Areas serving the purposes of educational instruction/qualification, work/occupation, recreation/sports/fitness will be located on the top-most storey; the facility will be augmented by areas for outdoor sports, recreation, relaxation, lawns, and green areas. The 58 standard rooms (each of them 20.00 m² in size with their own bathroom and a barrier-free shower stall at grade, toilet, washbasin; a built-in closet in the room as well as a refrigerator and kitchen work surface) will be complemented by two rooms designed and equipped for use by disabled persons (each of them 23.5 m² in size, with their own bathroom with a shower stall,

toilet, washbasin; a built-in closet in the room as well as a refrigerator and kitchen work surface). Each of the six residential units will have a communal kitchen for the residential community with a dining room, as well as a separate smoking area behind glass; in addition to the individual bathrooms given in the individual accommodations, each of the residential units will have a bathroom with a bathtub for special treatments as well as a utility room equipped with the corresponding tools. The foundation stone was laid, following the change of government and renewed budget consultations in Berlin, in December of 2012. The building is scheduled to be completed in the first quarter of 2014, so that its occupants can be moved in and its operations commence in the second quarter of 2014. Until that time, the detainees are accommodated in Wing V of the Tegel penal institution. In this context, the distance requirement is met by each detainee having two spaces, which they may furnish as they wish, with various counselling and therapy opportunities being made available. Moreover, the detainees are able to move about freely in the wards and in the grounds outside of the penal institution's preventive detention wing.

- 34 In **Brandenburg**, a new building is being constructed on the grounds of the penal institution of Brandenburg an der Havel to house persons in preventive detention. This new building is to be completed by the beginning of the fourth quarter of 2014. It will have 18 rooms, each with a plumbing area with shower stall and kitchenette on an area of 25 m² each. The residential part of the building will be subdivided into two residential communities. Additional spaces are reserved in the building for medical services; group and individual therapy; occupational activities and educational instruction; as well as sports and recreation. The outside grounds have been generously proportioned and provide opportunities for recreational activities, sports, and relaxation.
- 35 Until the new building is completed, the detainees have been temporarily lodged on the storey of an existing building on the grounds of the penal institution in Brandenburg an der Havel that has been specially refurbished for this purpose; this likewise has a courtyard area of its own serving recreational activities. There are nine rooms in the building, each of which has a living and sleeping area, as well as a plumbing area with shower stall and kitchenette. The facility has spaces for therapy, recreation, educational instruction, and occupational activities.
- 36 In **Hamburg**, a ward for persons in preventive detention has been instituted at the Fuhlsbüttel penal institution that is separate from the area in which convicted offenders serving their punitive imprisonment sentence are housed. The preventive detention ward having a total of 31 accommodations is subdivided into three residential communities. Each

residential community is comprised of nine respectively 11 rooms at a maximum. Each residential community has a common room and a small kitchen, and there is a communal kitchen for cooking groups working under instruction as well as a laundry room.

- 37** The detainees' accommodations, each of which has a separate sanitary facility with a washbasin and toilet, are approximately 17.5 m² in size. The rooms have been furnished with furniture custom-made for the spaces' layout. The detainees have more opportunities to equip their rooms with their own furniture and other objects of their own than the convicted offenders serving their sentence do. Two of the rooms have been designed and equipped for the disabled.
- 38** The detainees may move freely about the ward during the daytime. They have their own outside area, which they may use at any time during the daytime.
- 39** Based on a state treaty with **Hamburg, Schleswig-Holstein** also houses its detainees in the Fuhlsbüttel penal institution.
- 40** In the **Land of Hesse**, preventive detention is executed in the Schwalmstadt penal institution. The annex of the main facility in Schwalmstadt is currently being rebuilt to serve as a preventive detention ward; the construction is scheduled to be completed in the first quarter of 2014. The structural facilities comply with statutory requirements and provide for a clear distance to the execution of prison sentences. The conversion being done to the Schwalmstadt penal institution, which will provide space for 60 detainees, takes account particularly of the additional group, recreation, and therapy spaces, as well as the creation of individually equipped rooms for the detainees, which have a total size of at least 18 m² including a sanitary area for their own, private use; also, the institution is designing a separate outside area to allow for enhanced freedom to move about within the building and outside of it. The detainees live together in manageable residential communities. Pursuant to section 19 of the Hessian Act on the Execution of Preventive Detention (*Hessisches Sicherungsverwahrungsvollzugsgesetz, HSVVollzG*), exceptions will apply wherever detainees are unable, due to their conduct, to live in groups or pose a threat to others.
- 41** Until the above-referenced construction measures have been completed, the detainees are being housed in the Weiterstadt branch facility of the penal institution in Schwalmstadt. In Weiterstadt, a part of the building has been allocated for preventive detention purposes, offering space for 38 detainees in a total of three wards. Here as well, a clear distance has been created to the part of the penal institution where sentences of punitive imprisonment are being served. Instead of a prison cell, each of the detainees is housed in two rooms

(which have a total size of 18.70 m², plus the plumbing area), which the detainees may design and use as they wish; for example, one of the rooms can be used as a living room, while the other will serve as a bedroom, work room, sports room, storage room, or audio room in which to listen to music. Each ward has a ward kitchen. The comfortably appointed common rooms of the wards are used for joint meals or watching TV. Additionally, there are recreation rooms and group rooms in which the therapy and treatment measures are carried out, as well as rooms serving various recreational projects. The accommodation building housing detainees has a separate yard where detainees can spend their free time, which has been landscaped. The visitors' area has been generously dimensioned and there as well, it is possible to keep the detainees separate from convicted offenders serving a prison sentence. Both the wards and the group spaces and visiting rooms are designed and comfortably appointed by the detainees themselves.

- 42** During the daytime, the detainees' rooms are kept unlocked; Fridays and Saturdays from 7:00 A.M. until 8:00 P.M and Sundays from 8:00 A.M. until 8:00 P.M. Furthermore, detainees have the opportunity to use the open spaces daily from 9:00 A.M. until nightfall, at the longest until 9:30 P.M. Various recreational and sports activities are available and are a fixed part of the daily programme; participation is voluntary. The detainees can state their wishes in this regard.
- 43** Based on a corresponding state treaty, the detainees from **Thuringia** are likewise housed in the *Land* of Hesse in the annex being constructed at the Schwalmstadt penal institution; until this is completed, they are being detained in the Weiterstadt branch of the Schwalmstadt penal institution.
- 44** In **Mecklenburg-Western Pomerania**, preventive detention has been executed since 1 June 2013 in a separate, newly constructed building on the grounds of the Bützow penal institution. The complex of buildings concerned is formed by a residential building as well as a building housing administrative offices and therapy spaces; each of the buildings has two storeys. The residential building, completed in May of 2013, consists of a total of 20 rooms having a minimum size of 20 m², plus a bathroom and a private cooking facility. The detainees are lodged in two residential communities comprised of ten detainees each. Five of the rooms were designed as barrier-free spaces to accommodate persons with limited mobility. Moreover, the detainees have access to common rooms (communal kitchen, recreational and sports rooms etc.) as well as outside grounds for their own use (sports field, garden areas to be designed and tended by them etc.). The therapy and administration

building, which is scheduled to be completed in September of 2013, houses offices, meeting rooms, therapy rooms, and visiting rooms.

- 45** On the grounds of the Rosdorf penal institution, **Lower Saxony** has constructed a new, separate building that will accommodate up to 45 detainees. The accommodations are distributed across three storeys and are divided up into six residential communities (each of which will have 7 or 8 members) with sufficient common areas and communal kitchens. The units have a floor space of approximately 23 m² and have a structurally separate sleeping/living area as well as a bathroom with a shower. Three of the units have been designed and equipped to accommodate the handicapped. The building has its own, generously proportioned outside grounds, which are freely accessible to the detainees during the hours in which the doors of the rooms are kept unlocked, generally from 6:00 A.M. until 10:00 P.M, as well as separate spaces reserved for, *inter alia*, occupational therapy measures and measures serving the detainees' individual occupation. The building was inaugurated on 24 May 2013. The detainees from Lower Saxony and Bremen, who used to be detained centrally in the Celle penal institution, were relocated to the Rosdorf penal institution in early June 2013.
- 46** **Bremen** also places detainees from Bremen in institutions in Lower Saxony on the basis of a corresponding administrative agreement.
- 47** In **North Rhine-Westphalia**, a new building is being constructed next to the Werl penal institution that is to house persons in preventive detention from this *Land*; the four-story residential building will have 140 accommodations in eight wards (of these, 45 accommodations are allocated to three socio-therapeutic wards and eight of the rooms are designed and equipped to accommodate the disabled). Furthermore, it is planned to newly construct a workshop building. The part of the building serving preventive detention will be separated from the other areas of the institution by a 5.5 m high wall.
- 48** The rooms accommodating the detainees will be 20 m² in size (plus bathroom) and will be equipped with a kitchenette. Each of the wards will have a group room, an additional open-plan kitchen, a room housing the washing machine and dryer, as well as offices and meeting rooms. The hallways are opened up at intervals to create communications and encounter zones for the detainees. Recreation rooms, a library, as well as a multi-functional room are available to all wards. Two sports rooms, a small playing field, and a surfaced area on which to play boules, for example, are planned for sports activities. The outside grounds directly adjacent to the residential building are designed to have various seating arrangements and exercise areas, as well as a vegetable garden with patches that are to be planted. The

preparatory construction work has already begun. The new buildings are scheduled to be ready for occupancy in December of 2015.

- 49 Currently, the detainees are being housed in separate areas of the Aachen penal institution and of the Werl penal institution. The distance requirement is complied with by consistently applying the Act on the Execution of Preventive Detention in North Rhine-Westphalia (*Sicherungsverwahrungsvollzugsgesetz Nordrhein-Westfalen, SVVollzG NRW*). For example, section 14 (2) of this Act stipulates that detainees are to be given sufficiently large accommodations in which to live and sleep, for their private use, which are to be appointed comfortably and must have a structurally separate sanitary area. This is why, for example, the detainees in the Aachen facility are accommodated in rooms having a floor space of 10.43 m² plus 1.2 m² for the toilet area, which is separated from the room by a door and wall up to the ceiling and has a separate ventilation. The doors to the rooms of the detainees are kept unlocked each day from 6:00 A.M. until 9:30 P.M.
- 50 In the area of the Aachen penal institution accommodating persons in preventive detention, there are kitchenettes and recreation rooms on every storey, the latter of which have been furnished with upholstered furniture and a television set as well as seats, a table, and a dartboard. Every detainee is free to partake of the meals offered by the institution or to prepare meals himself. Moreover, a weight lifting room is freely accessible to all detainees. This is equipped with an ergometer, a stepper, several free weights, and a weight lifting bench. Should the detainees so wish, a table tennis table will be made available.
- 51 A new building has been constructed on an unused part of the Diez penal institution's grounds in order to execute the preventive detention in **the Rhineland-Palatinate** and the **Saarland**. The four-storey building with a T-shaped layout is designed to permanently accommodate 64 persons, divided up into four residential communities of equal size, plus the appurtenant infrastructure for therapy, recreation, and administration. The total area leased amounts to 4,857 m². Both the size of the plot as well as the structure and layout of the building will allow it to be expanded at a later time as needed.
- 52 The civil works were commenced on 16 January 2012. Building "A" housing the detainees was ready for occupancy in May of 2013. The accommodations serving the detainees have a floor space of around 18 m², of which 2.5 m² are allocated to their personal sanitary facilities. The four rooms designed and equipped to accommodate the disabled have a size of 28 m², including 5 m² of plumbing area. In addition to the rooms, each of the four residential communities has a communal kitchen with dining room, a common room, a meeting room for

individual counselling, as well as a generously proportioned common area in the hallway. Furthermore, there is a sports room and a media center.

- 53** The outside grounds, which are freely accessible for use, have been designed to serve a variety of recreational activities: a small playing field with the necessary equipment for tennis, volleyball, basketball, and handball, a boules area, table tennis, a shared area, as well as open spaces within which to create one's own individual garden.
- 54** Including the ancillary construction costs, the construction costs will run to around € 19.5 million.
- 55** The relocation of the detainees into the facility commenced on 3 June. At the end of calendar week 23 (around 7 June), 23 of the currently 42 detainees had been moved into the new building. Due to intensive work being done on the outside of the building, in particular the dismantling of the scaffolding, the move was interrupted for the duration of calendar week 26 (until 28 June) and was completed by the end of July.
- 56** The therapy areas in Building "B" as well as the washrooms and office have reached a stage of completion allowing them to be furnished. Construction work on the recreational field has been completed for the most part. Only a few tasks remain to be done there. Outside of the recreational area, however, further and comprehensive work remains to be done on the outside grounds. All construction work will be completed by October of 2013.
- 57** In the Free State of Saxony, persons in preventive detention are accommodated in a separate area of the Bautzen penal institution. In a first construction phase, half of an existing prison building was converted. After the building had been completely gutted and new ceilings had been constructed, the structural pre-requisites for the new space allocation programme to be implemented had been created. This first building with 20 rooms as well as therapy and recreation rooms was handed over for occupancy in May of 2013. Currently, the other half of this building is being converted to obtain a further 20 accommodations; this construction phase is scheduled to be completed by mid-2014. The total construction costs amount to € 7.4 million.
- 58** The detainees' accommodations each have a shower, toilet, washbasin, and kitchenette (specifically a refrigerator and a cooktop for two pots). The rooms' floor space amounts to at least 20 m² including the plumbing area. As part of a working group project, employees of the Bautzen penal institution developed furniture specifically for these spaces, which was manufactured by prisoners in the institution's joinery. The rooms have two closets, a wall-

mounted shelf, a bed, a wardrobe, a desk, a separate dining table, and two chairs. Four of the rooms have been designed and equipped to accommodate the disabled.

- 59** Each of the residential communities (consisting of ten detainees each) has a communal kitchen with tables and chairs as well as one computer work station (currently without a connection to the internet) directly adjacent to the kitchen in a part of the hallway that has been expanded. Furthermore, treatment rooms and offices have been placed in the residential part of the building. On the lower storey of the building, further treatment rooms and offices as well as a room for the washing machine and a library are planned.
- 60** Directly next to the building, there are separate, generously proportioned outside grounds with a sports field, benches, a meadow, and a garden. This open area is freely accessible to the detainees during the daytime. As a matter of principle, the rooms are kept unlocked during the daytime and at night.
- 61** Once the overall construction measure has been completed, a total of four residential communities comprised of ten detainees each will be living on two storeys. In future, it is intended to differentiate the residential communities among each other (stage I: orientation, with the objective of increasing detainees' motivation; stage II: participation in therapeutic treatment, with the objective of reducing the threat posed by the individual and of working out a specific perspective for their life; stage III: preparation of release).
- 62** It bears noting that detainees may also be lodged in the socio-therapeutic ward of the Waldheim penal institution, in particular if they have already begun this measure while a previous prison sentence was being executed.
- 63** In **Saxony-Anhalt**, 18 new rooms were created in the Burg penal institution for persons in preventive detention by converting a building, and were ready for occupancy in June of 2013. The rooms have a size of at least 20 m² including the bathroom. Additionally, a kitchenette is installed with a sink, a cooktop for two pots, and a refrigerator. One of the rooms has been designed and equipped to accommodate a disabled person. It is intended to refurbish a further six rooms in the same building by 2018. The rooms required for providing therapeutic treatment to the detainees are available in the Burg penal institution and continue to be used.
- 64** In spite of the cooperation already described with the *Land* of Hesse, preventive detention is also executed in individual instances in the Tonna penal institution in **Thuringia**. However, this can be the case only if it is required by the treatment pursuant to section 66c (1) no. 1 of the Criminal Code (StGB) (cf. section 62 (3) first sentence in conjunction with section 11 (2) first and second sentences of the Thuringian Act on the Execution of Preventive Detention

(ThürSVVollzG)). This is the case in particular where a detainee is in socio-therapeutic treatment or where he is to be prepared for release in an open prison. In this context, the specific conditions of accommodation must be different from those in which convicted offenders serving their sentence are lodged (cf. section 62 (3) second sentence of the Thuringian Act on the Execution of Preventive Detention (ThürSVVollzG)). In other words, the correctional authority is to take all organisational measures in order to ensure that the persons concerned live in conditions that are fundamentally equivalent to those of the institution in which persons in preventive detention live.

2. Therapy

- 65 In the institutions centrally responsible in the *Länder* for executing preventive detention, the detainees have the opportunity to avail themselves of comprehensive and interdisciplinary treatment measures and other measures. Inasmuch as this is necessary to achieve the objectives pursued by the execution of preventive detention, the detainees are motivated to take part in such measures. They are flanked by offerings available in other correctional service institutions, in particular in penal institutions executing prison sentences, that detainees fundamentally may also attend – as a general rule, they must themselves agree to this – where this is required in order to achieve the objectives pursued by the execution of preventive detention. The measures are adjusted to correspond to individual requirements, so that the detainees are then housed in a suitable facility in the sense of Article 5 (1) lit. e of the Convention.
- 66 In order to ensure that detainees receive the therapeutic treatment suitable for their individual needs, the *Länder* have taken the following measures:
- 67 In **Baden-Württemberg**, a total of 18 new permanent positions were created in those penal institutions in which convicted offenders serving their sentence, for whom preventive detention has been reserved or has been ordered, and persons in preventive detention are housed according to the applicable scheme of execution for their sentences. Moreover, a psychiatric consultant physician is available in the Freiburg penal institution to treat detainees as well as two extra-mural counsellors working on a fee basis who provide art therapy and kinesiotherapy.
- 68 At a conceptual level, a treatment team was formed in the Freiburg penal institution from among the members of the specialist services and the general prison supervision services, which is to structure the future accommodation of every detainee as regards their therapeutic treatment, while bindingly allocating the individual members of the services to one of the wards on each of the four storeys of the building.

- 69 In the meantime, the execution format of residential communities has become an established treatment form, with each of these communities taking up one of the different wards on each of the four storeys of the building. Depending on their treatment needs, the detainees will be accommodated on a commitment and orientation ward, a ward for persons currently posing a threat and unable to live in a community – referred to as “individual care ward” – or to one of two wards where life in a residential community is compulsory; one of these wards focuses on motivating the detainees and promoting their social competence, while the other is specialised in studying and reappraising the offense and orienting the detainees towards their release. In each of the wards, the detainees are given treatment in accordance with their individual needs.
- 70 In order to instill in the detainees a willingness to undergo therapy, which is a pre-requisite for any treatment, it is offered to most detainees on a regular basis, in psychotherapeutic conversations, that they might wish to pursue individual therapy. Additionally, treatment-oriented group sessions take place on three of the wards. Moreover, the detainees have the opportunity to take part in milieu-therapeutic individual measures.
- 71 The specific therapeutic opportunities available to the detainees include an offense-specific therapy for sex offenders and violent offenders, as are social training courses, occupational therapy, art therapy and kinesitherapy.
- 72 For women in preventive detention, the Schwäbisch Gmünd penal institution has put in place a therapeutic concept corresponding to the treatment available in the Freiburg penal institution.
- 73 In **Bavaria**, the Straubing preventive detention institution has treatments available that correspond to the standards of social therapy. Persons in preventive detention are offered an intensive, customised treatment. In order to achieve this, a **total of 71 new positions** were created for the new preventive detention institution, with one psychiatrist, seven psychologists, one physician and four nurses being hired specifically for the purposes of providing therapeutic treatment.
- 74 The treatment of detainees is based on a treatment concept tailored to their individual needs, which was developed by the Criminological Service (*Kriminologischer Dienst*) of the Bavarian correctional services already after the ruling handed down by the Court on 17 December 2009 and amended in the aftermath of the ruling handed down by the Federal Constitutional Court (BVerfG) on 4 May 2011 (for further details, see Endres/Breuer,

Sicherungsverwahrung: Das Behandlungskonzept des bayerischen Justizvollzugs (Preventive Detention: The Treatment Concept of the Bavarian Correctional Services), in: *Forum Strafvollzug* (Forum On Matters Pertaining to the Execution of Prison Sentences) 5/2011, p. 286 et seqq.).

- 75** At the beginning of their preventive detention, each detainee is subjected to an examination regarding potential treatment options (cf. Art. 8 of the Act on the Execution of Preventive Detention (BaySvVollzG)). Where the detainees are willing to cooperate, the causes underlying the criminal deeds, the individual risk factors as well as the treatment needs, the ability to be treated and the motivation to seek treatment of the detainees are discussed with them and determined. Concurrently, those of the abilities are identified that will counteract the threat posed by the detainees to the general public.
- 76** Following the examination regarding potential treatment options, a correction and prevention scheme is prepared on the basis of the insights gained that determines the individual treatment objectives while identifying the measures suited and necessary to achieve them (cf. Art. 9 of the Act on the Execution of Preventive Detention (BaySvVollzG)). The measures offered in this context, often in combination with each other, include standardised evaluated treatment programmes for violent offenders or sex offenders, individual therapy, socio-paedagogical group measures, socio-paedagogical support granted on an individual basis as well as recreation groups monitored and cared for by treatment professionals. Where needed, extra-mural therapists are involved in these measures as well.
- 77** A particular focus is on the detainees recognising their need to be treated and on promoting their willingness to undergo such treatment. Accordingly, the correction and prevention scheme will expressly define whether individual or group measures should be taken, and if so, which ones, in order to instill a motivation for treatment in the affected detainees. This purpose can be served particularly by individual conversations and recreation groups in order to facilitate detainees' acceptance of the measures and opportunities being offered and to gradually reduce their inner resistance and reservations in this regard. Moreover, a statutory incentive system will promote the motivation of detainees to participate in treatment measures. For example, the pocket money paid to detainees may be increased from approximately € 50 to approximately € 100 if they participate in treatment measures (which may be designed to be low-threshold). Additionally, detainees taking part in treatment measures during working hours have the opportunity to be "reimbursed" for their loss of earnings for up to ten hours per week.

- 78** In **Berlin**, the preventive detention institution avails itself of social and psycho-therapeutic, psychiatric, and socio-paedagogical methods as well as methods of occupational therapy. In designing and structuring the therapeutic measures, the expert staff involved closely cooperate and contribute their expertise from their various fields; to the extent necessary, they also involve extra-mural experts, making them a part of the multi-disciplinary team that is well-equipped both in quantitative and qualitative terms. By having created manageable residential communities with permanently allocated counselling and technical staff, a closely knit, intensive treatment setting that focuses on individual needs is assured. The treatment measures are focused on four areas: motivation and activation of detainees; assuring their quality of life and teaching them skills for managing the tasks of everyday life; improving the detainees' prognosis and mitigation of the threat they pose to society: preparing detainees for their release.
- 79** Detainees for whom this is indicated are treated in the Social Therapeutic Facility (*Sozialtherapeutische Anstalt*) located on the grounds of the preventive detention facility.
- 80** In **Brandenburg**, a framework concept was developed on the basis of the Brandenburg Act on the Execution of Preventive Detention (*Brandenburgisches Sicherungsverwahrungsvollzugsgesetz*, BbgSVVollzG) for executing preventive detention in the *Land* of Brandenburg in a manner oriented by the principle of freedom and directed at therapeutic treatment. The framework concept, which is being applied, includes specific structural and procedural requirements for the process of motivating and treating detainees. Besides socio-therapeutic approaches to treatment and individual therapeutic counselling by extra-mural therapists, new therapeutic treatment methods are to be tested, such as reasoning and rehabilitation, schematic therapy, acceptance-and-commitment therapy. Approaches of art therapy and gardening therapy are likewise in use. Together with extra-mural specialists (psychiatrist, ergotherapist), the counselling and treatment tasks are performed by staff that has been hired in accordance with the staffing ratio determined for socio-therapeutic facilities.
- 81** In **Hamburg**, the treatment of detainees is based on a treatment setting designed as intensive milieu therapy (execution in residential communities). The treatment concept in use here stipulates a combination of treatment measures, in keeping with tried-and-tested socio-therapeutic concepts, that are specific to the offense and the personality of the offender. The detainees are treated in individual and group settings with a variety of methods being used. Each of the detainees is assigned to an individual therapist. The methods of dialectic behavioural therapy serving to treat impulsive and dissocial dysfunctions have been adapted to requirements given in a preventive detention institution. The treatment of sexual offenders,

oriented by the nature of the offense, is based in particular on the methods of the Sex Offender Treatment Programme. For violent offenders, a corresponding treatment programme is applied. In order to motivate the detainees, the clinical method of motivational interviewing is applied, among other instruments. However, the treatment of detainees does not begin only in preventive detention. As early as when they are committed to prison, the convicted offenders serving their sentence for whom subsequent preventive detention has been ordered will begin an intensive course of treatment. This specifically includes treatment in a socio-therapeutic facility that will perform a comprehensive examination regarding potential treatment options for this group of prisoners. The facilities caring for persons in preventive detention and convicted offenders serving their sentence for whom subsequent preventive detention has been ordered have been staffed accordingly.

- 82** The employees working in the ward for detainees and extra-mural therapists ensure that the detainees receive the therapeutic treatment they need.
- 83** These measures also extend to persons in preventive detention from **Schleswig-Holstein**, who are placed in Hamburg.
- 84** In the **Land of Hesse**, an extensive treatment concept oriented by the statutory requirements as well as by scientific insights was developed for the preventive detention ward in the Schwalmstadt penal institution as well as in the penal institution of Frankfurt am Main III (women's prison); this concept is based on a comprehensive array of individual therapy opportunities and socio-paedagogical measures. Essentially, five fields are covered:
- Criminal therapy,
 - Psychotherapy,
 - Measures to improve social competence,
 - Measures of occupational therapy and sports therapy, and
 - Preparation for detainees' release.
- 85** The concept provides for treatment measures in general as well as specific therapies to be made available to detainees on the basis of the above fields, which are to serve as an aid in promoting the resocialisation process. A broad range of measures takes account both of the deficits from which the detainees suffer as regards the offense they committed, as well as the current age structure. The therapy indicated is the result of careful diagnostic and prognostic work done by the facility's expert staff.

86 This concept is being comprehensively applied in the preventive detention ward of the Weiterstadt branch of the Schwalmstadt penal institution already in the interim period until the above-described conversion of the buildings is completed.

87 For example, the following treatment measures are being implemented there:

- **Motivation and orientation group**
Focus: promoting the acceptance of treatment measures;
- **R & R (reasoning and rehabilitation programme)**
Focus: developing strategies for problem resolution;
- **SOTP (sex offender treatment programme)**
Focus: avoiding relapses by sex offenders;
- **Group training in social competences**
Focus: training in social competence and behavioural training; managing the challenges of everyday life;
- **Therapeutic individual sessions for special indications**
Focus: therapeutic support on an individual basis; preparation for group therapy
- **Therapeutic sports groups**
Focus: process of group formation, team sports comprising preventive healthcare components, motivation of detainees
- **Paedagogical measures in recreational activities organised by the social services and general supervision services**
- **Socio-paedagogical group projects**

88 By way of ensuring that the therapeutic and treatment measures are performed in the treatment intensity required, the workforce was increased by 45.5 additional positions in the areas of specialist services (psychological, paedagogical, and social services), the general execution services as well as in the medical and nursing care services; additionally, two ergotherapists were hired.

89 The detainees from **Thuringia**, who are placed in the *Land* of Hesse, likewise benefit from these treatment opportunities.

90 In **Mecklenburg-Western Pomerania**, a total of 24 positions were allocated to preventive detention, which were filled by experienced correctional services staff trained in dealing with persons in preventive detention. The sole new hire was a single social education worker.

91 The required therapeutic treatment of detainees in Mecklenburg-Western Pomerania is assured by a treatment concept that provides for the therapy to be directly tailored to the

needs of the detainees, in addition to the therapy oriented by the offense(s) they have committed. The implementation of the necessary measures is regularly and independently monitored, for each individual detainee, by the Diagnostics Center of the Correctional Services of Mecklenburg-Western Pomerania (*Diagnostikzentrum des Justizvollzugs Mecklenburg-Vorpommern*).

- 92** The obligation stipulated in the Act on the Execution of Preventive Detention in Mecklenburg-Western Pomerania (SVVollzG M-V) to continually instill a sense of motivation in the detainees and to promote it is met by a variety of motivational measures that are implemented in parallel or successively, depending on the detainees' individual needs, and that may be augmented by further motivational measures as needed.
- 93** In **Lower Saxony**, 30 new permanent positions specifically for the counselling and treatment of persons in preventive detention have been approved from the fiscal year 2013 onwards. A psychiatrist has taken over the function of treatment director in the preventive detention ward of the Rosdorf penal institution. From fiscal 2014 onwards, budget approval for additional positions has been applied for both for the preventive detention ward of the Rosdorf penal institution and for the execution of prison sentences where preventive detention has been ordered or reserved. These staffing measures are flanked by an increase of the budgets for external services and materials in order to be able to retain extra-mural therapists as needed.
- 94** The detainees from **Bremen**, who are placed in Rosdorf as well, likewise benefit from these treatment opportunities.
- 95** In **North Rhine-Westphalia**, a concept has been prepared in coordination with the practitioners in correctional services for executing preventive detention in a manner oriented by the principle of freedom and focused on therapeutic measures. The concept, which has entered into force on 1 June 2013, includes the following measures:
- General education and training opportunities (e.g. acquisition of competencies for dealing with day-to-day life, activation of positive inner resources, creation of incentive systems),
 - Therapeutic basic modules (e.g. psycho-education, i.e. establishing the need for treatment; motivational interviewing, i.e. guiding the conversation such that it creates an intrinsic motivation within the patient to change his behaviour; reasoning and rehabilitation, which allows patients to develop an understanding of their situation and to reintegrate into society, while reducing fears and reservations about therapy; as well as a special treatment programme for sex offenders and a special treatment programme for violent offenders who are incarcerated),

- Socio-therapeutic treatment (e.g. psychotherapy, dialectic-behavioural therapy – mitigation of self-damaging behaviour and behaviour harming others, prophylactic relapse prevention groups).

- 96** Moreover, a socio-therapeutic ward was instituted for detainees in the Werl penal institution.
- 97** The staffing levels in the wards concerned were improved. The positions allocated to these areas are now oriented by the (more favourable) staffing key applying to socio-therapeutic facilities. Additionally, in order to improve treatment, the budget now includes funds for extra-mural therapists to be involved.
- 98** In the **Rhineland-Palatinate**, an interdisciplinary working group was established, in which **Saarland** was likewise a member. This group was tasked with preparing a treatment concept for preventive detention in the Rhineland-Palatinate and submitted its final report on 13 May 2013.

The final report is structured such that it begins by outlining the diagnostic and therapeutic approaches used in working with convicted offenders serving their sentence, for whom preventive detention has been ordered or reserved. These procedures are also applied, by analogy, to persons in preventive detention. While their diagnosis and treatment follow fundamentally similar principles, different priorities are set in individual instances. Since, according to the ruling handed down by the Federal Constitutional Court (BVerfG) on 4 May 2011, the treatment opportunities available to persons in preventive detention must be tailored to their individual needs, the working group has compiled a large number of scientifically recognised interventions serving the motivation and treatment of such persons; these will be successively tested and developed further in the Diez penal institution.

- 99** The treatment concept pursues the objective of beginning the diagnostic work and treatment with persons for whom preventive detention has been finally and conclusively ordered or reserved already during their punitive imprisonment, and to exhaust all measures available in order to prevent, if at all possible, their being placed in preventive detention.
- 100** In **Saxony**, the preventive detention ward of the Bautzen penal institution houses 20 detainees; the staff is comprised of one departmental head (higher service – legal expert), two psychologists, a physician with psychotherapeutic training, two social workers, an art therapist, a occupational therapist, and nine staff members of the general correctional services.

- 101** In order to treat the different patterns of dysfunction as given within this group of people, budget funds have been allocated in particular for the fees charged by psychiatrists, psychotherapists, ergotherapists and other specialists in this field.
- 102** A working group consisting of staff members of the Bautzen penal institution and the Criminological Service (*Kriminologischer Dienst*) of the Free State of Saxony has coordinated and worked together with the State Ministry of Justice and for European Affairs of the *Land* of Saxony in preparing a concept for the accommodation, counselling, and treatment of detainees. The basis for this was a diagnosis performed by the Criminological Service of test persons for whom preventive detention had been ordered / reserved, in order to analyse the need for treatment.
- 103** The objective pursued by the treatment is to improve mental health, to strengthen inner resources and to alter the factors in the patient's personality and environment that have a criminogenic effect on them – by this holistic approach to treatment, the threat these persons pose to society is to be reduced. Thus, the future detainees are visited in the facilities in which they are serving their sentences, already prior to their being committed to preventive detention by staff of the preventive detention ward of the Bautzen penal institution. When they are transferred, a therapeutic handover meeting is held with the detainee. Overall, the course of treatment in preventive detention is comprised of three modules:
- **Orientation and diagnostics module:** In addition to being diagnosed, detainees are to grow accustomed to their new surroundings, identify new approaches for personal change, and develop a motivation to pursue more intense therapeutic intervention. This is achieved in individual and group sessions as well as by psychological and medical / psychiatric diagnostic exercises. Based on these data, an individual correction and prevention scheme also serving reintegration purposes is established.
 - **Intervention module:** The detainees are given a weekly schedule setting out their therapy components. Depending on their ability to live in groups and on their learning objectives, they will attend individual or group therapy sessions. The detainees are to participate in measures of occupational therapy, or are to be given the opportunity to complete their school education or to pursue professional training; likewise, they are to learn how to live a healthy life and to take on responsibility for the group in the context of the milieu-therapeutic residential community.
 - **Transitional module:** The contact with and transition into the detainees' individual release is organised by establishing certain developmental objectives such as the establishment of social contacts or intensification of existing ones (involving family members and/or volunteers), graduated measures of relaxing the execution of the

sentence, placement in an open detention facility, establishment of contact to extra-mural follow-up care organisations, planning for the release and planning for the move into assisted living facilities or retirement homes.

- 104** The concept was implemented under the expert supervision of the Criminological Service (*Kriminologischer Dienst*) of the correctional services of the Free State of Saxony.
- 105** In **Saxony-Anhalt**, the treatment concept for persons in preventive detention is oriented by socio-therapeutic approaches to integrative treatment. Based on an understanding that delinquency and/or dysfunction have their roots in a multitude of factors, the clients are offered a wide range of individual, interlinked treatment opportunities. This integrative approach both addresses criminogenic factors (deficit-based approach) and promotes the factors suited to preventing a relapse into delinquency (resource-oriented approach).
- 106** The detainees are treated by an interdisciplinary team of physicians, psychologists, psychotherapists, social paedagogues and social workers, ergotherapists, and personal process consultants. Following a comprehensive entrance examination and diagnosis, the detainees are integrated into the execution in residential communities. Depending on the treatment indicated for them, the detainees are offered individual treatment and/or therapy specifically designed for their needs.
- 107** Treatment sessions will include psychological and, as the case may be, psychotherapeutic individual sessions, motivational groups, treatment groups addressing specific aspects of the offense(s) committed, anti-aggression groups, addiction groups, training in social competence, dealing with frustration and stress, recreational and creative groups. Besides the individual sessions and group work, the involvement of external attachment figures (e.g. spouses or partners in a civil union, children, probation officer) may also be an important factor for ensuring that detainees are able to lead a crime-free life subsequent to serving their criminal sentence.
- 108** Day-to-day life and the social interaction of the detainees are discussed and evaluated in the sense of a milieu therapy jointly with the correctional officers and the heads of the residential communities. Implementing the treatment requirement stipulated by the law requires all parties involved in the treatment process to contribute a high degree of professional competence, stress-resistance, personal motivation, and ability to work in a team, to cite but a few examples. This is assured by involving an extra-mural team supervisor.

109 In **Thuringia**, the concept of the socio-therapeutic ward is currently being revised for the detainees in the Tonna penal institution by the *Land* Ministry of Justice of Thuringia in cooperation with the Criminological Service and the penal institution. Moreover, a treatment concept is being prepared for prisoners from whom preventive detention has been ordered or reserved.

IV. Individual measures

110 The Compliance Report of 11 March 2013 has set out in detail the various measures taken in the individual proceedings, and is included herein by reference. Solely the following information should be added as regards the further development of the applicants who continue to be in preventive detention:

1.K. (Application No. 17792/07) and M. (Application No. 20008/07)

111 The detainee K. continues to live in the Aachen penal institution in preventive detention.

112 In most recent years, the attitude and behaviour of the detainee have been marked by his feeling that, as an “old case,” he has been kept in preventive detention unlawfully. Against this backdrop, he refused to participate in treatment measures offered in the context of his preventive detention.

113 By order of the execution of sentence division (*Strafvollstreckungskammer*) of the Regional Court (*Landgericht*) of Aachen of 21 February 2013, Dr. R. was asked to prepare an opinion on the detainee K. and to state whether or not, in his view, specific aspects of the detainee’s person or behaviour would give rise to the assumption that he represents a high risk to society as concerns exceptionally serious violent and sex offenses.

114 In his report of 22 April 2013, the expert came to the result that the detainee fulfils all criteria making up an antisocial personality disorder in the sense of ICD-10. Moreover, the detainee has abused several substances in parallel, notably alcohol and drugs, and is addicted to them; he is abstinent under protective conditions. In light of this mental dysfunction, the expert has stated that as before, there is the exceptionally high risk that the detainee will commit acts of sexual abuse.

115 However, new perspectives may open up now that the detainee has consented to once again commence therapeutic treatment. Specifically, Mr K. will begin individual therapy with an extra-mural, female therapist in September of 2013.

116 By its order of 14 June 2013, the execution of sentence division of the Regional Court of Aachen has refused, following a meeting at which it heard the detainee, to declare the further execution of preventive detention as accomplished, or to suspend it on probation. This ruling is not final and still subject to appeal as Mr K. has filed an immediate complaint against the order.

117 Since 4 January 1997 preventive detention has been executed against M. based on the sentence handed down by the Regional Court (*Landgericht*) of Duisburg of 22 July 1991. Since 15 March 2006, Mr M. has been housed in the Aachen penal institution. The execution of sentence division (*Strafvollstreckungskammer*) of the Regional Court (*Landgericht*) of Aachen has suspended, by its order of 31 May 2013, which became final and non-appealable on 11 June 2013, the further execution of the preventive detention on probation, subject to certain requirements being met and instructions being followed.

118 On 12 June 2013, the convicted offender was released from preventive detention and moved into the flat-sharing community “Die Kaue” in Recklinghausen. On 20 June 2013, the execution of sentence division of the Regional Court of Aachen issued a warrant of arrest in order to secure the revocation proceedings (*Sicherungshaftbefehl*) against the convicted offender for the violation of instructions issued to him pursuant to section 453c of the Code of Criminal Procedure (*Strafprozessordnung*, StPO). On that same day, Mr M. was arrested in Recklinghausen and taken to the Bochum penal institution. Mr M. had failed to comply with several of the instructions issued to him, in particular those forbidding him to partake of alcoholic beverages or other means of intoxication. Moreover, he had violated the internal house rules of the facility “Die Kaue” during his stay there, which had begun only on 12 June 2013.

119 Since then, M. has been under arrest to secure the revocation proceedings, and has returned to the Aachen penal institution on 24 June 2013. The public prosecutor’s office of Duisburg has petitioned that the suspension of preventive detention on probation be retracted. No ruling has as yet been handed down in this regard.

2. B. (Application No. 61272/09)

120 Since 26 June 2013, the detainee B. has been living in the preventive detention ward of the Straubing penal institution. Since May of 2012, he has taken part in 25 individual therapy sessions. At present, the expert Dr N. is working on a prognostic statement, in accordance with the order handed down on 31 January 2013 by the external execution of sentence division (*Strafvollstreckungskammer*) of the Regional Court (*Landgericht*) of Regensburg,

which division is domiciled in Straubing. For this purpose, the detainee was explored on 22 und 24 May 2013 by the expert. The report has not been submitted as yet.

121 On 17 April and 13 June 2013, the detainee was allowed to take short periods of leave under escort, which he had been psychologically prepared for and regarding which he was debriefed subsequently. These periods of leave did not give rise to any concerns. A further such leave was planned for 25 July 2013.

3. K. (Application No. 61827/09) and G. (Application No. 65210/09)

Reopening of the proceedings:

122 The application for reopening of the proceedings filed by the detainee K. had been dismissed as inadmissible by order of the Regional Court (*Landgericht*) of Darmstadt of 20 February 2013. The immediate complaint filed by the detainee with the Higher Regional Court (*Oberlandesgericht*) of Frankfurt am Main likewise did not meet with success and was dismissed by the court's order of 13 May 2013.

123 The detainee G. has filed an immediate complaint with the Higher Regional Court against the order handed down by the Regional Court of Darmstadt on 20 December 2012, which dismissed his application for reopening of the proceedings. By order of the Higher Regional Court of Frankfurt am Main of 29 April 2013, the appeal was dismissed as inadmissible.

124 In both of these cases, the Higher Regional Court of Frankfurt am Main held, in the reasoning for its order, that the facts had not been sufficiently stated.

Continued preventive detention

125 Both of the Applicants have filed a constitutional complaint against the rulings handed down thus far by the Regional Court of Marburg and the Higher Regional Court of Frankfurt am Main stipulating the continuance of their preventive detention.

126 By ruling of the Federal Constitutional Court (BVerfG) of 6 February 2013, the decisions

- In the matter **G.** (2 BvR 2122/11) against the rulings handed down by the Higher Regional Court of Frankfurt am Main on 22 August 2011 (3 Ws 761-762/11) and by the Regional Court of Marburg on 15 July 2011 (7 StVK 190/11 + 267/11) and
- In the matter **K.** (2 BvR 2705/11) against the rulings handed down by the Higher Regional Court of Frankfurt am Main on 15 November 2011 (3 Ws 970/11) and by the Regional Court of Marburg on 30 August 2011 (7 StVK 266/11)

127 were repealed and referred back to the Higher Regional Court, to be ruled on once again. In the reasoning for its decision, the Federal Constitutional Court (BVerfG) stated that the rulings handed down by the Higher Regional Court of Frankfurt had violated the Applicants' fundamental rights as given under Article 2 (2) second sentence in conjunction with Article 104 (1) and Article 20 (3) of the Basic Law (*Grundgesetz*, GG). The decisive factor in this regard was that the Higher Regional Court had failed to apply the strict examination standard used by the Federal Constitutional Court (BVerfG) for cases involving an issue of trust meriting protection, according to which preventive detention may continue to be executed only if it meets the pre-requisites stipulated by Article 5 (1) lit. e of the Convention. In neither of these cases has a ruling been handed down as of yet, or at any rate, no such ruling has been made known to the author of the present Final Report.

128 In both cases, proceedings are currently pending with the Regional Court of Marburg, as applied for by the Schwalmstadt penal institution of 24 December 2012 in each case, to have the detainees placed in accordance with the Act on Placement for Therapeutic Treatment (*Therapieunterbringungsgesetz*, ThUG).

Therapeutic and treatment measures; efforts at motivation

129 As before, Mr G. does not participate in any treatment and/or therapeutic measure. He is deemed to be a detainee who refuses any and all measures and who cannot be reached by any means or individual incentives. Mr G. puts an end to any efforts at motivating him by verbally aggressive outbursts, and vehemently refuses to accept such overtures. Fundamentally, he is not willing to enter into a conversation. When the responsible psychologist attempted to motivate Mr G. to participate in the SOTP group, the Applicant indignantly and aggressively demanded that he refrain from such efforts in future.

130 Recently, it was possible to motivate Mr K. to attend a six-week training course in social competence. In spite of this progress, he continues to refuse to communicate with staff and does not allow any further efforts at therapy or treatment. In his case as well, continuous efforts are made to involve him, but to no avail. He is not willing to participate in any other measures.

131 In the view taken by the staff of the institution, both of the Applicants are not willing to work towards personal change, in spite of exceptionally intense efforts in this regard by staff.

4. S. (Application No. 3300/10)

132 By judgment of 30 July 2008, an order was issued against the Applicant regarding his retroactive preventive detention pursuant to section 66b (3) of the Criminal Code (StGB) in its old version. Upon the Federal Constitutional Court (BVerfG) having stated, in its ruling of 6 February 2013, that the stricter standard as set out in the judgment of 4 May 2011 also applied to cases of retroactive preventive detention pursuant to section 66b (3) of the Criminal Code (StGB) in the old version of the law, the public prosecutor's office of Munich I was asked, by letter of 4 March 2013, to immediately initiate a review of the continuation of the detention, in accordance with the stricter standard.

133 Thereupon, the public prosecutor's office of Munich I asked the Straubing penal institution to state its position as regards the threat posed by the Applicant, in terms of his committing exceptionally serious violent offenses or sex offenses, on whether or not he suffered from a psychological disorder, and on the matter of his being transferred to a psychiatric hospital in accordance with section 63 of the Criminal Code (StGB). In its statement of 2 April 2013, the Straubing penal institution declared that, considering the overall situation and in particular taking account of the public's interest in security, it could not advocate suspending the further execution in preventive detention at this time under any circumstances whatsoever. Likewise, transferring the convicted offender to a psychiatric hospital in accordance with section 63 of the Criminal Code (StGB) did not seem a sensible alternative, the institution stated, as his compliance with therapeutic measures was too low. Furthermore, it referred to the opinion of the expert involved, according to which it was currently not to be expected that the Applicant's behaviour would change by his participating in a psychotherapeutic/psychiatric measure.

134 On 11 April 2013 the public prosecutor's office of Munich I applied with the external execution of sentence division (*Strafvollstreckungskammer*) of the Regional Court (*Landgericht*) of Regensburg, which division is domiciled in Straubing, to have the preventive detention continue and submitted the files.

135 By order of 11 June 2013, the execution of sentence division asked Prof. Dr. O. to prepare a psychiatric expert report on the threat to society posed by the Applicant and his psychological dysfunction in the sense of section 1 of the Act on Placement for Therapeutic Treatment (*Therapieunterbringungsgesetz*, ThUG), and/or to state which potential measures might improve the convicted offender's prognosis regarding his criminal propensities. This report has not been submitted as of yet.

136 As before, the detainee is not willing to participate in any treatment measures. He had solely been willing to join a “basic cooking group.” However, after two group hours, he refused all further attendance, citing as his reason that the group was being run by internal expert services.

137 The practice of having individual talks with the detainee will continue in order to mitigate his reservations against treatment. Moreover, the detainee will be offered the opportunity to take part in numerous supervised group or recreational events such as conversation groups, relaxation groups, and groups serving to prepare members for therapy.

V. Conclusion

138 In the view taken by the Federal Government, these measures, along with the measures set out in the report of 11 March 2013, fully implement the judgments.