

EDLIRA PAPAANGJELI

WOMEN IN THE CONFLICT WITH THE LAW  
– THE GENDER PERSPECTIVE  
IN THE CRIMINAL JUSTICE SYSTEM

*-Monograph-*



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## Acknowledgment

*The realm of criminal justice with a particular focus on detained and sentenced women has always been of interest to me. This interest arose around the year 2000, along with my professional commitment to the Albanian Helsinki Committee, one of the most prominent organizations that contributes to the observation of human rights in general and of the persons deprived of their liberty in particular. My involvement in leading many initiatives regarding state police performance and prisons, have given me a wonderful opportunity to get to know from up close the developments in the Albanian criminal justice and at the same time awakened in me a special interest in scientific research, particularly on issues that have not been submitted as yet to a thorough scrutiny, such as the case of women offenders who are consequently faced with many bodies of criminal justice administration.*

*The work with Albanian professors from various fields, such as the criminal justice, human rights and gender equality, as well as ongoing cooperation with many national and international experts who are part of the academic world also from the field of the prison system, have inspired me to discuss many of the issues addressed in this paper and presented me with different perspectives that I found very useful for it.*

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## **Preface**

This monograph by Dr. Edlira Papavangjeli hereby presented to the general public and to the criminal justice system is a publication of great value. The publication is a reflection of her professional commitment, and many years of practice in the field of criminal justice as well as her research. Her experience of 15 years with the Albanian Helsinki Committee has provided the author with the opportunity to see close-up the challenges faced by the criminal justice system, analysing them from a theoretical and practical human rights perspective. The internal drive to contribute further to the development of the rule of law in this country with the aim of its further improvement, not as a goal in itself, but as the need to establish a better and fairer criminal justice system, clearly underpins this monograph.

Criminal justice in itself has a number of aspects which have been and should be the subject of research and studies in the future. Criminal justice is a part or branch of the justice system in a country and, like other branches of the justice system, it is and should be created to serve society, its needs and interests, its present and its future. With this perspective, analysis of different aspects of this system are very necessary in order to understand to what extent a certain rule is really serving the purpose for which it was established. In such analysis, the gender perspective is without doubt of paramount significance, sufficiently to make us welcome all publications that bring this perspective to the criminal justice system. Practices followed to date, the need to follow certain practices in the future, a correct understanding of the elements necessary for the treatment of women in conflict with the law as a specific group of society, and the inclusion of the gender perspective in the criminal justice system all have a special importance. As the title of the monograph explains, the analysis here is from a gender perspective. The gender perspective on handling a range of issues in criminal justice constitutes two aspects that make this monograph unique. Such a monograph is of interest for all researchers, policy-makers and practitioners in the field of justice.

A screening of the administration of criminal justice is always worth doing and even more so when it emerges in print. It is of even more value when the screening has a

special perspective and has women as a special focus. Nevertheless, the monograph which you will read here is not simply an overview of the reality of the system seen from the gender perspective. The publication also reflects the theoretical and scientific debates taking place in the literature of contemporary Europe and across the world. It evokes theories and concepts of importance to criminal justice and the integration of the gender concept within it, as theories sensitive to gender, and it focuses on these theories even though it refers to and rationalizes other aspects related to theories of the routes to crime, of relationships, of trauma theory and of addiction. For each of these theoretical aspects, the author provides an analytical overview which helps the reader understand even better the fundamental theory currently being used in relation to the issues studied in this monograph, namely gender-sensitive theory. Through the analysis provided, the reader is invited to understand the fundamentals of this theory which emphasizes the importance of recognizing, first, the pathways that lead women to criminality and second, the need for a better understanding of the specific life circumstances of women in conflict with the law, and to draft and later implement policies and programs that respond to these specific needs during the time when they are serving their sentence under the care of the prison system. The research reflects an analysis of the gender perspective in the criminal justice system in our country, using this fundamental theory in the analysis, with perspectives on its approach and its guiding principles. The basic principles of a theory such as the acceptance that gender makes a difference, establishing a climate based on safety, respect and dignity, drafting of policies, practices and programs which create healthy relationships with children, family, other people important to the women, and the community to which they will return, addressing a range of challenges faced by women, creating opportunities for women to improve their social and economic status as well as establishing an system for oversight in the community, and for women's successful return to society after their release in co-operation with other services and bodies outside the criminal justice system; these are the principles that this monograph presents through gender-sensitive theory as fundamental for policy-makers and others. This monograph also introduces other concepts new to the literature in contemporary Albanian such as the "battered woman" syndrome, through offering of an analysis of the positive aspects of the use of such a concept, even supporting the idea of using it in the process of giving justice to women, thus supporting its legitimacy in justice processes. Different perspectives on the basis of the criminal justice system for women are not only welcomed, but very necessary in order to encourage informed debate on the most healthy foundations of our country's criminal justice system. The debate is encouraged even more by the fact that the monograph offers comparative analysis of the criminal justice system towards women offenders in different European countries. The theoretical perspectives are not the only ones used by the author in this monograph, which also includes empirical information. The author has further researched and processed concrete data applied

to the criminal justice system for women offenders in our country and even offers comparative analysis of the results, with the aim of highlighting trends in crime typology and related aspects seen from the gender perspective.

The monograph continues with an historical analysis of the prison system. Legislative developments are presented in the light of international standards and principles. Attention is given also to the safeguards of human rights in the prison system as well a gender perspective on human rights. Such an analysis contributes to a better understanding of the basis of the criminal justice system seen from the gender perspective as well as the need for legislative improvement of this system.

Models of the social exclusion of women, as well as studying and identifying the profile of women in the prison system are other topics treated carefully by the author. Thus the reader is introduced to economic, social and cultural factors such as the bad economic situation of women, their low educational level, their civil status and parental and family responsibilities, and gender-based violence, all factors which impact on the social exclusion of women. Based on the author's findings there are three profiles of women present today in the prison system: women destined "for crime due to their exclusion", women destined "for crimes because of violence", and women destined "for crime by choice". Further on, the author researches to what extent the present treatment programs respond to the needs of women in closed penal institutions in the country, thus offering concrete assistance to policy-makers. Through a concrete matrix, the monograph presents concrete findings and suggestions for concrete interventions in the system, emphasizing that "*. . . services that respond to the needs of women and are gender sensitive, are the key to the rehabilitation of imprisoned women and constitute a better safeguard for their healthy return to their families and community*".

Such a conclusion, accompanied with concrete suggestions, gives theoretical and practical value to this monograph, turning it also to a working document for those institutions mandated to draft policies and implement concrete legal frameworks in the criminal justice system.

Given everything written above, I hold the opinion that this research gives an invaluable contribution and is of added value to the contemporary scientific literature of this field in our country and abroad, and opens up new perspectives for further research in the criminal justice system.

Prof. Assoc. Dr. Eralda (Methasani) Çani





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## CHAPTER

# 1 **PURPOSE OF THE THESIS, ISSUES TO BE TREATED, THEORETICAL FRAMEWORK AND METHODS**

### **1.1 Introduction to some key topics of the thesis**

Over the last 24 years, the Albanian criminal justice system has undergone institutional and legislative developments engrossing also the implementation level composed of a number of relevant bodies, in an attempt to establish democracy, the rule of law and observation of standards of human rights in Albania. For this reason, the prison system in Albania is undergoing a transformation and development phase. One of the most serious efforts has been that of the development of strategies and procedures for the establishment of an effective system of a more humane and dignifying treatment of persons sentenced to imprisonment. Despite positive developments in this area, much remains to be made for the approximation of this system and its further reformation in accordance with internationally accepted standards.

Since the judicial reforms in general and those in the prison system in particular are a priority in terms of our country's commitments in the process of stabilization and association agreement (SAA) and of our country's approximation with the European family, the scientific research in this field takes on a new importance.

This paper on 'Women in Conflict with the Law - Gender Perspective in the Criminal Justice System' provides a comparative analysis of this important issue and European standards in criminal justice and gender equality. The paper will be useful to the Albanian criminal justice system, as it offers a new analysis and

ideas about the policy, strategies, measures and programs available for women offenders, undertaken by the bodies of the criminal justice line, in which special attention is given to the prison system. The sentenced to imprisonment women constitute a category that requires special care and treatment as also noted in the progress report of the European Commission to Albania, in two of the priorities of the SAA, namely: the observance of human rights, and gender perspective in policy-making. The paper focuses on a particular group in Albanian criminal justice system, that is the women offenders, but the methodology used will serve to provide a similar analysis for other groups of persons sentenced to imprisonment.

Why women? In both European and Albanian prison population, women represent one of the “invisible” groups. However, it is worth noting that in recent years, in many countries around the world, their number in prisons is on the rise. Some international studies even show that in some countries, the number of women in prison is growing faster than that of the convicted men. At the same time, most of these women represent the most neglected and excluded from social benefits that societies in general provide. It is said that the best way to judge the degree of civilization, health and generosity of a society, is to see how the vulnerable citizens of it are treated, but when we examine the situation of women detained and sentenced in the Albanian and some European detention centers and prisons, we have to admit that they do not enjoy a pleasant status.

What is the general profile of women offenders and that are under the care of penal institutions in Europe? These are women who, were abused physically, psychologically and sometimes sexually from their childhood, but in most cases, they are abused even as adults. They are women who are dependent on narcotic substances. They are women who have had little or no support during childhood, youth and as they matured. They are poor women. They belong to Roma or Egyptian minority, and that have experienced stigmatization, social exclusion as well as direct or indirect discrimination. They are women with health and/or other problems.

This paper aims to study women offenders in general and in particular those in the care of Albanian detention institutions and prisons, in comparison with some European Union countries. The paper, firstly, will focus on criminal policies pursued in various European countries and in Albania regarding women offenders; secondly, the study will focus on the broader social dynamics and the factors that have influenced the lives of women and more particularly in the commission of offences, as well as the factors and dynamics that affect their lives while they are awaiting trial or sentenced with imprisonment and, finally, in the study of the dynamics faced by women after their release and opportunities they



have for a potential successful return to society.

The paper undertakes to provide not only a comparative study of the status of women offenders, but also serves to provoke discussion on how society treats these women in order to find and implement more humane and effective measures to solve conflicts and improve the lives of women who constitute one of the most neglected groups of society. Moreover, this paper aims to enable Albanian prison system and the line bodies of the criminal justice, to benefit from European approaches in the design and implementation of gender perspective policies.

Finally, it is noteworthy that the purpose of this paper is not to provide simply a theoretical analysis, but also to present a study focused on the best practices of the European Union member states that can serve as models for the reintegration of detained or sentenced women back into the Albanian society. For this reason, this paper aims to turn into a tool for practical use by representatives, policy makers and decision makers of relevant state and civil society institutions that are involved in the process of reintegration of women offenders back into society.

## **1.2 Short presentation of paper's chapters**

The paper begins with an introductory chapter which mainly states its aim, the issues to be treatment and theoretical framework through which will be addressed the issues presented herein. In this chapter are presented also the main hypotheses and the methodology that enables proper understanding of the methods used during the study and that serve the purposes of the paper.

Chapter Two provides a comparative overview of the latest trends regarding the typology of crimes, judicial practices, data and main characteristics of the Albanian penitentiary system with a particular focus on the characteristics of the women in Albania's prisons by comparing it with data from several European countries. This comparative analysis is accompanied by analysis of quantitative and qualitative data on offences, sentences, other alternative measures, sanctions etc. The main purpose of the chapter is to describe the profile of women offenders in Albania and in those European countries. Moreover, this chapter lays the statistical groundwork that makes possible the analysis in the next chapter of the assumptions raised in this paper.

In the scope of this data and indicators related to the profile of women and that of the theoretical perspectives of the paper, the third chapter provides a historical overview of developments in the Albanian prison system by analyzing the mission

and responsibilities of these institutions, the way of management, organization and their function, the premises' architecture and the manner of treatment of detainees/prisoners under their care in terms of their rights. This chapter will make possible the understanding of the peculiarities of the development of the Albanian prison system that is necessary for creating the right basis/context to the right analysis and understanding of the issues addressed in this respect in the case of Albania.

The fourth chapter narrows down the study to the comparative analysis of the dynamics of social exclusion and inclusion as well as the policies and strategies designed for this purpose in some member states of the European Union and Albania. This analysis helps prove the thesis that the majority of sentenced women have experienced extreme social exclusion. The chapter provides comparative analysis of social inclusion measures, social services and various types of social policies aimed at marginalized and disadvantaged persons, in order to determine the appropriate variables that play a role in the case of women in the detention centers and prisons.

To better understand what happens in the lives of these women in the care of the Albanian penitentiary system, the fifth chapter of the paper, albeit admittedly not exhaustive, aims to present an analysis as to what level do the programs and services offered by prison administrations, address the specific needs and circumstances of women's lives using the theory of gender-sensitivity presented in the first chapter of this paper. Moreover, the analysis made of the programs and treatment in institutions where these women are placed, as well as the data from surveys of different stakeholders that play a role in their reintegration into society, brings another perspective to the further exclusion of women due to their imprisonment.

Chapter Six provides a conclusive analysis for a comprehensive approach to gender sensitive policy for women offenders. Given that a significant proportion of women have first been victims of domestic violence and ultimately they killed their abusers, this chapter gives a special place to the contemporary literature that tackles the battered-women syndrome and how it can be accounted for in the judicial process by all actors involved, such as defense attorneys, prosecutors and judges. Afterwards, the analysis focuses on various problems faced by women during litigation. Also, the gender perspective in preventing the commission of offences by women offenders is an essential part of this chapter, including such issues as: gender sensitive approaches by prosecutors and police officers, medical service, legal defense service, judges and their proactive role in preventing domestic violence, as well as cases of women who commit murder against their abusers. Lastly, but just as important is the analysis of the gender

perspective in rendering the verdict for women in criminal proceedings, during their stay in the Albanian prison system and beyond that, towards their social reintegration into society after their release from prison. In this part of the paper, it is presented also a good model of the Dutch and Belgian prison service, in order to create a comprehensive approach of all stakeholders of criminal and social justice to contribute to a successful return to society of women sentenced to deprivation of liberty.

The paper is complete with a rich bibliography of the subject matter as well as with reference to the consulted literature.

## **1.3 Theoretical Framework, Assumptions and the Methodology Used**

### **1.3.1 Theoretical Framework and the Consulted Literature of the Paper**

National and international legal framework in the field of criminal justice and contemporary criminology theories form the basis of the theoretical approach of the paper. In the analysis provided in the paper, the international criminal legislation sets the standards by which the relevant local legislation and practice in this field is compared. The paper is largely based on the gender-sensitivity theory, one of the most modern theories of effective treatment practices, of programs and services that should be offered to women offenders. This part of the paper highlights the basic elements of this theory.

Scientific research in the world in order to better understand women sentenced to prison, goes back to the 70s. It was expanded and enriched during the 90s and is currently known as the theory of gender-sensitivity, presented initially by female criminologist<sup>1</sup>. Gender-Sensitive theory emphasizes the importance of recognizing, primarily the roads that lead women to criminality, which are different from those of men, and, secondly, the need for a better understanding of the specific circumstances of life of women offenders to design and then to implement policies and programs that respond to these specific needs of them during the period that they serve their sentence under the care of the penitentiary system<sup>2</sup>.

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- 1 Bloom, B.; Owen, B. and Covington, S., since 2003 have been giving in the US a precious contribution in compiling and enriching this scientific theory.
  - 2 Bloom, B.; Owen, B. and Covington, S.: "Gender Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders." National Institute of Corrections, Washington, D.C.: Department of Justice, National Institute of Corrections, 2003.

The purpose of the implementation of policies and practices not only in accordance with relevant international standards, but also sensitive from a gender perspective, is to create a suitable environment for women's correction and that reflects an understanding of the reality of women's life circumstances. Being sensitive and responsive to the specific needs of women in the criminal justice system, among other things is related to making decisions on issues such as: criminal coercive measures against women offenders, the selection of the building where female prisoners are kept incarcerated, staff selection, designing the program, the activities and services offered, the material base in the institution etc.

Gender-sensitive (or otherwise known as gender-responsive) approach has many dimensions and addresses various social factors, such as poverty, ethnicity, social strata, gender inequality, as well as cultural factors. This theory proposes interventions that address issues such as abuse, violence, family relations, various health problems, including mental health problems experienced by women sentenced to imprisonment and offers to these women treatment and the opportunity to learn various skills. Such an approach includes enabling in emotional, behavioral and competencies level and characteristics that create a sense of personal actualization and make women feel able to return to life after release.

The research paper led by this contemporary theory, highlights and analyzes in the first place the features of the women sentenced to prison, including women apprehended/arrested, those awaiting trial by the relevant courts, and not only those sentenced to imprisonment but also those with other alternative measures. These features include: types of offences for which they were arrested or apprehended by police and those for which their sentencing to imprisonment or other alternative sentences was pronounced, taking into account their age, family status and background, parental responsibilities, their education and employment, their stories of victimization and trauma primarily related to their systematic experiences of physical and/or psychological violence.

These characteristics and life experiences, specific to each woman offender, make up the basis of theoretical perspectives in working with these women within the framework of their correction in the community where they live by using alternatives to coercive measures and/or different measures of treatment for them. Theories that explain the unique factors and their impact on the lives of women, are the ones that guide the researchers of the field in determining the interventions and programs that suit the needs of women in the criminal justice system.

Bloom and Covington analyze some theoretical perspectives<sup>3</sup> which serve as the basis for the designing of gender-sensitive strategies for women sentenced to imprisonment, such as:

1. *The road to crime theory*, which reveals that women perform different criminal offences compared to men and that for different reasons than men. The road that led a woman to crime, in most cases has been affected by attempts to survive poverty and/or some persistent form of abuse.
2. *Relations theory*, which is based on the belief that men and women have different notions of adulthood, which means that men approach adulthood as the way to independence as individuals, while women approach it through building relationships with others. These two approaches are implemented in practice in different ways of communication and establishment of contacts with others and, consequently, there are different ways of responding when valued relationships are interrupted or cease to function. A correct understanding of the importance of establishing, maintaining and further developing relationships with the beloved people for women offenders, even when they are placed in closed penal institutions, is vital in the process of correction and rehabilitation of these behaviors in women and their successful reintegration into society. Establishing and maintaining relationships are crucial also in terms of the impact that they have in the criminal history involving a woman. Women's experiences in the past, including their stories of experiencing domestic violence, may have made it impossible for women to create and maintain lasting and valuable relations. However, when women face the criminal justice system and, in many cases, when their liberty is restricted, it is of paramount importance that the interventions of the criminal justice system, create opportunities for women to talk together, to build trust and open up about their personal issues, to establish relationships with loved ones and their relatives and to further develop these relations.
3. *Trauma theory*, which includes physical, emotional and psychological injuries which came as a result of direct violence and abuse. It also includes damage incurred while witnessing the violence or in cases of experiencing various forms of discrimination on grounds of gender, race, social status etc., or attitudes that have led to marginalization. It must be clearly understood that, according to this theory, not all women experiencing violence, who have witnessed violence or who are discriminated against or marginalized,

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3 Ibid.

suffer from trauma. Some of them have better ability to cope with these situations, have the support of their close circle of people that allows them to overcome in these situations in their lives, without the long-term effects. Some others, initially handle well these situations, but later on suffer the effects and display trauma symptoms.

Trauma theory states that the effects of trauma and violence on women offenders are essential in terms of the impact they have on their involvement in crime, as well as on how the criminal justice reacts and treats these women through various interventions. This theory does not imply that women who have committed a criminal offence, should not be held accountable for what they have done. What this theory emphasizes is rather the importance of understanding the roles played by the trauma and violence in the lives of these women and that appropriate interventions be designed and implemented by criminal justice institutions to address the consequences of these symptoms and promote rehabilitation and fostering pro-social behavior in these women.

Bloom, Owen and Covington, highlight the importance of effective services for victims of trauma which include such steps as:

- admitting the trauma,
- identification of cases that can “awaken” traumatic reactions in the victim,
- support to be given to the victim in order to equip her with the necessary skills and abilities,
- aid that should be given to the victims to successfully manage the traumatic symptoms.

Addressing issues related to the experience of trauma and violence by women offenders, not only helps these women rebuild their lives, but it also is a step in the right direction as far as the criminal justice system is concerned.

4. *Dependency theory* is another theoretical perspective developed by criminologist researchers which is worth explicating, but it should be noted that, for the Albanian context is not very relevant, because in closed institutions, for the period when the surveys were conducted, there has not been a significant number of women and girl offenders who suffer from problems of drug addiction. The situation in many European and beyond countries is different, with the number of women sentenced

to prison who have committed criminal offences, including theft and prostitution in order to enable themselves to take drugs, is growing and that is a very disturbing phenomenon.

For this reason it is important to understand correctly the complex factors, such as psychological stress factors, such as the physical and sexual victimization; issues related to social and cultural factors, which determine also the role of women in family and society and which are directly related to self-esteem, educational and socioeconomic constraints to women etc.; importance of relationships, especially with children and family; loss of a positive self-image; common health problems, including high levels of predisposition for contracting sexually transmitted diseases and carriers of the HIV/AIDS<sup>4</sup>.

The researchers of this theory point out that scientific research in the field show that what works for these women, is a multifaceted approach addressing a variety of their needs. The treatment of these women from a gender sensitive perspective, takes into account the factors that have led them to commit the offence, acknowledges and deals with the consequences of trauma and victimization due to the experienced violence and takes into account the needs of women for having relations with their children and family. The Center of Substance Abuse Treatment has managed to identify 17 critical cases that must be addressed in the framework of a program for women, known as *the contemporary model for handling critical issues for women*<sup>5</sup>.

The theoretical perspectives presented above, suggest that important factors can directly affect the situation in which the women offenders find themselves. These theories, along with research in various fields related to criminal justice, form the basis of the guidelines that are designed to address problems associated with the management, supervision and treatment of women offenders throughout their dealings with the institutions of the criminal justice system.

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4 Kassebaum, P.A. (1999): "Substance Abuse Treatment for Female Offenders – Guide to Promising Approaches", USA Department of Health and Human Services.

5 Center for Substance Abuse Treatment: A Practical Approach to the treatment of women who have abused with alcohol and other drugs, 1994, reprint 1999; Substance abuse treatment for women sentenced to prison: Guide to promising approaches, Washington, DC: Department of Health and Human Services, administration services for substance abuse and mental health, p. 40.



Bloom, Owen and Covington<sup>6</sup> point out six principles on which the criminal justice policies are based, including practice in the penitentiary system, and gender sensitive principles:

1. *Gender*: acknowledge that gender makes the difference. The first step in implementing gender-sensitive programs is to understand correctly the fact that women sentenced to imprisonment are very different from men of the same status. The programs and interventions in the criminal justice system are implemented and evaluated by taking into account the majority of the population in closed institutions i.e. men, and little attention was given to other categories such as women. Administration working in various institutions of criminal justice and especially in closed criminal institutions must understand correctly the characteristics of women sentenced to imprisonment as well as theoretical perspectives mentioned earlier, which are closely linked with their behavior and their criminal record. The staff of these institutions should aim at providing services that are proportional to the risks and needs of the particular women that are under their care. In conclusion, if agreed that gender makes the difference, this will lead to the designing of policies and programs tailored for women that will start to change the way justice is given to women offenders, as well as the way they are treated by all administration of criminal justice institutions.
2. *Safe environment*: create an environment based on safety, respect and dignity. Based on their experiences in the past, many women sentenced to imprisonment were faced with criminal justice institutions with a sense of fear. Many of them come from a past of experiencing violence, were victimized by very close people of their family and often have experienced trauma as a result of that victimization. Professionals in the criminal justice system should be sensitive to these specific circumstances and therefore should not fall into further victimization patterns. In order to achieve possible changes to their behaviors and skills, initially, these women should feel safe and respected as human beings and treated with dignity by the staff of criminal justice institutions. Although sometimes creating a safe environment for women sentenced to imprisonment may seem to contradict the objectives of maintaining the security, it is very

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6 Bloom, B.; Owen, B. and Covington, S.: Gender Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders, Washington, D.C.: Department of Justice, National Institute of Corrections, 2003.



important to understand that creating an environment where women feel safe is the basis of rehabilitation of their behavior.

Creating a safe physical and psychological environment means to assist persons deprived of their liberty, in order to not only have a secure physical environment, but also to obtain full and timely information; to make clear the expectations; apply less security interference; proactively address the issues related to violence in women's lives; to establish an environment where women do not feel sexually harassed by any inappropriate action of the staff of penal institutions and, above all, where women feel respected as human beings and are treated with dignity.

3. *Relations:* Develop policies, practices and programs that create healthy connections to children, family, other important people for women and the community where they will be restored. It is necessary to understand the high importance of women establishing relationships and keeping in touch with other persons. If the policies, strategies and programs are developed by the staff of institutions of criminal justice with this understanding, then interventions will be successful in the case of these women. Drafting of their treatment plan should take into account their parental responsibilities as well. As much as possible, the bond of these women with their children should be strengthened and, therefore, ought not to destroy this relationship from the requirements or the lack of attention from the administration of penal institutions for women and their parental responsibilities in terms of their children's needs. All other important relationships with family, relatives etc. ought to be encouraged.
4. *Services and supervision:* address different issues that women have, such as trauma, various problems of mental health, the potential addictions, through modern integrated services tailored to the local reality and culture. These services must be supervised by appropriately trained staff of penal institutions.
5. *Social-economic situation:* create opportunities for women to improve their social and economic situation. It must be taken into account that in many cases women took the road of crime affected by their poor socio-economic situation. Their rehabilitation often depends on their training to become economically independent. Women, by not having the opportunity to sustain themselves and their children, are forced to continue to be bound in the economic and social terms with their spouses/

partners or their relatives even though their relationships are not healthy and often abusive. Many of the women sentenced to imprisonment are head of their households and have parental responsibilities. Even when employed, these women work in the black market, which means that they are not entitled to social insurance and health benefits. Even when they are ensured, they are paid much less than men for the same amount of work. Often they do not benefit from the economic assistance in the event of unemployment, and that for various reasons, but mainly due to their lack of information about the procedures, excessive bureaucracy, etc. Their difficult socio-economic situation deprives them of the benefit of the goods and services of interest to them, turning them into marginalized people. Therefore, it is appropriate to consider the above-mentioned circumstances of the women above the administration of criminal justice institutions. Moreover, during their stay in penal institutions, women should be given full support, advice and opportunities for professional education and then employment with the purpose of their economic enablement.

6. *Community*: Create a system of supervision in the community and a successful reintegration of women after release in cooperation with other services/structures outside the penal system. This means that development and then implementation of gender-sensitive programs for women sentenced to imprisonment, requires cooperation and coordination between a number of bodies of the justice system such as: probation service, prosecution, courts, police, municipalities and communes, free legal aid, regional employment offices, local offices of social services, child care facilities, shelters, educational institutions, vocational training centers, health institutions, NGOs that provide various services etc. Each of these institutions is a potential partner in the cooperation process to ensure services in the framework of a particular program, on an institutional level or at the individual case level for each woman. Based on an individual assessment, planning is made for each case with a mapping of all relations that the women have with family and community, and also a list of the institutions with which cooperation ought to be established. In this context, all relevant stakeholders work together to create a continuity of services and support to women sentenced to imprisonment and their children and in this way to maximize their resources and services even after women have served their prison sentence and returned to society.

Implementation of policies, strategies and gender-sensitive programs is faced with some challenges encountered by the criminal justice system in many European countries and beyond.

Some of these challenges are:

- The number of women in the general population of persons deprived of their liberty is small<sup>7</sup> and, consequently, there little attention and appropriate services is given to specifications set forth above for women offenders.
- Implementation of a rigid penal policy for offenders, makes it difficult to bear in mind in the process of administering justice by judicial authorities, the particularities and specific conditions of women who are driven to crime<sup>8</sup>. It often happens that in cases when there are some specific mitigating circumstances which may be used in the justification of a shorter sentence, nevertheless, a more severe punitive measure is rendered against women offenders<sup>9</sup>.
- Generally speaking, women do not constitute a specific group of a high risk of recidivism, and therefore there is less attention and adequate resources to enable the delivery of services to them<sup>10</sup>.
- There is little knowledge and, therefore, less sensitivity about the specific problems of women and the criminal justice system, including prison system, that continue to address the problems of women from the same perspective as for men in conflict with the law.
- Penal systems in Europe and the world, are faced with the daily workload which leaves little space and energy to properly address issues related to women offenders<sup>11</sup>.

Although there are different challenges in general for the justice system and the prison system, they have an obligation to take the initiative for the evaluation of the situation of women offenders and then to design and implement policies, strategies and programs sensitive to the specific problems of women, especially given that the number of women who are faced with a variety of bodies of the

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7 For more specific information on Albania, please read the second chapter of this thesis.

8 For more specific information on Albania, please read the second chapter of this thesis.

9 Sydney, L. (2005): "Gender-responsive strategies", Washington, D.C.: Department of Justice, National Research Institute, p. 18.

10 Ibid.

11 Ibid.

criminal justice chain and of women returning to society, is ever increasing. If there is a mentality of implementing various interventions, sensitive to the specificities of women offenders in the chain of criminal justice institutions, these institutions and their staff will be able to find more opportunities in the designing and implementation of these interventions.

Given that the development of policies and programs sensitive to issues of concern to women offenders is a process, the participation and contribution of all the bodies of the criminal justice system, but also of the stakeholders outside the system, is a must. They should analyze criminal behavior of women offenders within their specific and human experiences, keeping in mind the theoretical perspectives discussed above, proper planning the cooperation between them in the implementation of interventions that address the special needs of these women.

### **1.3.2 Some key concepts and hypotheses raised in the paper**

#### **1.3.2.1 *Key developments in the field of criminology about the “social exclusion” concept***

The concept and the term “social exclusion” is widely used in criminology writings. When the term began to be used, it was merely a concept of social science and also a matter of policy. As to the second aspect, it is worth mentioning that the reduction of the phenomenon of “social exclusion” and promoting its opposite concept, namely that of “social inclusion”, are transformed into a program of policy development and policy making.

The term “social exclusion” represents a process and due process situation. Definition of Trevor Bradley says that “social exclusion” refers to the dynamic process and multiple dimensions of complete or partial exclusion from social, political or cultural systems, which serve the integration of the individual in society”<sup>12</sup>. At the same time, the concept is related to marginalization, poverty, social isolation and disadvantages of affected individuals, as well as the lack of enjoyment of full “citizenship”<sup>13</sup>.

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12 Bradely, T.: *Social Exclusion in the Criminology Dictionary*, Sage, London, 2001, p. 275.

13 Levay, M.: *Social exclusion: A flourishing concept in contemporary criminology; Social exclusion and crime in Central and Eastern Europe in: Criminal Policies, Judicial Reforms and Social Exclusion*, issue no. 48 from European Institute of Crime Prevention and Control, HEUNI, Helsinki, 2007, p. 7.

In the works of exceptional significance of Jock Young “Exclusive Societies” (1999), he points out that the criminology literature distinguishes three levels of social exclusion: The first level concerns *the economic and material exclusion of individuals and denied access to the full-time and paid employment. The second level has to do with isolation from relationships that result from the breaking of social ties, whereas the third is related to increasingly exclusionary policies and practices of the criminal justice system*<sup>14</sup>.

At the policy level, mainly in social policy programs, the concept of “social inclusion” is encountered in the mid-1980s in an effort to eradicate poverty. The European Community supported the research involving the phenomenon of social exclusion. A very important phase of these developments is the treaty of Amsterdam, 1997, which modified the European Union treaty.

More specifically, paragraph 136 states that the European Union and its Member States declare that the fight against social exclusion is their priority. European Council in Lisbon in March 2000, represents for the European Union a milestone in the fight against social exclusion. This is partly also because in the summit “The attempt for reaching a social cohesion, emerged simultaneously as an economic objective according to which the Union should be the most competitive region within a decade”. Also, the conclusions of the presidency rendered unacceptable the “number of people living in poverty and experiencing social exclusion in the European Union.”<sup>15</sup>

Findings of the Lisbon presidency asked for drafting the appropriate indicators to measure poverty and social exclusion as well as to compare these two phenomena in member countries.

For these common indicators, an agreement was reached at the Laeken European Council in December 2001 and the presidency findings stated them as “important elements in Lisbon set policies for eradicating poverty and promoting social inclusion”<sup>16</sup>.

It is worth mentioning that in the European Union, the fight against social exclusion is already included in terms of promoting social inclusion. This means that “the European Union’s policies for the prevention and readdressing the

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14 Young, J. (1999): “Exclusive Societies”, London: Sage Press.

15 Lelkes, O.: “Being Outside and Being Inside”, 4th sociologic edition, 2003, p. 89-90.

16 Findings of Presidency no. 28 – Laeken, December 14-15, 2001.

social exclusion, consider as very important the growth of service delivery, strengthening of solidarity with the purpose of resocialization and the further support of those who live socially excluded or that are at risk of social exclusion”<sup>17</sup>.

Institutional components are as follows:

- Objectives achieved in Nice in December 2000, at the summit “On Poverty and Social Exclusion”.
- National action plan for social inclusion.
- Joint Reports on Social Inclusion of Commission and Member States.
- Common indicators.
- Community action plans to promote cooperation among member states in the fight against social exclusion.

From the criminological perspective, the announcement of the eradication of social exclusion as a target of the European Union is very important, because the fight against the processes and phenomena that lead to social exclusion, affect also the social risk factors that lead to criminal offences. The above-mentioned objective has enabled the emerging of an old criminological perception that “effective social policies constitute the best criminal policy”<sup>18</sup>.

To reinforce the importance of the concept of social exclusion from the perspective of policy, let us refer to the Constitution of the European Union, which includes provisions such as Article 3.3 of the objectives of the Union that states: “The Union shall combat social exclusion and discrimination and promote social justice and protection”. Among social policy provisions, the Constitution, in Article 209, states that the objectives in this area aim to serve the primary purpose of promoting employment and combat exclusion.

### ***1.3.2.2 The link between social exclusion and crime in the contemporary literature of criminology***

The concept of social exclusion has been present in criminological studies since the late 80s and early 90s. This concept describes the links between inequality,

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17 Kerecsi, K.: Human Safety in Southeastern Europe, Budapest. Faculty of Law, ELTE University, 2004, p. 101-120.

18 Miklós, L.: Social exclusion: a burgeoning concept of modern criminology. Social exclusion and crime in Central and Eastern Europe, European Institute of Crime Prevention and Control, Finland, 2007, p. 9.

poverty, exclusion, stigmatization and crime. In his research, Young states that “crime is in itself an exception”<sup>19</sup> and, if we stick to this interpretation, we will find it obvious that this concept is very essential for criminology. Criminology literature on this issue talks about two approaches to the concepts of social exclusion and crime: one stresses the idea that crime is a result of social exclusion, while the other approach stresses the fact that social exclusion is a result or byproduct of crime, or rather, the byproduct of the actions of crime control system.

The approach that interprets the crime as a result of social exclusion is based primarily on research related to recorded offences, especially the property related ones and the defendants registered with various categories such as adults, juveniles and recidivists. Common message of these researches is that the social processes and conditions that lead to social exclusion, further encourage the crime, which means that an increase in the number of those excluded from social benefits to society “may create in itself certain types of crimes”<sup>20</sup>. In other words, people who lose their jobs and over time their vocational skills as well, become marginalized, succumb to alcohol, poverty or unemployment, constitute the social base of people who commit crimes, become alcoholics, drug addicts or attempt suicide<sup>21</sup>.

However, according to another approach, it is believed that crime is not “prerogative” only of those who are excluded and deprived of social benefits. The message conveyed by scientific research according to this approach, is that crime in general in society is not necessarily represented by the recorded data of offences and more importantly, that among the registered defendants, many have experienced social exclusion. Scientific research in this area has shown that the use of the criminal justice system against various social problems in itself leads to exclusionary effects. This is especially true in the case of criminalization of drug use in the criminal codes of various European countries<sup>22</sup>.

In criminology scientific conference of the Council of Europe in 2003, personalities in the field of criminology stressed that rigid criminal legislation that focuses on a strict rule of law proves counterproductive. The consequences

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19 Young, J.: *Exclusionary Societies*, London, Sage, 1999, p. 26.

20 Gönczöl, K.: *Criminal Policy, as Part of Politics*, 2002, p. 198.

21 Miklós, L.: *Social exclusion: a burgeoning concept of modern criminology. Social exclusion and crime in Central and Eastern Europe*, European Institute of Crime Prevention and Control, Finland, 2007, p. 12.

22 Ibid.

of rigid criminal legislation is precisely the social exclusion and lack of sense of security<sup>23</sup>. Research in this area reveals many harmful effects of detention in terms of the future reintegration. Based on the results of these studies, it can be stated that “prison is a genuine form of exclusion and convicts make up the excluded population”<sup>24</sup>.

Another issue related to stricter penal policy is the fear of crime. Fear of crime is a factor that directly affects the nature of penal policy in different countries of the world. At the above-mentioned conference were discussed the reasons of overestimation of problems associated with fear of crime, at a time when the level of fear of crime has decreased in many European countries since the mid 90s<sup>25</sup>. Conclusion of Klaus Boers (one of the prominent researchers of the field) in this conference was that “fear of crime creates the opportunity to reach a social agreement of the society in general for measures to be taken to keep crime in check as well as to prevent it.” However, these measures are not directed against crime and persons who commit it, but to persons who infringe public peace and order and, consequently, also the measures that lead to social exclusion refer to the indicators of fear of crime, as an appropriate and legitimate basis<sup>26</sup>.

### **1.3.2.3 *The hypothesis that the paper raises***

Presentation of the above arguments is necessary to understand the importance that takes the concept of social exclusion on the latest developments in the field of criminology and the interpretation of crime from a criminological perspective. The importance of social exclusion treatment in the scope of this thesis is high, because this paper undertakes to analyze the involvement of women in crime, the causes that have led these women to committing various criminal acts, criminal nature of politics in general in Albania with a special focus in the women offenders and policies to be implemented for the control and prevention of crime for this particular category.

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23 Jung, H.: Government organizations and the influence on public perception of crime and its control’. Paper presented at the 22nd Criminological Research Conference of the Council of Europe, Strasbourg, 24-26 November 2003. Manuscript.

24 Bradely, T.: Social Exclusion, in the Dictionary of Criminology, London, Sage, 2001, p. 276.

25 Boers, K.: ‘Crime, fear of crime and the operation of crime control in the light of victim surveys and other empirical studies’, paper presented at the 22nd Criminological Research Conference of the Council of Europe, Strasbourg, 24-26 November 2003. Manuscript.

26 Ibid., p. 20.



This paper shares the opinion of some personalities in the field of criminology that the major criminological perspectives for the interpretation of the crime are:

1. the social perspective,
2. the individual perspective,
3. the situation-based perspective.

The social approach has to do with interpretations that crime is a social phenomenon that is due to social, economic and cultural factors. The individual approach focuses on individual processes that have led a person towards committing a crime, while the situation-based approach focuses on the circumstances of the penal act and the potential situations that can lead to a criminal act. Each of these approaches has its specific ways to prevent crime.<sup>27</sup> Researches on the concept of social exclusion are included in the social approach. These theoretical and empirical researches have provided a wider dimension to the social approach of interpreting crime as a social phenomenon. In the recent years, social prevention of crime has received great attention that has led to the search for social justice, as the best response to crime. The great attention given to the phenomenon of social exclusion, allows criminal policy to take priority as part of social policy and harmonized with social welfare policies<sup>28</sup>.

Inspired by recent studies in the field of criminology that emphasize the importance of developments in the field based on empirical studies, more than just the theoretical ones, this thesis is a combination of the theoretical framework presented in this chapter and the empirical data in the field of criminal justice focusing on women offenders. Studies that present empirical data, provide arguments that are aimed at improving effective policies to reduce the phenomenon of social exclusion and, therefore, enrich the theoretical approaches in this field of study.

The following are key assumptions which this thesis undertakes to put to test:

1. The Majority of women in detention institutions and prisons, come from categories of individuals who have experienced a certain degree of social exclusion before ending up in penitentiary institutions.

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27 Miklós, L.: Social exclusion: a burgeoning concept of modern criminology. Social exclusion and crime in Central and Eastern Europe, European Institute of Crime Prevention and Control, Finland, 2007, p. 14.

28 Gönczöl, K.: Criminal policy, as part of Politics, 2002, p. 120.

2. Sentencing excludes those women who did not experience social exclusion before they were sentenced and further exclude already marginalized women.
3. Policies, strategies, measures and programs that aim at current social integration or reintegration of ex-convicts, are still insufficient from the perspective of best European practices and accepted standards in this area.
4. There are numerous obstacles to integration / reintegration of ex-convicted women into society.

These hypotheses will be tested by utilizing the statistical data presented in the second chapter of the paper.

### **1.3.3 The methods used in the thesis**

The approach proposed in this paper is multidimensional and is employing intertwined methodologies such as scientific research, fieldwork and their utilization in the analysis, findings and suggestions offered.

Research focuses on the study of contemporary literature for policies, strategies and practices for women offenders, social inclusion and studies in the field of gender equality in Albania and some European countries that will be subject of the study.

In order to draw some representative data about key trends observed in the dynamics of administering justice and penal policy, decisions of Tirana district court were scrutinized and, subsequently, the court of first instance of serious crimes for all 2010 and a considerable period of time in 2011. Besides reviewing criminal decisions of penal cases involving female defendants, are examined simultaneously also the official reports of the Attorney General for the period 2008-2010 and the official data issued by the General Directorate of State Police in cases where women were persons apprehended/arrested.

Field research on the ground is focused on interviewing women who are in penal institutions and representatives of a number of institutions of criminal justice administration, such as representatives of the detaining and prison institutions and representatives of bodies responsible for social inclusion and integration of these women in Albanian society.

To have an easy communication with detained and convicted women, as well as various professionals of institutions that have women in their care, early in the research work in the field, during 2011 was signed a cooperation agreement

between the General Directorate of Prisons and the Institute of European Studies. The cooperation agreement served as the regulatory framework between the two institutions to conduct the field research necessary for the realization of this paper. Also, the agreement defined the concrete area of cooperation, the working methods that will be used for data and appropriate information collection that is necessary for the purposes of this paper, as well as concrete commitments of the parties.

After the signing of this agreement by the relevant authorities of the two aforementioned institutions, began the intensive fieldwork to collect qualitative and quantitative data through structured interviews, free discussions and formal meetings with various representatives of the prison system.

Given that the best method to create an atmosphere where the detained and sentenced women feel carefree and more importantly, feel comfortable during questioning, initially were held free conversations with the purpose of acquainting them with the focus of this scientific paper. The approach was simple and the women were told that 'I was there to learn from them and from their life experiences.' Women welcomed me and appreciated the focus of the paper. During this period, which preceded the interviews in various activities in penal institutions, I used every opportunity to get to know personally the women and to establish mutual trusting relationships which are very important especially for such a paper for the purposes of which, the essential part of the data is obtained from direct interviews with women.

According to the literature, the research ought to be guided by the principle of reciprocity between individuals involved in the process of obtaining the data in order to mitigate the asymmetries between individuals with different positions regarding the resources, rights and powers that they have<sup>29</sup>. Also, in this research paper was respected the principle of reciprocity in order to establish an equal level between the author of the paper and women sentenced to imprisonment. The women in the two penal institutions of Tirana, were very open and very soon considered me more like a friend of theirs rather than as a researcher. I began interviewing them only after a mutual trust relationship between me and these women in these penal institutions was established.

Interviews were based on structured and detailed questionnaires that focused

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29 Hondagneu – Sotelo, P.: Immigrant women and paid domestic work: Research, theory and activism; in Heidi, G. (ed): "Feminism and social change: The interweaving between theory and practice", University of Illinois, Chicago, USA, 1996.

on four key moments, aiming at getting as much knowledge as possible about: the period of their lives before they were sent in the penal institutions to explain how and why they have committed a criminal certain offence; the period of life in the detention centers and prisons to explore Albanian factors that have impacted positively or negatively their lives especially after their release and reintegration into society, about health, family ties, acquiring different skills, etc.; the third period, the one after their release from the penitentiary institutions, to study the factors that influenced positively or negatively on their return and reintegration into society; the fourth period in which it is examined whether these women's experience about their potential successful integration is due to the social and personal factors, or factors that affected them during their serving time in prison.

Taking part in the interviews was completely voluntary. Women who have agreed to be part of this research, were interviewed in pre-trial detention and prison while maintaining the confidentiality of the conversation and data gathered for the purpose of this paper. However, the goal was to collect abundant and all inclusive information and data for the issues that will be treated in this research paper, in order to reach conclusions based on the practice of the Albanian cases about the listed theses at the beginning of this research which will put them to the test. It is worth noting that to accomplish the goal of this study were interviewed about 75% of women on remand and convicted. In this representative percentage are included all women who have suffered systematic physical and psychological violence in the family and in a certain moment in time, they have killed their abusers. This group of women has been paid special attention in this thesis. Serious consideration is given to all women groups and individuals that have experienced various forms of social exclusion before and during incarceration.

Interviews were conducted with representative staff of the prison system and criminal justice in general, as well as with representatives of other institutions and civil society involved in social integration programs for women after their release. They constitute the second group of individuals interviewed for the purposes of this research. This served the obtaining of comprehensive information on issues related to initiatives, policies, strategies, programs and concrete measures that aim at integration of these women into societies as well as getting professional opinions on the implementation and effectiveness.

Part of working methods are also the official communications established with central institutions, such as the Directorate of State Police (DSP) and the General Directorate of Prisons (GDP). This communication is conducted through official documents for official data collection on issues of interest to the thesis.

### **1.3.3.1 Means of interviewing**

This paper used three different techniques of data collection in the field: in-depth interviews, questionnaires and participant observation. Interviews began with questionnaires and then were followed up with the in-deep questions.

The questionnaires served as icebreakers if you will, with women, and to establish the link between the general and the specific information that is gleaned from the stories of individual women on one hand, and a more qualitative information extracted from the data on the other.

Deeper and open questions constitute the most essential information interviews where women were asked, among other things in regard to:

1. Their life experiences in the family of origin, their family situation, education and their employments.
2. Their family life during the marriage (for married women), including their economic situation, employment, engagement and family responsibilities. Women who said they had been victims of domestic violence were asked about the moments when they first experienced domestic violence, their relationship with the perpetrator, including the reactions of other family members; strategies pursued to cope with, to keep under control, to end or to find escape routes from violence; violence by the perpetrator to other family members; Possible interference from persons/institutions outside the close family circle; The manner of commission of the offence.
3. Their reaction and treatment during the penal process starting from fetching/arrest, interrogation by police, court hearings, legal counsel service, reaction of judges to the crime committed, experiences during trial and the experiences during the detention period while waiting to be tried.
4. Their lives in the closed institutions of detention and prison, the dynamics of life with activities at the institution, their treatment by the staff of the institution, contacts with children and families/relatives, the work performed in the closed institution to prepare them for release.

Interviews were conducted at the premises of the internal regimes of penal institutions, under the conditions of full confidentiality of the obtained data, in compliance with the requirements of the law on protection of personal

data. Participation in interviews was not only on voluntary bases, but also from the beginning, the women interviewed were explained again the purpose of the interview and her prior consent was sought to explore stories from her life for the purpose of this research, while preserving the anonymity. Physical environmental conditions in which the interviews were conducted, were such that stimulate equality and convenience between interviewer and interviewee. Part of the interview with open ended and in-depth questions, was recorded with the consent of each voluntary interviewee.

Generally speaking, women were willing to tell their full stories. Many were moved while sharing the story of their lives. Some others handled better their emotions. To avoid subjectivity of information obtained from interviews with women detainees or convicted, the prior consent was required that the information they gave about their stories of crime, be compared with their legal files kept in penal institution. Upon receipt of the consent of every woman to be interviewed, was performed the comparative process and the study of legal records of all interviewed women. Also, during the observation period of the respondents was paid great attention to the conversations the women had with each other, to ensure that the information provided by them was reliable. Often times, parts of information were consulted also with social workers and psychologists of closed penal institutions.

## CHAPTER

# 2 WOMEN IN DIFFERENT STAGES OF CRIMINAL PROCEEDINGS AND THEIR PROFILE

### 2.1 The matters addressed by this chapter and the resources and limitations of the comparative analysis

The first chapter dealt with the gender-sensitive theory that has many facets and addresses various social factors, such as poverty, ethnicity, social strata, gender inequality etc., as well as various cultural factors. This theory proposes interventions, addressing issues such as abuse, violence, family relations, various health problems, including mental disorders experienced by women sentenced to imprisonment and offers treatment and opportunity for these women to acquire various skills.

To come to the point of using this theory in analyzing the specific situation of women sentenced to imprisonment, we must first become acquainted with their profile. It is precisely this part of the paper that analyzes the traits of women sentenced to imprisonment, including women apprehended/arrested, those awaiting trial by the relevant courts, sentenced to imprisonment or those with other alternative measures. These features include: types of offences for which they were arrested or apprehended by police and those for which the relevant decisions by imprisonment or other alternative sentences; age, family status and background; parental responsibilities; education and employment, their stories of victimization and trauma, associated primarily with their experiences of systematic physical and/or psychological violence etc.

Moreover, this chapter aims to provide a comparative overview of the latest

trends regarding the types of crimes, judicial practices and prison population and presents a comparative overview of the current situation and the characteristics of incarcerated women in some European countries.

Comparative analysis between several European countries as well as research on the latest data issuing from Albania, will enable the outlining of:

- potential similarities and differences between countries observed regarding women in the justice system and developments with regard to women's incarceration;
- similarities and differences related to criminal profile of women in prison;
- similarities and differences related to the sociological profile of women in prison.

Specific characteristics of women offenders who talk about the past and the making of their social status, form the basis of theoretical perspectives discussed in the first chapter of the paper. They constitute a realistic foundation in working with these women in the process of their rehabilitation with various forms of coercive measures and/or other alternative measures of their treatment. Unique factors treated in this chapter, have affected and continue to affect the lives of women. A proper understanding of them will guide this paper towards concrete suggestions for determining interventions and programs that suit the needs of women in the criminal justice system. Analysis of intervention and treatment programs for these women, will be treated in a separate chapter.

In terms of detailed data collection and information grouped according to topics covered in this chapter, it is worth mentioning that due to lack of detailed statistical data for various European countries that are compared for the same time-periods or for the same issues that serve the purpose of this study, different sources of information are taken into consideration in order to enable the comparative analysis.

Four of the main sources used are:

- International Centre for Prison Studies (International Centre for Prison Studies, ICPS)<sup>30</sup> which generates data updated by governments/ various state institutions internationally that is processed with scientific methodology utilizing different variables.
- The Council of Europe, SPACE - Annual Penal Statistics of the Council of Europe in recent years.

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30 <http://www.prisonstudies.org/info/worldbrief/>



- A comparative study of six countries of the European Union “Reintegration of Women and Prison” (2005), undertaken as part of a project funded by the European Commission<sup>31</sup>. This study served as a reference point, after having presented a comparative analysis of several European countries for the variables used also in this study.
- Statistical yearbooks of the Ministry of Justice in recent years<sup>32</sup>, Official recent reports of the office of Attorney General,<sup>33</sup> data obtained from official websites of Tirana district court<sup>34</sup>, official records of the State Police in terms of crime trends and women, as well as the official records of the General Directorate of Prisons and criminal domestic institutions. These official sources were crucial to provide more detailed information, comparable with other European countries.

Although efforts have been made for finding time periods and common issues as a basis for comparative analysis, to conduct a study that takes a comparative approach, difficulties were encountered because there are differences in the organization of criminal justice systems in different countries and the way the statistical data is managed. Oftentimes, the gender sensitive data, which shed light on judicial issues on sentencing decisions, etc., are lacking from such bodies of criminal justice such as courts and prosecution.

In the Albanian case, such data for women offenders are lacking, so the data was obtained from annual reports of prosecution or fragmentary data of the State Police. However, in the case of Albanian courts, such data is missing completely. For this reason it was deemed best to consider a sample judgment for the purposes of an analysis.

## **2.2 Women in the Criminal Justice System**

Official data integrated and generated by the State Police, the prosecution, the judicial system and the Albanian prison system resources, that reflect developments and trends for women in the criminal justice system, are lacking, together with also proper scientific studies which could shed light on this important issue. Therefore, to obtain a complete picture of the situation of women

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31 The project was undertaken within the scope of the key initiative: “Improving the socio-economic knowledge base “ of the Directorate General of Scientific Research.

32 Statistical yearbooks 2005, 2006, 2008, 2009, 2010 of the Ministry of Justice.

33 The official report of the Attorney General in 2007, 2008, 2009, 2010, presented in the Parliament.

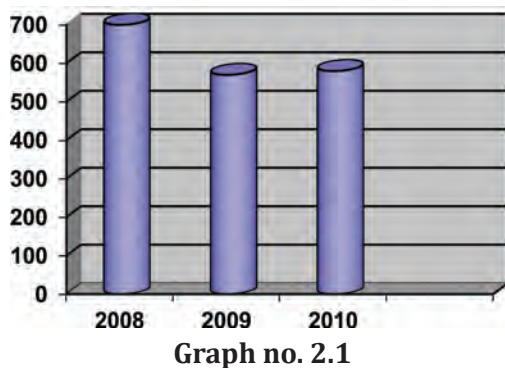
34 2010 and 2011 were selected for all criminal cases where the defendant has been a woman.

in the criminal justice system in recent years in our country, in this section of the chapter, references will be reflected on data generated in the official reports of the abovementioned institutions. Agreeably, the processing and analysis of these data presented in this chapter has been a difficult task, since variables of data generation for women and girl offenders were different and sometimes there were only a handful of detailed data, there was a total lack of these data or there were discrepancies between the data provided by different institutions or sometimes even from the same source.

Keeping records for each institution separately makes it impossible to clearly understand how many women and girls are apprehended/arrested for a given year, for how many of them has started a criminal case, how many of these cases were closed or have been suspended, how many of them were convicted, how many of them have been sentenced to prison and how many of them are currently serving sentences, including those of women and girls who are in the remand. Despite the limitations mentioned here, the following information will make possible an analysis of the situation in our country in order to compare it with some European countries.

### **2.2.1 Women arrested and types of offences they allegedly committed**

According to official sources of the GDSP, in terms of the involvement of women and girls that allegedly committed various criminal acts, are presented the following data: in 2008 are involved about 700 women and girls; in 2009, about 570 women and girls and for 2010, 580 women and girls. Based on these data is rendered the following graph:



*Source:* General Directorate of the State Police, as in 12.10.2011.

More specifically, for 2008-2010 women and girls are suspected of such offences: During 2008, we note as alleged perpetrators for these criminal acts:

- Offences against life and health - 45 women (five for murder, four for attempted murder, wounding 4 and 32 slight injury).
- Offences in the economic and financial aspects - 289 women.
- Offences of illegal trafficking - 50 women.
- Offences of illegal border crossing and immigration - 99 women.

During 2009, we note as alleged perpetrators of such offences:

- Offences against life and health – 30 women (2 for murder, 4 for attempted murder, 4 for severe wounding and 20 for slight wounding).
- Offences in the economic and financial aspects – 250 women.
- Offences of illegal trafficking – 65 women.
- Offences of illegal border crossing and immigration – 37 women.

During 2010 we note as alleged perpetrators of such offences:

- Offences against life and health – 31 women (7 for murder, 1 for attempted murder, 6 for severe wounding 17 slight wounding).
- Offences in the economic and financial aspects – 265 women.
- Offences of illegal trafficking – 36 women.
- Offences of illegal border crossing and immigration – 42 women.

**Table no. 2.1**

| Offences                                       | Adults     |            |            |
|--|------------|------------|------------|
|  | 2008       | 2009       | 2010       |
| Offences against life and health               | 45         | 30         | 31         |
| Offences in the economic and financial aspects | 289        | 250        | 265        |
| Illegal trafficking                            | 50         | 65         | 36         |
| Illegal border crossing and immigration        | 99         | 37         | 42         |
| <b>Total <sup>35</sup></b>                     | <b>483</b> | <b>382</b> | <b>374</b> |
|  |            |            |            |

Source: State Police Directorate, as of 12.10.2011.

From the official information provided by the GDP is apparent that in most cases women's involvement in crimes against life and health is the result of "... a multi-

<sup>35</sup> The total number for each year does not correspond to the data presented from the same source. This is because in the detailed data, the General Directorate of State Police has identified some of the offences and left out some other of them.

year history of repeated violence, ill-treatment. The perpetration of crime by these women is considered as “the only way” of escape from violation. Only for the period January-June 2011 were committed 22 offences against life and health by allegedly women offenders. The causes of these crimes remain the same with that of the period 2008-2010<sup>36</sup>.

### 2.2.2 Main trends of criminality among women in prosecution process

The information of the table below is rendered according to data provided by the Office of the Attorney General in the annual reports of the years 2008-2009-2010:

**Table no. 2.2**

| Offences   | Adults |      |      | Juveniles |      |      |
|--|--------|------|------|-----------|------|------|
|  | 2008   | 2009 | 2010 | 2008      | 2009 | 2010 |
| Premeditated crimes against life committed   | 8      | 17   | 11   | -         | -    | 1    |
| Premeditated crimes against health committed   | 21     | 4    | 22   | -         | -    | -    |
| Offences that endanger the lives and health by pregnancy termination or denial of birth assistance | 2      | 3    | 2    | -         | -    | -    |
| Sexual crimes  | 0      | 0    | 0    | 0         | 0    | 0    |
| Crimes against the person's freedom  | 1      | 11   | 7    | -         | -    | 1    |
| Illegal trafficking  | 0      | 4    | 7    | 0         | 0    | 0    |
| Offences of Production , trafficking, cultivation and sale of narcotics                            | 19     | 18   | 14   | -         | -    | 1    |
| Offences related to the exploitation of prostitution   | 38     | 36   | 45   | -         | 4    | 2    |
| Offences related to corruption   | 2      | 0    | 9    | 0         | 0    | 0    |
| Offences related to duty   | 22     | 18   | 24   | 0         | 0    | 0    |
| Offences related to money-laundering   | 1      | 1    | 0    | 0         | 0    | 0    |
| Offences related to organized crime  | 0      | 0    | 0    | 0         | 0    | 0    |
| Offences related to wealth and those of the economic realm   | 37     | 26   | 58   | 4         | 9    | 2    |
|  |        |      |      |           |      |      |

36 Official GDP's information, dated 12.10.2011.

|  |            |            |            |          |           |           |
|--|------------|------------|------------|----------|-----------|-----------|
| Offences related to deceptions                           | 28         | 34         | 33         | 0        | 0         | 0         |
| Offences related to the destruction of property          | 4          | 9          | 5          | 0        | 0         | 0         |
| Offences related to Customs' activity                    | 7          | 2          | 9          | 0        | 0         | 0         |
| Offences related to taxes and obligations                | 4          | 3          | 3          | 0        | 0         | 0         |
| Offences relating to forgery of documents                | 137        | 62         | 59         | -        | -         | 2         |
| Offences of counterfeiting currencies and treasury bonds | 0          | 0          | 2          | 0        | 0         | 0         |
| Offences related to organization of unlawful gambling    | 0          | 1          | 1          | 0        | 0         | 0         |
| Offences related to the environment                      | 0          | 0          | 2          | 0        | 0         | 0         |
| Crimes against state authority                           | 15         | 4          | 14         | 0        | 0         | 1         |
| Offences against public order and safety                 | 47         | 34         | 48         | 1        | 4         | 1         |
| Offences against justice                                 | *          | *          | 39         | *        | *         | 5         |
| Offences that violate the legal regime of the country    | **         | **         | -          | **       | **        | -         |
| Offences against state secrecy and borders               | 13         | 6          | -          | -        | -         | -         |
| <b>Total</b>   | <b>406</b> | <b>293</b> | <b>414</b> | <b>5</b> | <b>17</b> | <b>16</b> |

Source: Annual reports of the Attorney General for 2008, 2009 and 2010.

\* No data are presented for 2008 and 2009, but percentage increases are rendered when comparing the three years 2008-2010. Thus, for 2009, compared with 2008, a 50% increase in the number of defendant women is reported.

\*\* In 2009, compared with 2008, there is a 30% increase in the number of female defendants, but no concrete figures are given.

- No figures are given.

In terms of the data analysis of the total number of defendant women for 2008 versus 2009 it was noticed a decrease by 72% of them, whereas for 2009 versus 2010 it was noted an increase by 141% of their overall number. Of interest is the growing tendency of the total number of under-age girls in 2008 compared with 29.4% in 2009 and a slight decreasing tendency in 2010.

When we analyze the main trends of women and girls' involvement in criminal offences for 2008-2010 it is noted that for these offences there is an increase as shown below, ranked from highest trends to those lowest.

1. For crimes against property and of the economic realm, for 2010 there is noted a 46.34% increase in the number of defendant women and girls compared to 2008.
2. For offences pertaining customs activity, for 2010 there is noted a 28.57% increase in the number of defendant women and girls compared to 2008, whereas, compared to 2009, the number of defendant women increased by 4.5 times for 2010.
3. For offences related to the exploitation of prostitution, for 2010 there was noticed an increase of 23.68% in the number of defendant women and girls compared to 2008.
4. For offences related to fraud, for 2010 it was noted an increase of 17.85% in the number of defendant women and girls compared to 2008.
5. For offences in relation to duty, for 2010 there was noted a 9% increase in the number of women and girls defendants compared to 2008.
6. For premeditated crimes against health, in 2010 there was noted a 4.7% increase in the number of defendant women and girls compared to 2008, whereas compared to 2009, the number of women defendants increased by 4.5 times more in 2010.
7. For offences against public order and safety, for 2010 there was noted a 2% increase in the number of defendant women and girls compared to 2008, whereas compared to 2009, the number of women defendants increased by 28.9% in 2010.
8. For illegal trafficking offences, in 2010 there was noted an increase by 7 times more in the number of women and girls defendants compared to 2008 and 1.75 times more compared to 2009.
9. For offences relating to corruption, for 2010 there was noted an increase by 4.5 times more the number of defendant women and girls compared to 2008 and 9 times more compared to 2009.
10. For offences related to forgery of documents, for 2010 there was noted a 55.47% decrease in the number of defendant women and girls in 2008 and 1.6% decrease of their number compared 2009.
11. For premeditated crimes against life, in 2010 there was a 29.41% decrease in the number of defendant women and girls compared to 2009 and 1.5 times more increase of their number compared to 2008.
12. For offences of production, trafficking, cultivation and sale of drugs, for 2010 there was noted a decrease by 21% in the number of defendant women and girls compared to 2008 and 16.6% decrease in their number compared to 2009.
13. For offences against secrecy and national borders, for 2009 there was noted a 53.84% decrease in the number of women and girls defendants compared

to 2008. For 2010, the comparison is not possible due to lack of data.

14. It is worth emphasizing that for offences against justice for 2010 it is reported a significant number of defendant women and girls, 44 such, while for 2009 is reported a 50% increase of women compared with year 2008. For these two years, no figures were provided, and this makes it impossible to compare the percentage for 2010.

From the analysis of growing trends or reducing the involvement of women and girls in different criminal offences for 2008-2010, it is observed that there is a significant increase in their involvement in non-violent offences while the increase in their involvement in violent offences is in lower figures. The data referring to defendant women and girls in these categories of criminal offences, including violent offences, makes it impossible to understand which specific offences were committed by these defendants, to identify clusters within whether they are or not violent in nature. Data analysis of the offences committed by female prisoners will enable us the argument about it in a later part in this paper.

If we consider the defendants over the years, according to official reports of the Office of Attorney General, it turns out that: in 2006 there were 7,721 male offenders; in 2007, 8,489 defendants or an increase of 9.94% compared with 2006; in 2008, 8,870 defendants or an increase of 4.48% compared with 2007; in 2009, 7,555 defendants or a decrease of 14.82% compared with 2008 and in 2010, 9,425 defendants or an increase of 24.75% compared with 2009. For women defendants, the statistics show that: in 2006, there were 455 women defendants; in 2007 there were 523 women defendants or an increase of 14.94% compared to 2006; in 2008 there were 457 women defendants or a decrease of 12.6% compared with 2007; in 2009 there were 378 women defendants or a decrease of 17.28% compared to 2008 and in 2010 there were 458 defendants or an increase of 21.16% compared to 2009<sup>37</sup>.

For the juvenile defendants, the statistics show that: in 2006 are reported 431 juvenile offenders; in 2007, 580 juvenile offenders; in 2008, 889 juvenile offenders; in 2009, 665 juvenile offenders and in 2010, 870 juvenile offenders.

Of 665 juvenile defendants in 2009, 636 were boys and 29 girls. In 2008 there were 18 girls, so in 2009 there was an increase of 61.11% in the number of juvenile girls. In 2010, out of 870 juvenile offenders, 853 were males, which means an increase of 34.11% compared to 2009 and 17 are women, which means

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37 Some data about women defendants through the years do not match the data that are given in the figure. 2.4 which is itself built with data from the same official source.

a decrease by 41.37% compared with the year 2009.

The above data can be summarized in the following table along with the data reported in the statistical yearbooks of the Ministry of Justice:

**Figure no. 2.3**

| <b>Persons sentenced to imprisonment</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>2009</b> | <b>2010</b> |
|--|-------------|-------------|-------------|-------------|-------------|
| <b>Adult defendants</b>                  |             |             |             |             |             |
| Total                                    | 8176        | 9012        | 9327        | 7933        | 9883        |
| Women                                    | 455         | 523         | 457         | 378         | 458         |
| % of women and girls                     | 5.56%       | 5.8%        | 4.89%       | 4.76%       | 4.63%       |
| <b>Juvenile defendants</b>               |             |             |             |             |             |
| Total                                    | 431         | 580         | 889         | 665         | 870         |
| Women                                    | *           | *           | 18          | 29          | 17          |
| % of women and girls                     |             |             | 2%          | 4.36%       | 1.95%       |
| <b>Sentenced</b>                         |             |             |             |             |             |
| Total                                    | 6613        | 5678        | 7602        | 7259        | 7854        |
| Women                                    | 533         | 455         | 557         | 515         | 549         |
| % of women and girls                     | 8%          | 8%          | 7%          | 7%          | 7%          |
| <b>Sentenced to imprisonment</b>         |             |             |             |             |             |
| (Year)                                   | 01/09/2006  | *           | *           | 01/09/2009  | 01/06/2010  |
| Total                                    | 3884        |             |             | 4482        | 4711        |
| Women                                    | 130         |             |             | 123         | 95          |
| % of women                               | 3.3%        |             |             | 2.7%        | 2.0%        |

Source: Annual reports of the Attorney General for 2010.

Statistical yearbooks of the Ministry of Justice for 2006, 2007, 2008, 2009 and 2010.

SPACE I, 2009, 2006. Reports of the General Directorate of Prisons.

\* No data are presented for 2008 and 2009, but percentage increases is presented in comparing the years 2006 and 2007.



The above data clearly show that the percentage of women and girls in all stages of criminal dynamics, is very small compared with the total number of persons sentenced to imprisonment through the years in Albania. Thus, in the first stage of criminal prosecution against women the percentage of women of the total number of defendants, ranged between 4.6% - 5.8% for juveniles and this percentage varies from 1.95% - 4.36% for 2006-2010. Percentages of women's involvement in the sentencing phase, with the prosecution phase do match. For this period of the total number of prisoners 7-8% of them are sentenced women and girls. Percentage of women and girls sentenced to prison on remand and those of pretrial drops from 2-3.3% against the total number of persons sentenced to imprisonment and those detained.

### ***2.2.2.1 Comparison of this field data with European countries***

The above trends brought from Albania are comparable also with European countries, as will be seen below. Figure no. 2.4 is based on the information gathered in the scope of the comparative study of six countries in the European Union "Reintegration of Women and Prison" (2005). Although the data refers to the years 1999-2003 for the countries of the European Union, they still are valuable for comparing trends regarding the involvement of women at all stages of the criminal justice system.

**Table no. 2.4**

| <b>Persons sentenced to imprisonment</b> | <b>England &amp; Wales</b> | <b>France</b> | <b>Germany</b>   | <b>Hungary</b> | <b>Italy</b> | <b>Spain</b> |
|--|----------------------------|---------------|------------------|----------------|--------------|--------------|
| <b>Arrested or suspected</b>             |                            |               |                  |                |              |              |
| (Year)                                   | 2001/02                    | 2001          | 2002             | 2002           | 2000         | 1999         |
| Total                                    | 1,300,000                  | 835,839       | 2,326,149        | 121,885        | 339,109      | 880,731      |
| Women                                    | (...)                      | 117,120       | 149              | (...)          | 45,885       | (...)        |
| % of women                               | 16%                        | 14.0%         | 547,600<br>23.5% | (...)          | 13.5%        | 10.0%        |

|  |            |          |          |          |          |          |
|--|------------|----------|----------|----------|----------|----------|
| <b>Sentenced</b><br>(Year)                             | 2001       | 2000*    | 2002**   | 2001     | 2000     | 2001     |
| Total  | 1, 349 700 | 580, 039 | 517, 118 | 95, 270  | 308, 300 | 96, 813  |
| Women  | 237, 600   | 55, 981  | 95, 103  | (...)    | 56849    | 6327     |
| % of women   | 17.6%      | 9.7%     | 18.4%    | 12.0%    | 18.4%    | 6.5%     |
| <b>Sentenced to imprisonment</b><br>(Year)             | 2000       | 2000*    | 2002**   | 2000***  | 2000     | 2001     |
| Total  | 106, 300   | 99319    | 42271    | 11740    | (...)    | (...)    |
| Women  | 8100       | 4689     | (...)    | 684      | (...)    | (...)    |
| % of women   | 7.6%       | 4.7%     | (...)    | 5.8%     | (...)    | (...)    |
| <b>Incarcerated</b><br>(including detainees)<br>(Year) | 30/11/02   | 01/01/03 | 21/03/03 | 31/12/02 | 31/12/02 | 31/12/02 |
| Total  | 72, 272    | 49839    | 81.176   | 17838    | 55670    | 51454    |
| Women  | 4368       | 1988     | 3882     | 1088     | 2380     | 4109     |
| % of women   | 6.0%       | 4.0%     | 4.8%     | 6.1%     | 4.3%     | 8.0%     |

Source: “Reintegration of Women and Prison” (2005)

(...) No data available

\* Data for all France convicts; metropolitan France data on suspects and those sentenced to prison.

\*\* West Germany for the sentenced population; all Germany for suspects and those sentenced to prison.

\*\*\* Hungary: includes data only for adult offenders sentenced to imprisonment.

The data in the table, although coming from a different time period of that of Albania, indicates the trend observed in the criminal justice policies of these countries and enable comparison in this respect with the Albanian case. Therefore in almost all European countries it can be clearly seen that the percentage of women and girls sentenced to imprisonment is less than the percentage of those convicted and that the percentage of female prisoners is even smaller compared to the two other indicators. The exception is Spain, which has almost the same percentage of convicted women and girls with those imprisoned. It is worth mentioning that also based on the data presented in Table no. 5 below, it is noted that Spain has a population percentage of women in prisons that ranks among the highest in Europe. In the case of Albania, the above trends are similar to those observed in the European countries.

### **2.2.3 Crime trends of women in litigation and criminal policies applicable for them**

To complete the dynamic picture of criminal justice, in the following paragraphs will be submitted to scrutiny the various data related to decisions of Tirana judicial district court and subsequently, the court of first instance of serious crimes. The period of study of the criminal cases has been the year 2010 and a considerable part of 2011. These data were included to understand key trends observed in the dynamics of administering justice and penal policy. It should be emphasized that there are no studies or official reports for criminal policy in the rendering of justice by judicial authorities to fully reflect the situation for penalties if these sentences have been effective, what their rehabilitative effects are etc. Such reports or studies would enable comparisons for long periods of time and would also make it possible for data analysis to defendant women in trial, compared with men in trial, highlighting characteristics for each group. However, given the limitations in doing such analysis, the data below provide an overview of the defendant women in criminal cases and information related to criminal policy made by judges to administer justice about concrete issues that are brought to the attention of the reader.

#### **2.2.3.1 *Women in the cases decided by the judicial district court of Tirana***

In 2010, 35 criminal cases were tried with 36 women defendants and for the period January to October 2011 the judicial district court in Tirana tried 40 criminal cases with 45 women defendants. There is noted an increase in the number of criminal cases with women defendants. The following are various data associated with the profile of women and criminal policy pursued by the judges for both periods under study.

##### **➤ Age**

As evidenced in the data presented in the following table regarding the age of women defendants in 2010, 55.5% of the total number of women, belongs to the elderly age 55-65; 16.6% of the total number of women belongs to the middle aged 45-55 years; 13.8% of the total number of women belongs to the adult age 25-35 years; 8.3% of the total number of women belongs to the age group of 35-45 years old, and only 5.5% of the total number of women belongs to the age group of 18-25 years old. In other words, a significant proportion of women defendants, belong to the elderly age. This trend is characteristic of the profile of

women offenders in Albania. However, the age of women defendants for 2011 turns out to be more diverse than that of the previous year. The data show that 37.7% of women are of the 55-65 age group, 22.2% of them belong to the age group of 25-35 years with a significant increase in the number of women in this age compared to 2010, 15.5% are women aged 45-55 years, 13.3% are aged 35-45 years and 11.1% of them belong to the youngest age 18-25 years. For this age group, the number of women defendant for the first 10 months of 2012 has increased.

| Age             | Year 2010 | January-October 2011 |
|-----------------|-----------|----------------------|
| 55-65 years old | 20 women  | 17 women             |
| 45-55 years old | 6 women   | 7 women              |
| 35-45 years old | 3 women   | 6 women              |
| 25-35 years old | 5 women   | 10 women             |
| 18-25 years old | 2 women   | 5 women              |

#### ➤ *Education*

As for the education of women defendants, data of the table below indicates that the majority of them have attended only the 8-year education (37.9% of their number for which we have data) or that have not completed it (13.7%); 20.6% of them have completed secondary education (6.8% did not complete higher education) and only 17.2% have completed higher education. So, most women defendants have attended elementary education and only few of them have attended secondary or higher education.

On first ten months of 2011 the number of women defendants that had high education has increased significantly by 40%. This is an apparent increase compared also to 2010; 15.5% of them had completed high school, 11.1% of them have completed the 8-year education, 4.4% have not completed high school and 2.2% of them have university degrees and just as many are without education whatsoever. For 15.5% of them there is no data available.

| Education                                 | Year 2010 | Year 2011 |
|---|-----------|-----------|
| Elementary (8 grades)                     | 11 women  | 4 women   |
| Did not complete the elementary education | 4 women   | 5 women   |
| Did not complete the secondary education  | 1 woman   | 2 women   |
| Secondary education                       | 6 women   | 7 women   |

|                                   |         |          |
|-----------------------------------|---------|----------|
| Have not completed high education | 2 women | 1 woman  |
| High education                    | 5 women | 18 women |
| No education                      | 0 women | 1 woman  |
| No data available                 | 7 women | 7 women  |

➤ *Marital status*

The table below shows that 70.9% of the number of women for whom we have data for the year 2010, are married. 80% of them have two or more children, so they are women with family and parenting responsibilities. For the given period in 2011 it is noted a doubling of the number of single women defendants, that make 27.5% of women for which we have data. Married women compose 66.9% of which more than 70% have two or more children.

| Marital status    | Year 2010 | Year 2011 |
|-------------------|-----------|-----------|
| Married           | 22 women  | 24 women  |
| Single            | 5 women   | 10 women  |
| Divorced          | 1 woman   | 1 woman   |
| Single            | 3 women   | 1 woman   |
| No data available | 5 women   | 9 women   |

➤ *Economic status*

According to the table below, 91.6% of women defendants of 2010 are unemployed and 41% do not receive a pension. All unemployed women have turned out not to benefit from the social support. Almost all women come from families with deep economic issues, in addition to their parental responsibilities. The data collected for this indicator for women defendants for 2011 are scarce and do not allow drawing some conclusions, although there is a tendency that most women are unemployed and come from families with multiple economic issues.

| The economical status   | Year 2010 | Year 2011 |
|-------------------------|-----------|-----------|
| Unemployed              | 22 women  | 15 women  |
| Employed                | 2 women   | 2 women   |
| Other (student/retired) | 0         | 2 women   |
| No data available       | 12 women  | 26 women  |

➤ *Judicial status*

The phenomenon of recidivism of these alleged women is not widespread, as most of their considerable (85.7%) were convicted for the first time and only 16.6% of them, for which we have data for 2010, are recidivists. Also 2011, 97.5% of women defendants were not previously convicted, which indicates that the number of recurring offences is still very small.

| <b>The judicial status</b> | <b>Year 2010</b> | <b>Year 2011</b> |
|----------------------------|------------------|------------------|
| Not previously convicted   | 30 women         | 39 women         |
| Previously convicted       | 5 women          | 1 woman          |
| No data available          | 1 woman          | 5 women          |

➤ *Charges*

The offence committed by 61.1% of women defendant is that of “fraud”, 13.8% have committed the offence of “falsification of documents” and 11.1% have committed the offence of “theft”, whereas other criminal offences, as presented in the following table, make a small percentage. Also, it is worth mentioning that women defendants are charged for committing generally non-violent offences.

It is worth analyzing the data of 10-month period of 2011, according to which we see a substantial reduction in the involvement of women defendants for criminal acts, such as “fraud” and have increased their involvement in offences related to “misuse of office”, compared with 2010. Also, note the increase of the range of charges with new criminal offences compared with the charges against women in 2010. More specifically, 28.8% of women are charged with “fraud”, 20% of them are charged of “abuse of power” and 13.3% of them are charged with several offences simultaneously, a part of which is violent in nature. Allegations of further offences are addressed to a smaller percentage.

| The nature of the criminal offence                                 | Year 2010 | Year 2011 |
|--|-----------|-----------|
| Fraud  | 22 women  | 13 women  |
| Falsification of documents   | 5 women   | 1 woman   |
| Illegal crossing of the state border                               | 1 woman   | 0         |
| False charges  | 1 woman   | 1 woman   |
| Abuse of office  | 1 woman   | 9 women   |
| Theft  | 4 women   | 3 women   |
| Violation of traffic rules   | 1 woman   | 0         |
| Light premeditated injury  | 1 woman   | 0         |
| Withholding subsistence means                                      | 0         | 1 woman   |
| Destruction of property  | 0         | 2 women   |
| Prostitution   | 0         | 2 women   |
| Malicious use of telephone calls                                   | 0         | 1 woman   |
| Burglary   | 0         | 1 woman   |
| Defamation   |           | 1 woman   |
| Combination of criminal offences <sup>38</sup>                     | 0         | 6 women   |
| Self-administered justice  | 0         | 1 woman   |
| Issuing arbitrary orders   | 0         | 1 woman   |
| Exercise of unlawful influence against persons on public functions |           | 1 woman   |
| Leaving the scene of the accident                                  | 0         | 1 woman   |

➤ *Security measures*

During 2010, 51.7% of women that were tried not in absentia, have awaited the decision of the district court of Tirana in the remand, with the security measure of 'indefinite prison detention.' This is a relatively high percentage considering that the offences allegedly committed by women defendants are non-violent in their nature and for a substantial number of them is taken into account the mitigating circumstance that the risk they pose is rated low. A good number of them have

38 E.g.: "Attempted premeditated murder in collaboration", "Destruction of property by explosives in collaboration" and "Manufacturing and illegal possession of weapons and ammunition" or "theft through abuse of office", "Forgery of documents from the person who entitled to issue", "Battering related to the duty", "Insults because of duty" or "Abandoning the scene of the accident" and "Driving of the vehicle without a driver's license".

had family responsibilities and most importantly, parental responsibility as well as various health problems due to their old age.

During the corresponding period in 2011, 68,5% of the women tried not in absentia are investigated and await the decision of the court of the judicial district of Tirana while not incarcerated, whereas 31.5% of them were awaiting court decision in remand. It turns out that Tirana district court this year used less the measure of ‘indefinite detention in prison’ compared with 2010, however it is still worth noting that even in cases where the court has granted the measure of indefinite detention, in some of these occasions it has stated that the defendant poses low social risk and/or has pointed out other factors classified as mitigating circumstances etc.

| Security measure   | Year 2010 | Year 2011 |
|--|-----------|-----------|
| Tried on one’s own recognizance (while not in detention) | 14 women  | 24 women  |
| Tried in absentia  | 7 women   | 10 women  |
| Arrest to prison measure                                 | 15 women  | 11 women  |

#### ➤ *Mitigating circumstances*

Of the 35 cases for 2010 only in three of them the Tirana district court did not consider mitigating circumstances. In 32 cases, various mitigating circumstances associated with the specific situation of each defendant were taken into account. Whereas of 40 cases for 2011, in 31 of them, the court took into account various mitigating circumstances.

Some of the mitigating circumstances which are often used by judges are:

- old age;
- low social risk;
- pleading guilty and deep repentance;
- very difficult economic situation: unemployed, no pension and no financial support;
- not convicted previously;
- homeless;
- health issues;
- mother with children, in many cases a mother with minor children, with an invalid spouse and/or one of her children, etc.;



- insignificant material damage;
- the damage has been indemnified;
- it was an attempted offence;
- severe psychological condition of the defendant;
- the role of the defendant only as an accessory in the crime;
- slight injuries to the injured.

➤ *Sentence requested by the prosecution*

In 19 cases, or in 52.7% of the total cases, the sentence that the prosecutor of the case requested, was the same as that pronounced by the Tirana district court. In 47.2% of the remaining cases, the sentence requested by the prosecutor of the case is more severe than that decided by the court. For 2011, the prosecution has requested the same sentence decided by the court in 11 cases or 24.4% of the total cases, while in almost all remaining cases, the sentence requested by the prosecution has been more severe. It is worth mentioning that 9 women, for which were required various criminal penalties that vary from fines to prison sentences, the court found them to be innocent.

➤ *Legal protection*

During 2010, 33.3% of women defendants were represented personally in their court cases, 22.2% had mainly lawyers appointed by the District Court of Tirana, the remainder were represented by personal lawyers. While in the ten-month period of 2011, 52.5% of cases of alleged women were represented by personal counsel, 27.5% other were with a lawyer appointed by the court and only 10% of cases were represented by themselves. This shows that a good portion of women have had the opportunity to pay a personal lawyer for representation in the court. Nevertheless, there is still a significant percentage of women who do not have the economic means to afford such a lawyer.

| The legal defense | Year 2010 | Year 2011 |
|-------------------|-----------|-----------|
| No lawyer         | 12 cases  | 4 cases   |
| Personal lawyer   | 15 cases  | 23 cases  |
| Mostly a lawyer   | 8 cases   | 11 cases  |
| No data available | 0         | 2 cases   |

➤ *Decisions/Sentences issued by the court*

According to data presented in the table below, it is noted that, for 2010, Tirana district court has issued 19 sentences, 8 alternative sentences to imprisonment and 6 cases of imprisonment. So, the trend has been that from 35 cases on trial, 54.2% of sentences are fines and 22.8% are decisions of alternatives to imprisonment. As for January-October of 2011 the court issued 21 decisions for fines and 8 decisions for alternatives to imprisonment and only one case has been for imprisonment. It is worth noting that this tendency to pronounce other sentences than imprisonment has grown and is to be welcomed. However, not wishing to prejudice the decisions given by the courts in cases of imposing a fine, it is recommended that it would be best to look at the possibilities of alternative sentencing to imprisonment, because almost all women defendants come from a background of deep economic problems and consequently, alternative penalties such as work in the public's interest etc. are more suitable for them than paying fines imposed as alternative sentencing.

| Type of criminal offence   | Year 2010   | Year 2011   |
|----------------------------|---|---|
| Fraud                      | 15 cases of fines and reduction of 1/3 of the sentence<br>2 cases of several months imprisonment, reduction of 1/3 of the sentence and application of suspension of sentence to imprisonment for a period of several years<br>1 case of several months of imprisonment, reduction of 1/3 of the sentence<br>2 cases of sentences to imprisonment<br>2 cases of imposition of a fine | 7 cases of imposing a fine and reduction of 1/3 of the sentence<br>1 case sentenced to several months of imprisonment, reduction of 1/3 of the sentence and application of suspension of sentence to imprisonment for a period of several years<br>5 cases of imposing a fine |
| Falsification of documents | 1 case of imprisonment sentence and reduction of 1/3 of the sentence<br>4 cases of imprisonment sentences, fine and reduction of 1/3 of the sentence and application of the home confinement/suspension of the sentence   | 1 case found not guilty   |

|                                      |  |  |
|--------------------------------------|--|--|
| Illegal crossing of the state border | 1 case of imposing a fine and reduction of 1/3 of the sentence   | No such cases  |
| False charges                        | 1 case found not guilty  | 1 case of imposing a fine and reduction of 1/3 of the sentence   |
| Abuse of office                      | 1 case found not guilty  | 6 cases found not guilty<br>2 cases of closing the case  |
| Theft                                | 1 case of sentence to imprisonment <sup>39</sup><br>2 cases of sentences to imprisonment, reduction of 1/3 of the sentence and application of probation<br>1 case of sentence to imprisonment and reduction of 1/3 of the sentence | 3 cases of sentencing to imprisonment, reduction of 1/3 of the sentence and application of probation   |
| Combination of criminal offences     | No such cases  | 2 cases <sup>40</sup> sentenced to imprisonment, reduction of 1/3 of the sentence and application of probation<br>1 case <sup>41</sup> imposing a fine<br>2 cases <sup>42</sup> sentenced to imprisonment and a fine as well as application of reduction of 1/3 of the sentence.<br>1 case <sup>43</sup> several years of imprisonment<br>1 case <sup>44</sup> of imposition of a fine and reduction of 1/3 of the sentence. |

39 Theft of a double-decker refrigerator and a stove with electric oven from the landlord.

40 "Theft through the abuse of office", "Falsification of documents" and "Abuse of office" and the other case "Batterign because of the duty" and "Insults because of the duty".

41 "Burglary" and "Repeated insults".

42 Theft by abuse of office", "Falsification of the documents by the person responsible to issue them" and "Theft through misuse of duty", "Document falsification".

43 "Destruction of property by explosives in collaboration" and "Manufacturing and illegal possession of weapons and ammunition".

44 "Leaving the scene of the accident" and "Driving without a license".

|  |  |   |
|--|--|---|
| Prostitution   | No such cases  | 1 case of sentenced to imprisonment, reduction of 1/3 of the sentence and application of probation service<br>1 case of imposing a fine and reduction of 1/3 of the sentence. |
| Violation of traffic rules   | 1 case of imposing a fine and reduction of 1/3 of the sentence | No such cases   |
| Light premeditated injury  | 1 case of closing the case                                     | No such cases   |
| Destruction of property  | No such cases  | 1 case of imposing a fine and reduction of 1/3 of the sentence.<br>1 case of imposing a fine  |
| Vigilante justice  | No such cases  | 1 case of imposing a fine and reduction of 1/3 of the sentence.   |
| Issuing arbitrary orders   | No such cases  | Case closed   |
| Exercise of unlawful influence against persons on public functions | No such cases  | 1 case of sentenced to imprisonment, reduction of 1/3 of the sentence and application of probation service  |
| Ill-intended phone calls   | No such cases  | 1 case of imposing a fine   |
| Defamation   | No such cases  | 1 case found not guilty   |
| Withholding subsistence means                                      | No such cases  | 1 case found not guilty   |
| Leaving the scene of the accident                                  | No such cases  | 1 case of imposing a fine and reduction of 1/3 of the sentence  |

### **2.2.3.2 Women in the cases decided by the court of first instance for serious crimes**

In the following paragraphs there are present also the details of cases in which the women defendants are judged by the first instance court for serious crimes for three years 2008-2010 and for the period January-August 2011. For 2008, the court has given the verdict on three cases. The same number of cases was adjudicated in 2009, 2 cases in 2010 and 6 cases of the previously mentioned period in 2011. It is noticed a significant increase in the number of criminal cases involving women defendants tried by this court.

#### ➤ *Age*

In regard to the age of the women defendants, it is striking that during these last four years the young age groups are predominant. Of the 16 women defendants total, 14 of them belonging to age group 18-25 years, 25-35 years and 35-45 years, where the largest share is for that of the ages 18-25 and 25-35 years (62.5% of the total), as reflected in the table below. This trend of involving young women as defendants in criminal offences was especially emphasized in 2011.

| <b>Age</b>  | <b>Year 2008</b> | <b>Year 2009</b> | <b>Year 2010</b>      | <b>January-August 2011</b> |
|-------------|------------------|------------------|-----------------------|----------------------------|
| 55-65 years | 0                | 0                | 1 woman <sup>45</sup> | 0                          |
| 45-55 years | 0                | 0                | 0                     | 1 woman                    |
| 35-45 years | 1 woman          | 2 women          | 0                     | 1 woman                    |
| 25-35 years | 2 women          | 2 women          | 1 woman               | 2 women                    |
| 18-25 years | 0                | 0                | 0                     | 3 women                    |

#### ➤ *Education*<sup>45</sup>

The number of women who have completed secondary education, constitute the largest group of women over the last four years, followed by women who have completed higher education.

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<sup>45</sup> One women of foreign nationality about 66 years old.

| Education                                   | Year 2008 | Year 2009 | Year 2010 | January-August 2011 |
|---|-----------|-----------|-----------|---------------------|
| Elementary education                        | 1         | 0         | 0         | 2 women             |
| Have not completed the elementary education | 0         | 0         | 0         | 0                   |
| Have not completed the secondary education  | 0         | 0         | 0         | 0                   |
| Secondary education                         | 2 women   | 1 woman   | 1 woman   | 2 women             |
| Has not completed the higher education      | 0         | 1 woman   | 0         | 0                   |
| Higher education                            | 0         | 0         | 0         | 2 women             |
| No education                                | 0         | 0         | 0         | 0                   |
| No data available                           | 0         | 3 women   | 1 woman   | 0                   |

➤ *Marital Status*

Number of single and married women for which there is evidence of recent years has been almost equal to a growing trend for 2011, as indicated below.

| Marital Status    | Year 2008 | Year 2009 | Year 2010 | January-August 2011 |
|-------------------|-----------|-----------|-----------|---------------------|
| Married           | 1         | 0         | 1         | 2                   |
| Single            | 1         | 1         | 0         | 2                   |
| Divorced          | 0         | 0         | 0         | 1                   |
| Widow             | 0         | 0         | 0         | 0                   |
| No data available | 0         | 3         | 1         | 2                   |

➤ *The economic situation, judicial status, legal protection and security measure*

Two of the three women defendants in 2008 have been self-employed and for one of them there is no information. Except for the information that we have for one of the women who continued university and, therefore was not employed in 2009, no other data are available with regard to their economic situation, and therefore it is difficult to derive generalizations with regards to this indicator.

With the exception of one case for which we have no information, all other women defendants during all these years have not been previously convicted. The same applies for their legal representation in court: all women, for which there is information available, had a personal attorney as their legal representative. As regards the security measure given by the court, except two cases in which women defendants are tried on their own recognizance, for all other cases they awaited the decision of the court under the measure of indefinite prison detention.

- *Charges, mitigating circumstances, the sentence requested by the prosecution and sentence given by the court*

Of the 14 cases that were tried, 6 of the accusations are 'drug trafficking, committed in collaboration', one of which only attempted. Other issues are related to various charges, as presented in the table below. Only in one case the court has given suspension sentence and probation of the defendant, so there is a very low use of these measures by court. Of the 14 cases that were tried, we have information of mitigating circumstances that the court has taken into account for only two of them, such as the economic difficulties of the defendant and, in the other case, the fact that the defendant had a juvenile under her responsibility. However, although these mitigating circumstances were evidenced, the court has given the same sentence as the one asked by the prosecutor of the case. Of the 14 cases that were tried, 6 times the prosecution has requested a sentence higher than the one that the court pronounced eventually, among which there is also a case where the court found the defendant to be innocent.

| The type of the criminal offence             | Year 2008  | Year 2009  | Year 2010   | Year 2011  |
|--|--|--|---|--|
| Drug trafficking, committed in collaboration | 1 case of 10 years of imprisonment<br>1 case of 10 years of imprisonment and reduction of 1/3 of the sentence. | 1 case of 10 years of imprisonment and reduction of 1/3 of the sentence. | 1 case of 12 years of imprisonment and reduction of 1/3 of the sentence<br>1 case 7 years of imprisonment | 1 case of 9 years of imprisonment and reduction of 1/3 of the sentence |
| Trafficking of minors                        | 1 case of 7 years of imprisonment and reduction of 1/3 of the sentence.  | No such cases  | No such cases   | No such cases  |

|   |               |   |               |   |
|---|---------------|---|---------------|---|
| Coercion by threat or violence for granting property, in cooperation  | No such cases | 1 case of 11 years of imprisonment and reduction of 1/3 of the sentence | No such cases | 1 case of several years <sup>46</sup> of imprisonment and a fine<br>2 cases of several years of imprisonment, fine, suspension of the sentence and placement in the probation service |
| Violent robbery in collaboration  | No such cases | No such cases   | No such cases | 1 case of innocence   |
| Production and sales of drugs   | No such cases | No such cases   | No such cases | 1 case of 7 years of imprisonment and reduction of 1/3 of the sentence  |
| Requiring or receiving bribes for adoption procedures in collaboration. Assisting in illegal border crossing in collaboration | No such cases | 2 cases of several years of imprisonment and a fine                     | No such cases | No such cases   |
| Illegal deprivation of liberty, vigilante justice   | No such cases | No such cases   | No such cases | 1 case of several years of imprisonment and a fine  |

<sup>46</sup> Where there is no specification of the exact years of the sentence, it was four or less years of imprisonment.



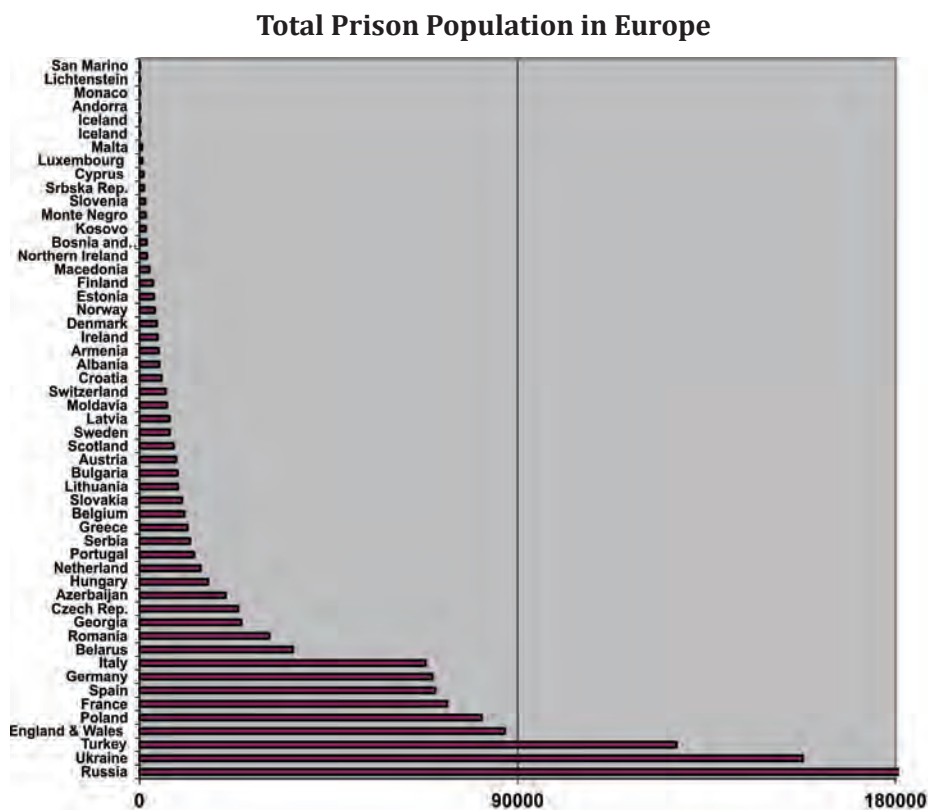
## **2.2.4 Main trends of crime in the prison system and how female prisoners compare to other categories of prisoners**

Part of women offenders are also the detained women who await the final decision by the relevant courts and the sentenced ones who are now under the care of the prison system. In this part of the paper are outlined the trends in crime based on the official data from the prison system in Europe, including Albania. Moreover, this part of the paper focuses on key indicators of the profile of women in the prison system that are directly related to the theoretical perspectives of gender-sensitive approach. These data will help the analysis to be made in the following chapters.

Initially, data on the prison population in Europe and Albania, provide us with a wide panorama of crime trends. Next, the attention is focused in the population of women in the prison system which enables us to understand the part that women constitute in the total prison population.

### ***2.2.4.1 Trends and key data for prisons in Europe, including Albania***

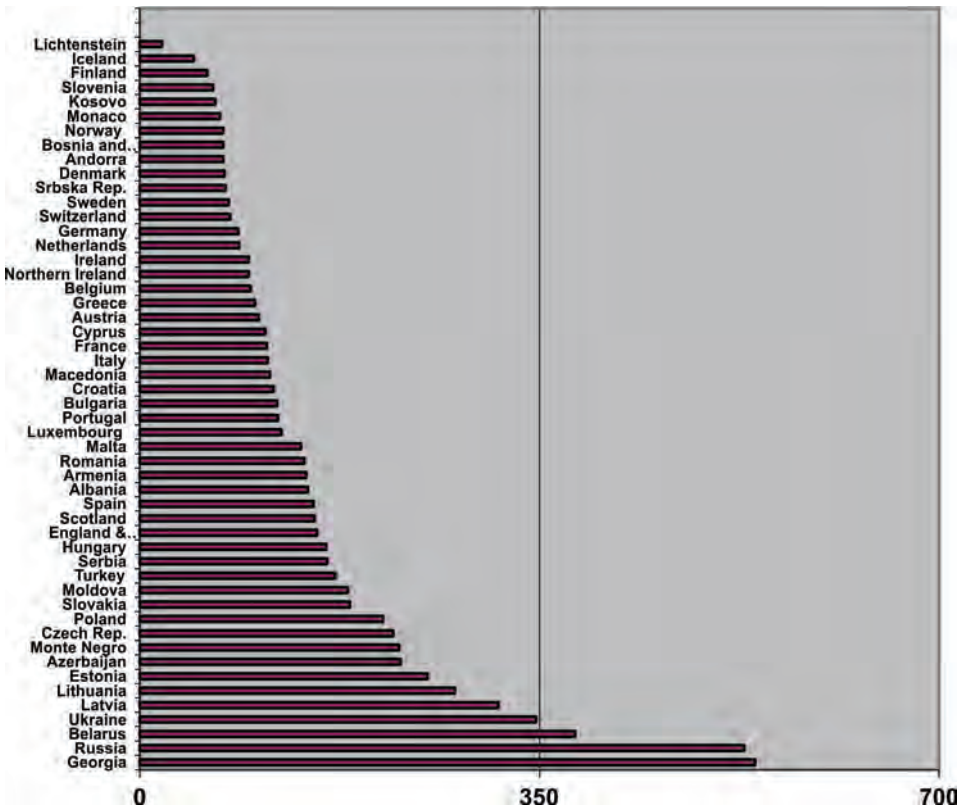
More specifically, the graph no. 2.2 below shows the situation of the total population in European prisons, in order for us to understand the total percentage of women in prison for each of these countries, including Albania. Also, below you will find the graph no. 2.3 which shows the ratio of the population in European prisons, compared to the total population in each country, which is an indication of the trend of crime in European countries. According to these data, Albania ranks 31st out of 57 total countries of Europe in terms of population in prisons, and 22nd from 56 European countries with its population in prisons ratio 147 prisoners for 100,000 people, while the estimated population according to Eurostat was 3.2 million in 2010.



**Graph no. 2.2**

*Source: World Prison Brief (ICPS)<sup>47</sup>*

<sup>47</sup> International Center for Prison Studies, in <http://www.prisonstudies.org/info/worldbrief/>. Data are from early 2012, but it must be kept in mind that the data may have not been updated by all the countries up until this point.

**Graph no. 2.3***Source: World Prison Brief (ICPS)*

The following table presents the data in absolute values and in percentage of the prison population in general and women in prison population, coupled with data on women detainees in the prisons of the Council of Europe member countries.

Table no. 2.5

| Country            | The total number of prisoners (including pre-trial detainees) | Number of women convicted (including female pre-trial detainees) | % of women sentenced versus the total number of prisoners (including pre-trial detainees) | Number of foreign women (including female pre-trial detainees) | % of foreign women versus the total number of female convicts (including female pre-trial detainees) | The total number of women pretrial detainees | % of pretrial female detainees versus the total number of convicted women |
|--------------------|---|--|---|--|--|--|---|
| Albania            | 4 482   | 123  | 2.7   | 2  | 1.6  | 31   | 25.2  |
| Andorra            | 68  | 13   | 19.1  | 11   | 84.6   | 6  | 46.2  |
| Armenia            | 3 989   | 159  | 4.0   | NA   | NA   | 54   | 34.0  |
| Azerbaijan         | 20 470  | 433  | 2.1   | 16   | 3.7  | 112  | 25.9  |
| Belgium            | 10 901  | 440  | 4.0   | 129  | 29.3   | 163  | 37.0  |
| Bosnia-Herzegovina | 1 619   | 39   | 2.4   | 3  | 7.7  | 8  | 20.5  |
| Srpska Republic    | 961   | 20   | 2.1   | 2  | 10.0   | 3  | 15.0  |
| Bulgaria           | 10 028  | 298  | 3.0   | 3  | 1.0  | 29   | 9.7   |
| Croatia            | 4 891   | 225  | 4.6   | 16   | 7.1  | 60   | 26.7  |
| Cyprus             | 670   | 39   | 5.8   | 28   | 71.8   | 13   | 33.3  |
| Czech Republic     | 22 021  | 1 189  | 5.4   | 68   | 5.7  | 162  | 13.6  |
| Denmark            | 3 721   | 178  | 4.8   | 52   | 29.2   | 82   | 46.1  |
| Estonia            | 3 555   | 195  | 5.5   | 85   | 43.6   | 45   | 23.1  |
| Finland            | 3 589   | 241  | 6.7   | 11   | 4.6  | 39   | 16.2  |
| France             | 66 307  | 2 321  | 3.5   | 521  | 22.4   | 723  | 31.2  |
| Germany            | 73 263  | 3 918  | 5.3   | 761  | 19.4   | 606  | 15.5  |
| Hungary            | 16 459  | 1 065  | 6.5   | 36   | 3.4  | 92   | 8.6   |
| Iceland            | 11 833  | 598  | 5.1   | 267  | 44.6   | 237  | 39.6  |
| Ireland            | 3 919   | 129  | 3.3   | 30   | 23.3   | 24   | 18.6  |
| Italy              | 63 981  | 2 740  | 4.3   | 1 196  | 43.6   | 1 372  | 50.1  |
| Latvia             | 6 999   | 415  | 5.9   | 8  | 1.9  | 135  | 32.5  |
| Lichtenstein       | 7   | 0  | 0.0   | 0  | 0.0  | 0  | 0.0   |
| Lithuania          | 8 295   | 353  | 4.3   | 2  | 0.6  | 35   | 9.9   |

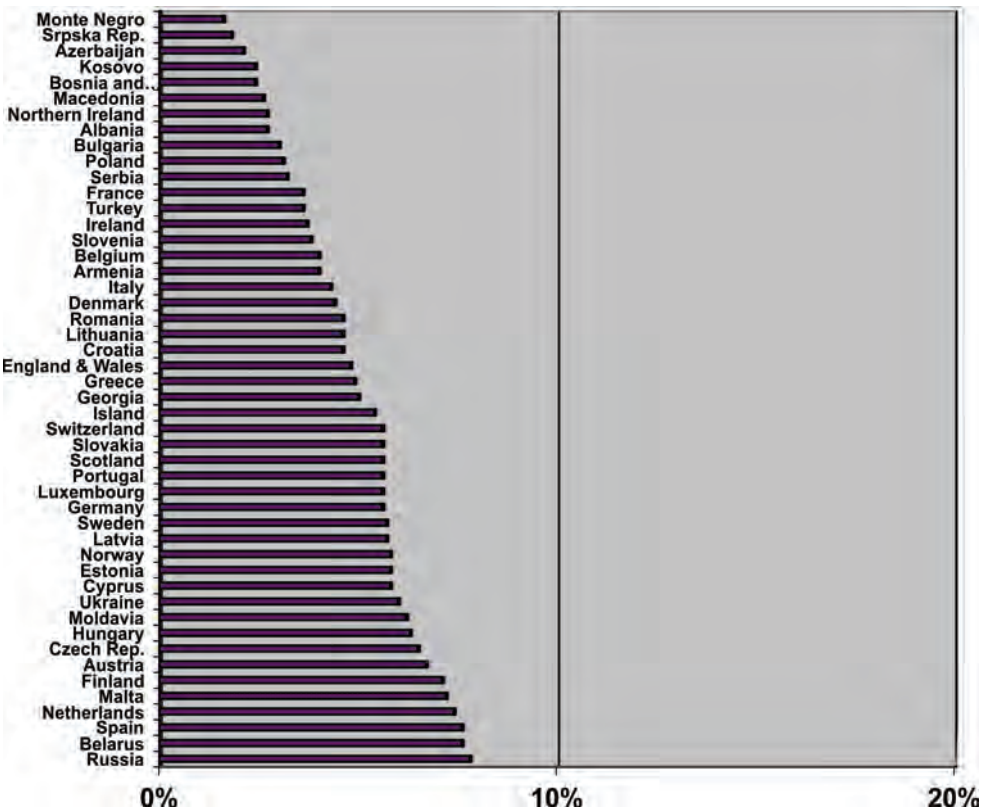
| Country             | The total number of prisoners (including pre-trial detainees) | Number of women convicted (including female pre-trial detainees) | % of women sentenced versus the total number of prisoners (including pre-trial detainees) | Number of foreign women (including female pre-trial detainees) | % of foreign women versus the total number of female convicts (including female pre-trial detainees) | The total number of women pre-trial detainees | % of pre-trial female detainees versus the total number of convicted women |
|---------------------|---|--|---|--|--|---|--|
| Luxembourg          | 679   | 32   | 4.7   | 23   | 71.9   | 14  | 43.8   |
| Malta               | 494   | 28   | 5.7   | NA   | NA   | 23  | 82.1   |
| Moldavia            | 6769  | 418  | 6.2   | 5  | 1.2  | 129   | 30.9   |
| Monaco              | 23  | 2  | 8.7   | 2  | 100.0  | 2   | 100.0  |
| Netherlands         | 11 629  | 725  | 6.2   | 195  | 26.9   | 333   | 45.9   |
| Norway              | 3 285   | 208  | 6.3   | 48   | 23.1   | 54  | 26.0   |
| Poland              | 84 003  | 2 697  | 3.2   | NA   | NA   | NA  | NA   |
| Portugal            | 11 099  | 613  | 5.5   | 196  | 32.0   | 177   | 28.9   |
| Rumania             | 27 028  | 1 268  | 4.7   | 11   | 0.9  | 139   | 11.0   |
| San- Marino         | 2   | 0  | 0.0   | 0  | 0.0  | 0   | 0.0  |
| Serbia              | 10 262  | 324  | 3.2   | 14   | 4.3  | 105   | 32.4   |
| Slovakia            | 9 170   | 474  | 5.2   | 5  | 1.1  | 74  | 15.6   |
| Slovenia            | 1 365   | 64   | 4.7   | 7  | 10.9   | 15  | 23.4   |
| Spain               | 67 986  | 5 391  | 7.9   | 2 156  | 40.0   | 1 328   | 24.6   |
| Catalonia           | 10 356  | 722  | 7.0   | 275  | 38.1   | 170   | 23.5   |
| Sweden              | 7 147   | 374  | 5.2   | NA   | NA   | 92  | 24.6   |
| Switzerland         | 6 084   | 374  | 6.1   | NA   | NA   | 138   | 36.9   |
| Macedonia           | 2<br>461  | 63   | 2.6   | 4  | 6.3  | 9   | 14.3   |
| Turkey              | 115 540   | 4 150  | 3.6   | 244  | 5.9  | 1 803   | 43.4   |
| Ukraine             | 146 394   | 7 742  | 5.3   | NA   | NA   | 1 463   | 18.9   |
| UK: England & Wells | 83 454  | 4 296  | 5.1   | 838  | 19.5   | 554   | 12   |
| Average             |   |  | 4.9   |  | 21.6   |   | 28.6   |

Source: Council of Europe, SPACE I 2009

The average is about 29% of women on remand awaiting a final decision of the court, which ranges from 8.6% of women detainees in Hungary to 50% in Italy and 82.1% of them in Malta. Denmark, the Netherlands and Iceland appear to have a significant percentage of women who await a final decision. Albania also has a considerable percent of women detainees (25.2%) versus 75% of women sentenced to imprisonment.

The figure 2.4 presents us with the percentages of women population in the total population in European prisons. The trend of this category in almost all European countries is increasing, although in their portion of total prison population for each country, women continue to constitute a small percentage. In any prison system, throughout Europe and beyond, the percentage of women in prison ranges from 2 to 10%, as shown by the table no. 2.5 and chart no. 2.4 below.

### Women Population in Prisons



Graph no. 2.4

Source: World Prison Brief (ICPS)

To understand developments in Albanian prisons population during the years 2000-2009 the following data would be of help:

- a) The total number of prisoners (including pre-trial detainees) in September 1 of each year (source SPACE I): It is noted that the population of inmates has tripled from 2000 to 2009. According to data presented in the graph no. 1 above, this number reached 4,689 convicts, including detainees and this is a slight increase in 2010, versus that of 2009.
- b) The number of prison population for every 100,000 inhabitants, on September 1 of each year (source SPACE I): The proportion of prison population for every 100,000 inhabitants in Albania, increased more than threefold. Even for this indicator, for 2010 there was an increase in the ratio from 14.7 to 147/100,000 inhabitants.
- c) Change during 2000-2009 = fluctuation (in percentage) of the ratio of the prison population from 2000 to 2009. This comparative growth reaches 223.5%.
- d) Change from 2008-2009 = developments (in percentage) of the proportion of prison population from 2008 to 2009; The 1.1% growth indicates the increasing trend of criminality in the country.

**Table no. 2.6**

| Country | 2000 |      | 2001 |      | 2002 |      | 2003 |     | 2004 |     | 2005 |       | 2006 |       | 2007 |    | 2008 |       | 2009 |       |       |     |
|---------|------|------|------|------|------|------|------|-----|------|-----|------|-------|------|-------|------|----|------|-------|------|-------|-------|-----|
|         | a)   | b)   | a)   | b)   | a)   | b)   | a)   | b)  | a)   | b)  | a)   | b)    | a)   | b)    | a)   | b) | a)   | b)    | a)   | b)    | c)    | d)  |
| Albania | 1467 | 43.5 | 1635 | 48.1 | 1785 | 52.5 | ...  | ... | ...  | ... | 3425 | 109.3 | 3884 | 122.4 |      |    | 5041 | 139.3 | 4482 | 140.7 | 223.5 | 1.1 |

Source: Council of Europe, SPACE I 2009

This population is accommodated in 21 penal institutions. 1.3% of this population consists of juvenile offenders and detainees, female prisoners and detainees constituting 2.7% and 1% of them, is made up of convicted and detained foreign nationals. Based on the official estimate of the capacity of institutions in the prison system, which is 4380<sup>48</sup> for the year 2010, it is noted an overcrowding that for this year amounts to 1%. For 2010 detainees constitute 33.6% of the

48 International Center for Prison Studies in <http://www.prisonstudies.org/info/worldbrief/>. World Prison Brief (ICPS), the data updated in 2010 by Albanian authorities.

total number of persons sentenced to imprisonment.

It is worth noting that for purposes of comparability of data between Albania and other European countries, international sources are used as they are reported by the relevant states. In some cases, the data from official statistical yearbooks of the Albanian Ministry of Justice, does not match with the official data for Albania of the aforementioned international sources. This comes as a result of using different variables, such as assessments for a certain period of time or assessment indicators in a given day of the year, etc.

The following part of the chapter focuses on the population of women in prisons and detention and their profile.

#### **2.2.4.2     *The profile of women in the Albanian detention centers and prisons***

##### **2.2.4.2.1     *Some general information about female prisoners in recent years***

In reference to the official data of the Ministry of Justice throughout the year 2010, the number of female prisoners compared with prisoners in general, is in lower figures: 549 convicted or 7% of the total number of prisoners<sup>49</sup>. Compared with female prisoners in 2009, there is an increase in the number of convicts from this social category with 34 more convicted, but with 8 convicted less than in 2008, with 94 sentenced more than in 2007, with 16 convicted more than in 2006, with 55 convicted more than in 2005 and 187 sentenced more than in 2004.

Of 549 convicted in 2010, 336 were convicted of crimes and 213 for criminal offences, so 61% of them are convicted of crimes and 39% for minor criminal offences. Compared to 2009, the number of women who have committed crimes decreased (from 65% convicted of crimes in 2009, to 61% convicted of crimes in 2010)<sup>50</sup>.

In a chart and graphical depiction, the female prisoners for the last few years turn up as follows:

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49 This percentage is calculated against the total number of prisoners for the entire year 2010, while the data reported above refer to a specific day of the year

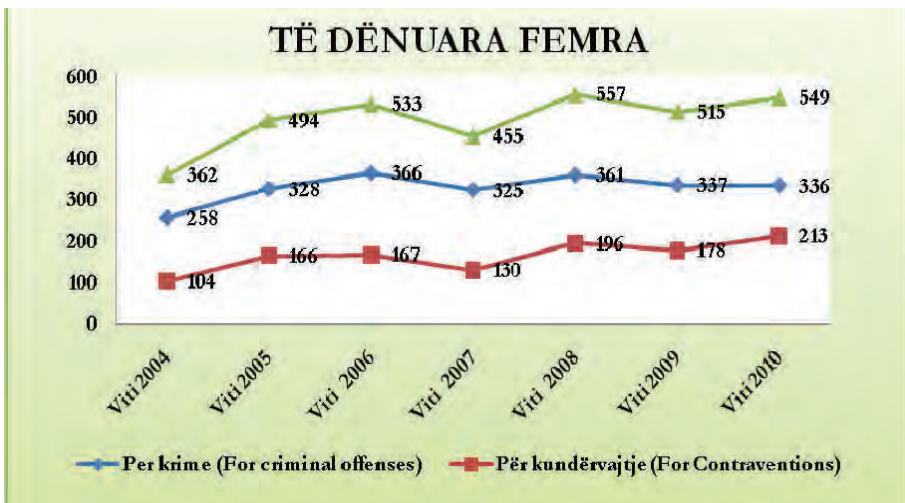
50 Statistical Yearbook of 2010 of the Ministry of Justice, Ministry of Justice publication, 2008, p. 86.



**Table no. 2.7**

| Female convicts | Year 2003 | Year 2004 | Year 2005 | Year 2006 | Year 2007 | Year 2008 | Year 2009 | Year 2010 |
|-----------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Of crimes       | 239       | 258       | 328       | 366       | 325       | 361       | 377       | 336       |
| Of offences     | 44        | 104       | 166       | 167       | 130       | 196       | 178       | 213       |
| Total           | 283       | 362       | 494       | 533       | 455       | 557       | 515       | 549       |

Source: The Ministry of Justice, Statistical Yearbook of 2010

**Graph no. 2.5 (Female prisoners)**

Source: Ministry of Justice, Statistical Yearbook of 2010

The Yearbook of the Ministry of Justice for 2010 lacks information on the types of crimes and offences committed by women. As for 2009, the Ministry of Justice reports that for this year, just as in 2008 (as will be shown below), the largest number of female prisoners is comprised of those charged with the crime of 'prostitution' (37 convicts); for the crime of 'forgery of identity cards, passports or visas' (23 convicts); for the crime of 'falsification of documents' (36 convicts); for the crime of 'counterfeiting of seals, labels or forms' (10 convicts); for the crime of 'fraud' (33 convicts), for the crime of 'theft' (32 convicts); for the crime

of ‘abuse of office’ (24 convicts); for the crime of ‘false charges’ (17 convicts); for offences of ‘trade and transportation of smuggled goods’, (8 convicts) etc.

In 2008, for the offence of ‘prostitution’ 47 women were convicted, for offences of ‘forgery of identity cards, passports or visas’ and ‘falsification of documents’, there were 73 women convicted, for the offence of ‘theft’ there were 42 convicted, for the offence of ‘fraud’ there were 30 women convicted, for the crime of ‘other premeditated injuries’ there were 54 convicted or about 28% of all convicted of criminal offences.

To enable identification of trends and the nature of the crimes and criminal offences committed by convicted women over the years, we are bringing to the attention of readers the fact that in 2005 the largest number of female prisoners are charged with ‘falsifying documents’ (123 convicted); for the crime of ‘theft’, there were 35 convicts; for the offence of ‘abuse of office’, there were 22 convicts; for the crime of ‘murder’, there were 13 convicts; for the crime of ‘other premeditated injuries’ there were 62 convicts or 37% of all convicted for misdemeanor.

A comparative overview of the data, ascertained that during 2008 and 2009, the most common criminal offence has been that of ‘prostitution’; for other offences, such as ‘fraud,’ ‘theft,’ ‘abuse of power’, committed during these two years, compared with 2005, they stand more or less in approximate figures that vary only slightly, while for the crime ‘forgery of documents’ there is a declining tendency in the figures for 2009, compared to 2005, as we have a tendency of decrease crime figures of ‘murder’ for 2009, compared with 2005. By analyzing these general data of the Ministry of Justice it is affirmed the finding that women convicted perform more non-violent than violent offences.

With the establishment and functioning of the institution of Probation Service, from June of 2009 began the implementation of alternatives to imprisonment. According to official data of the Probation Service<sup>51</sup> for the period June 2009-December 2011 women under probation supervision number 412 in total, versus 3,787 convicted persons. Women constitute about 10.8% of the total number of persons deprived of their liberty but that are placed under the supervision of this service.

More specifically, the total number of women convicts in the institution being under the supervision of probation service, is as follows:

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51 According to the email dated December 19, 2001 of Mrs. Ersida Mulkurti, specialist in the institution of the Probation Service.

**Table no. 2.8**

| Time frame 1.6.2009 – 1.12.2011  | Total |
|--|-------|
| Total supervision  | 412   |
| Completed  | 63    |
| Under supervision  | 349   |
| Juveniles  | 14    |
| Article 58 of the Criminal Code ‘Semi-freedom’   | 0     |
| Article 59 of the Criminal Code ‘Suspension of the execution of imprisonment sentence and placement in probation’                                  | 389   |
| Article 59/a of the Criminal Code ‘Home arrest’  | 8     |
| Article 63 of the Criminal Code ‘The suspension of execution of imprisonment sentence and the obligation to perform work in the public’s interest’ | 11    |
| Article 64 of the Criminal Code ‘Parole’   | 4     |

*Source:* The Probation Service Institution, December 2011.

Although the trend in the number of women who have been sentenced to probation supervision has been on the rise, it remains imperative that the judicial authorities create a more flexible penal policy for women defendants in criminal proceedings, taking into account the specific characteristics of women case by case, such as low social danger, their parental responsibilities to children, especially to those underage, poor economic conditions, etc.

It is worth considering the small number of women who have benefited from parole during 2009-2011. Under the Criminal Code, Article 64: ‘The sentenced to imprisonment may be released on parole during his/her serving of the sentence, only for specific reasons, if his/her behavior and performance shows that the sentence served to that point is sufficient in reaching its goal of educating, and that the convict has served already:

- not less than half of the sentence imposed for criminal offences,
- not less than two thirds of the sentence imposed for crimes sentenced for up to 5 years,
- no more than  $\frac{3}{4}$  of the sentence imposed for crimes punishable from 5-25 years in prison.

In the served sentence it is not taken into account the time covered by an amnesty or pardoning. No early release is allowed for recidivist convicted of premeditated crimes. Early release on parole is revoked by the court in the case when the

convicted for a criminal premeditated offence, during the time of his/her parole commits another premeditated offence, just as severe or more severe than the first, applying the provisions of merging the convictions’.

Given that sentenced women that are as we speak in the penal institution of prison, in the most part were given long sentences of 10-25 years (in the section below it will be shown that in Albania 64.5% of the total number of women convicted to imprisonment, are held in prison for 10-25 years). It should be noted that they need to stay for a long time in prison in order to benefit from this provision of the Criminal Code.

If we refer to the recommendation 22 (2003) of the Council of Ministers to member states of the Council of Europe, in the General Principles, Section 6, it is stated that ‘minimum penitentiary time, to obtain parole, should not be so long that the purpose of parole can no longer be achieved’. This principle encourages that the minimum prison stay to be reasonable, that the parole be meaningful. This is intended to help the inmate to make the transition from prison life to that of a law-abiding citizen in the community, through conditions of supervision after release, contributing to public safety and crime reduction in the community<sup>52</sup>.

Given this principle, I think that the minimum time in prison before the convicted is entitled to request parole release in compliance with the Albanian Penal Code, is high due to the fact that women with long sentences, in most part, were convicted of the offence of murder of their former spouses. Moreover, this recommendation encourages the criteria that must be met by the convict, that the parole be made feasible. Lack of job opportunities outside prison should not constitute a cause for rejection or postponement of parole. Efforts should be made to find other forms of occupation. Lack of a regular accommodation should not constitute a valid cause for rejection or postponement of parole. In such cases there must be arranged a temporary accommodation<sup>53</sup>.

From interviews with female prisoners and prison staff of the Ali Demi prison where female prisoners are held, it is ascertained that, oftentimes, the lack of regular accommodation was the reason for the denial of parole or even granting the opportunity to apply for release on parole<sup>54</sup>.

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52 Recommendation 22 (2003) of the Council of Ministers of the member states of the Council of Europe, article 1 in the general principle.

53 Ibid, Chapter IV, no. 19.

54 According to interviews with social care workers in this institution as well as testimonies of women convicted, in September 2011.

#### 2.2.4.2.2 *Women in the Albanian prison system*

The total number of Albanian prisoners in prisons in September 2011 was 4,705<sup>55</sup> of whom, 91 were women on remand and convicted. Data provided by the General Directorate of Prisons in November 2014 indicate that the total number of prison population reached 5868 persons out of whom 101 were pre-trial detained and convicted women<sup>56</sup>. Women detainees who awaited trial by the relevant courts and those for who there is yet to be taken a final form decision by the court, were placed in the detention institution 'Jordan Misja' in Tirana till November 2014. According to official data of September 2011 there were 28 women on remand in this institution<sup>57</sup>.

Women convicted with a final form decision, are placed in 'Ali Demi' prison, in Tirana. In early September 2011 there were 62 convicted women<sup>58</sup>. During December 2014 pre-trial detained women were transferred to and accommodated in the "Ali Demi", Tirana, thus having only one institution for women offenders<sup>59</sup>. In order to preserve the sequence of developments in this area, developments, in both institutions that accommodated/still accommodate women offenders, are prescribed throughout this research.

In the following paragraphs are shown the characteristics of women detainees and convicts that were identified by the scrutinizing of their legal files, registers and other relevant data files in both institutions as well as through their interview method based on structured questionnaires for detained and sentenced women as well as for the staff of institutions.

#### ➤ *Age*

The table below shows the age groups of women who are in detention and prison in Albania:

55 Official data received from the Directorate General of Prisons, September 2011.  
http://www.dpsh.gov.al/?fq=brenda&m=shfaqart&aid=272

56 http://www.dpsh.gov.al/newweb/?fq=brenda&m=shfaqart&gj=gj1&aid=478.

57 According to official data of Jordan Misja prison, Tirana, August 31, 2011.

58 According to official data of the Ali Demi Prison, Tirana, August 31, 2011.

59 According to the data provided by the General Directorate of Prisons, December 2014.

**Table no. 2.9**

| Age               | Jordan Misja Prison | Ali Demi Prison |
|-------------------|---------------------|-----------------|
| Over 65 years old |                     | 2 women         |
| 55-65 years old   | 3 women             | 7 women         |
| 45-55 years old   | 6 women             | 13 women        |
| 35-45 years old   | 10 women            | 28 women        |
| 25-35 years old   | 6 women             | 9 women         |
| 18-25 years old   | 5 women             | 3 women         |

*Source:* Official data from the penal institutions, September 2011.

The figures show that the majority of women on remand as well as those sentenced, belong to the age group 35-45 years (45% of the convicts and 35.7% of detainees), 45-55 years (20.9% of detainees and 21.4% of convicts), 25-35 years (14.5% and 21.4% of convicts and detainees). These women of these age groups have already their family responsibilities and, in most cases also parental responsibilities. Women of this age are a valid workforce in their contribution for their domestic economy, etc. The following analysis will bring to the attention of readers also other social and economic factors of the real profile of these women. It was also noted that in detention there is a high percentage of young women aged 18-25 years (17.8%) versus 4.8% of this age group in prison, an indicator of the beginning of a trend of involvement of young women in criminality in these last years. As it will be shown concretely below, this feature is specifically very widespread in the population of women in European prisons. While a typical Albanian tendency is the fact that in detention and prisons there are about 12% of women who belong to the age group 55-65 years and some even over 65 years. Reasons why this relatively elderly age of women is in prisons, will be analyzed in more detail later on following the analysis of types of offences of these women. They are generally women who have experienced systematic violence perpetrated mainly by ex-husbands and in a low moment, they committed the crime of murder of their husbands. There are among them women who were convicted of planting and cultivation of narcotics which they did mainly to provide economically for their family, but in some cases, they have simply taken ownership of this offence that in reality may have been committed by male family members.<sup>60</sup> As it will be shown later on, these phenomena are less popular among the women population in European prisons.

<sup>60</sup> Some women talked about this fact during their interviews.

➤ *Education*

**Table no. 2.10**

| Education                                   | 'Jordan Misja' prison  | 'Ali Demi' prison |
|---|------------------------|-------------------|
| Elementary education                        | 2 women                | 27 women          |
| Have not completed the elementary education | 3 women                | 8 women           |
| Have not completed the secondary education  | 4 women                | 7 women           |
| Secondary education                         | 1 woman                | 7 women           |
| Have not completed the higher education     | 2 woman                | None              |
| Higher education                            | 4 women                | 3 women           |
| No education                                | 1 woman                | 4 woman           |
| No data available                           | 11 women <sup>61</sup> | 6 women           |

*Source:* Official data of the penal institutions, September 2011.

31.5% of detained and sentenced women have graduated only the elementary school, about 12% of them have finished only a few school grades, and there are just as many women who have completed secondary education, 8.6% of women have completed high school and just as many have completed higher education, while 5.5% have no education whatsoever. It is worth noting that about 10% of women either have graduated university or are about to. Alongside the traditional tendency that most of these women have a low educational profile, there is a growing trend of highly educated women involved in crime.

➤ *Marital status and family history of women*

As shown in the data table below, approximately 44.5% are married women, single women 24.6% and 18.5% are divorced women. About 10% of women are divorced mainly because they have committed a criminal offence and consequently were placed in a criminal institution<sup>62</sup>.

61 In the detention institution were interviewed 17 women of 28 total who were in custody at that point. It was not possible to interview the rest of the women since they were either at work or suffered from mental problems and had difficulties in terms of being interviewed. That helps in understand this interpretation when it is stated that there is no data available.

62 Only a very small number of them were divorced before they were imprisoned.

| Marital Status    | Jordan Misja prison | Ali Demi prison |
|-------------------|---------------------|-----------------|
| Married           | 7                   | 29 women        |
| Single            | 7                   | 13 women        |
| Divorced          | 3                   | 12 women        |
| Widow             | 0                   | 8 women         |
| No data available | 11                  | 0               |

93.2% of all women have children from their marriage and at the same percentage are those that have two or more teenage children. In 45% of cases, children have remained with their father. In 15% of cases children are scattered in various orphanages from North to South of the country. In many cases, siblings are placed in orphanages that are geographically very far from each other. In 11% of cases, children of the sentenced women are taken care of by her parents, who are often elderly and in poor economic condition, unable to address the needs of these growing children. In some other cases, these children live on their own, with no one else in their home<sup>63</sup>. For such a case I quote a concern of one respondent, whose children lived on their own: 'I fear that someone rapes my children.' Almost all married women who had committed the crime of murder of the spouses or in another case that of a family member, have had long marriage relationships. The same can be stated for those occasions when women are divorced. They suffered systematic physical and/or psychological violence as well as have lived in most cases with husbands that behaved irresponsibly towards their family and children as they spent their time with drinks and/or gambling etc. In about 5% of cases, before their incarceration, the women were caring for children with mental problems. In most cases, women have lived in extended families that included many children as well as the parents and relatives of their spouses. It was them that bore the burden of providing for the family's welfare, in addition to raising and caring for their children.

### ➤ *Economic situation*

As noted in the table below, approximately 45.5% of all women for which we have data, have been unemployed before they were taken into the remand institution, while about 44% have been employed. Unemployed women, in almost all cases, did not benefit from social assistance and were economically dependent on their husbands or ex-husbands. Asked why they had not sought to benefit from social assistance, almost all responded

<sup>63</sup> The case of A. P. is the most flagrant case as her four children live on their own in a miserable hut and without protection or assistance from state authorities.



with the argument that procedures were lengthy and bureaucratic. In some cases, they did not know how to apply for the financial assistance, or their spouses have been too jealous to let them leave the house to go get it.

| The economic situation  | Jordan Misja Prison | Ali Demi Prison |
|-------------------------|---------------------|-----------------|
| Unemployed              | 7 women             | 28 women        |
| Employed                | 7 women             | 27 women        |
| Other (student/retired) | 3 women             | 3 women         |
| No data available       | 11 women            | 4 women         |

It is worth pointing out that in the interviews with the women detained and incarcerated, it turned out that a significant number of them (about 83% of all employed women) were employed in the black market, not benefiting neither the required work-years for obtaining later the retirement benefits, nor the health and social benefits. Many of those employed had a hard physical work in agriculture, or even in construction.

#### ➤ *Judicial Status*

It is noted that there is a very small number of women (about 11% of the total number of women) that are recidivists. So the phenomenon of recidivism in female prisoners is not yet a concern for Albanian prison system, compared with the trends of European prison systems which indicate a significant number of women convicts that are recidivists, as will be noted later on in this chapter.

| Judicial Status          | Jordan Misja Prison | Ali Demi Prison |
|--------------------------|---------------------|-----------------|
| Not previously convicted | 23 women            | 57 women        |
| Convicted                | 5 women             | 5 women         |
| No data available        | 0                   | 0               |

#### ➤ *Criminal offences*

The data in the table below show that in about 40% of the cases, women are accused or convicted of premeditated offences against life and in some cases in collaboration, and in combination with committing other offences for which more details are provided below. This significant percentage remains a concern due to the nature of these crimes that have serious consequences, such as loss of life of a citizen. Meanwhile, through interviewing the women it was ascertained that in

most cases, when they committed these acts, they have been victims of systematic violence mainly from their former spouses while in a years-long marriage. During the interviews they have shown that their children not only witnessed violence and aggressive behavior perpetrated against their mother, but they were often themselves victims of the physical violence. The most flagrant case was that of the prisoner P.M.: ... *My husband drank and beat me up regularly, - she said. - I married him when I was 15 years old. I've suffered his violence all my life, but he also violated my kids, not just me... The girl who has been in prison he threw down from the second floor. I have reported him to the police, but he used to buy booze to the local police so they did not touch him. He also attempted to murder my son with an ax...*

For the rest of other criminal offences, it is observed that 15.2% of these offences are those committed against morality and dignity, mainly prostitution, sexual exploitation, etc., These offences committed by women have had a tendency to increase in the recent years, as evidenced by the comparative data of the Ministry of Justice. About 9.8% were crimes against property and in the economic realm. 8.6% are fraud offences; 7.6% are offences against public order and safety, while other criminal offences constitute a small part in the big picture of the offences committed by women, as seen below:

| Type of offence  | Jordan Misja Prison  | Ali Demi Prison   |
|--|--|---|
| Premeditated crimes against life <sup>64</sup>               | 6 women: four of whom are accused of premeditated murder and two of them for aggravated homicide | 7 women for murder, two of which in collaboration<br>4 for aggravated homicide, among them one in collaboration<br>7 women for murder, among which 4 committed in collaboration<br>1 woman for menace |
| Offences against property and pertaining the economic sphere | 5 women<br>1 woman for attempted violent robbery and in collaboration                            | 3 women, of which two in collaboration  |

64 Among other things we would like to mention the criminal offences for which some of the women have been charged or convicted: Article 76 of the Criminal Code (CC) “premeditated murder”; Article 77 of the Criminal Code “Premeditated murder related to another crime”; Article 78 of the Criminal Code “premeditated murder”; Article 79 of the Criminal Code, “Murder in other aggravating circumstances”. Other cases of murder related to other criminal offences, are included in the combination of offences.

|  |                       |   |
|--|-----------------------|---|
| Fraud  | 2 women               | 6 women   |
| Offences against morality and dignity <sup>65</sup>    | 4 women               | 10 women  |
| Offences against public order and safety <sup>66</sup> | 2 women               | 5 women, two of which have committed the offence in collaboration   |
| Counterfeiting money                                   | 1 woman               | No such cases   |
| Assisting in illegal border crossing                   | 1 woman               | No such cases   |
| False charges  | 1 woman               | No such cases   |
| Child trafficking in collaboration                     | No such cases         | 4 women, all having committed the criminal offence in collaboration |
| Falsification of documents                             | 1 woman               | 1 woman   |
| Actions that impede the discovery of truth             | No such cases         | 1 woman   |
| Combination of offences                                | 5 women <sup>67</sup> | 12 cases <sup>68</sup>  |

65 In this group of offences are included among others, those of these sections of the Criminal Code: Article 113 “Prostitution”, Article 114 “Exploitation of prostitution”, article 114 / a “Exploitation of prostitution in aggravating circumstances”, article 114 / b “Trafficking women” etc.

66 In this group of offences are included among others the following articles of the Criminal Code: Article 278 “Manufacturing and illegal possession of military weapons and ammunition”, article 283/a “drug trafficking”, Article 284 “cultivation of narcotics” etc., as the offences for which these women are charged/convicted.

67 “Manufacturing and illegal possession of military weapons and ammunition” and “opposing and battering the judge”; Other cases consist of “aggravated homicide” and “illegal possession of hunting and sporting weapons”; “Fraud” and “Exercise of illegal influence on persons exercising public functions”; “Deception” and “Falsification of documents”; “Premeditated murder” and “manufacturing and illegal possession of weapons and ammunition” and “destruction of property by explosives”.

68 “Armed robbery in collaboration “,” robbery resulting in death” and “illegal possession of weapons”; other cases, “murder” and “illegal possession of weapons”; “premeditated murder” and “illegal possession of weapons” (5 cases); “deception” and “libel because of duty”; “attempted murder”, “attempted trafficking of females in collaboration” and “illegal possession of weapons”; “aggravated exploitation of prostitution” and “sex with a minor more than once in collaboration”.

As for the length of the sentence pronounced for the female prisoners, look at the following data which ascertain that about 64.5% of the total number of women, were given very long imprisonment sentences of 10-25 years imprisonment and about 18% of them received relatively long sentences of 5-10 years in prison, while a small number of women have been sentenced to relatively short periods of imprisonment: those of up to 2 years imprisonment and those of 2-5 years of imprisonment as shown below:

| The sentence    | Ali Demi Prison |
|-----------------|-----------------|
| Up to two years | 5 women         |
| 2 -5 years      | 6 women         |
| 5-10 years      | 11 women        |
| 10-25 years     | 40 women        |
| Life Sentence   | 0               |

➤ *The Security Measure*

As shown in the table below, the majority of sentenced women, i.e. about 77.5% of them are held in detention under ‘arrest in jail’ measure, 11% were tried in absentia and the same number thereof are tried on their own recognizance. It is worth noting about these data the fact that for non-violent offences for which the court has taken into account the low social threat posed by some women as well as some other mitigating circumstances, such as parental or family responsibilities etc., in almost all cases it is preferable to pronounce for women custody to prison rather than measures aimed at avoiding the detention of women.

| The security measure            | Ali Demi Prison <sup>69</sup> |
|---------------------------------|-------------------------------|
| Tried on one’s own recognizance | 7 women                       |
| Tried in absentia               | 7 women                       |
| Jail arrest measure             | 48 women                      |

➤ *Time of receipt of a final decision by the court*

Women with the measure of prison custody, awaiting a final decision pronounced by the Court of Appeal of the respective judicial district, remain in the detention

<sup>69</sup> The Jordan Misja was not included, since all women are awaiting trial and the decision of the first and second instance court, while under the security measure of arrest in prison.

facility. During interviews, women detainees and those convicted also responded to questions related to the duration of stay in the detention institution, while awaiting a final court decision.

The data obtained from female prisoners are better guidelines in terms of evaluating an average of this prison stay, because women were detained at various stages of the trial and at the time of the interview, none of them had received a final court decision. Despite this fact, it is worth noting that women in custody had already stayed in for 9 months on average, while female prisoners<sup>70</sup> had stayed in on an average of 22.3 months to the receipt of their final court decision. The average stay is a very troubling indication that sheds light on the progress of proceedings and the speed of rendering justice especially for the defendant women.

Reasons for delays of court sessions have been most varied, depending on the issue at hand, but some of the reasons that were reported during the interviews, concerned the absence of witnesses, lawyers, prosecutors, judges or failure to notify the parties in the process, etc.

#### ➤ *Mitigating Circumstances*

In 50% of the 62 cases under consideration by different Albanian courts of first and second instance for the female prisoners in the institution of 'Ali Demi' is not taken into account any mitigating circumstances. While 50% of the remaining cases are taken into account various mitigating circumstances related to the specific situation of each defendant.

Among the mitigating circumstances which are often used by judges, are:

- Not convicted previously;
- admitting the charges and deep repentance;
- mother with children, in many cases a mother with minor children;
- very difficult economic situation, unemployed, no pension and no financial assistance;
- divorced or abandoned by the spouse; has the responsibility of providing for her extended family and children;
- the young or old age;

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70 To obtain the above indicator, 70% of sentence women were interviewed on the basis of a structured questioner.

- the relatively low social risk;
- the commission of the criminal offence under severe psychological conditions;
- The defendant has been the victim of systematic violence in the family.

For this latest mitigating circumstance, it is worth noting that only two of the adjudicated cases (one of the first instance court of the judicial district of Lezha, for the female convict L.J. and the other by the court of first instance of the district court of Korça, the female convict D.L.) is taken into account the fact that the defendants were victims of systematic violence and abuse from their former spouses. While, for the remainder, 40% of cases where the crime suspected women have been systematically violated by their ex-spouses and in many cases their children have witnessed or been victims of this violence, these mitigating circumstances were not taken into account by the relevant courts, although the circumstances of these issues have been crucial in making decisions about the defendant women.

➤ *The sentence requested by the prosecution*

In about 42% of cases of female defendants, the prosecution has demanded the same sentence as requested by the respective district court; in 40% of cases has required longer sentence than the sentences imposed by the relevant courts, while in 18% of cases, the prosecutors of respective cases have required lower sentences than those pronounced by the courts. So the trends speak of stiffer penalties sought by prosecutors in cases compared to the sentences imposed by the courts, and that for a significant number of cases, as was also noticed a trend of judges upholding the sentences requested by prosecutors.

➤ *Legal protection*

About 65% of detained and incarcerated women for who there is available data, in the first trial hearing sessions are defended by a personal lawyer. Then it turns out that these women are faced with demands for unsustainable amounts of money from their lawyers and, therefore, more than half of them are turning to legal defense lawyers assigned mainly by the respective courts. About 35% of women had no financial means and are represented since the beginning of trials by lawyers assigned by the relevant courts, as noted in the table below:

| The legal defense | Jordan Misja Prison | Ali Demi Prison |
|-------------------|---------------------|-----------------|
| No lawyer         | 0 cases             | 0 cases         |
| Personal lawyer   | 12 cases            | 39 cases        |
| Mainly a lawyer   | 4 cases             | 23 cases        |
| No data available | 12 cases            | 0 cases         |

33% of women detainees who had personal lawyers as legal representatives, were not satisfied with their service. As noted above, a significant number of sentenced women have had the opportunity of legal representation by private counsel, but from interviews with them, it turned out that more than half of them did not afford this service mainly due to the lack of financial resources. Almost all the women asked about this service said that they had different reasons for being dissatisfied.

Detained and sentenced women raised concerns such as: a) lawyers charge more than they can afford; b) there are no regular meetings with them; c) they have done next to nothing about the custody of their children or to resolve legal issues with which they are confronted in order to maintain regular contact with children; d) are not clear on what happens with their cases legally speaking, but also for a variety of other legal issues related to the consequences of their imprisonment, f) lawyers have at times been under pressure from the other party and are withdrawn from the case, g) in some cases women have highlighted cases where their lawyers were not at the appropriate professional level in their defense, etc.

Even the women who had a lawyer appointed by the courts, were very dissatisfied with the service that according to them, is not professional at all and that rose only to the level of being merely a formal completion of the legal proceedings. They have stated in interviews that attorneys assigned by the respective courts, have met them only in the court hearings, and not in advance. Also they claim that their lawyers, in most cases have asked the judge/judges to decide freely for the sentencing, as provided by the law.

### **2.2.4.3 Women versus men in the prison system**

The data presented in the two tables below, show the types of offences in which detained and convicted man are involved. 31% of them are accused of crimes against property and economic sphere, 21.6% in offences against public order and safety, about 22% of them are accused of premeditated crimes against life, about 2% have committed the offence of rape, about the same percentage is charged for

offences against morality and dignity, and 20.6% are charged for other offences for which no explanation is given and are grouped under the ‘other’ category’.

**Table no. 2.11**

| Detainees in prisons with detention units |             |       |        |          |      |                           |                        |       |                              |       |
|---|-------------|-------|--------|----------|------|---------------------------|------------------------|-------|------------------------------|-------|
| The institution                           | Total       | Theft | Murder | Wounding | Rape | Offences related to drugs | Criminal organizations | Fraud | Exploitation of prostitution | Other |
| 'J. Misja' (B)                            | 290         | 81    | 33     | 11       | 4    | 102                       |                        |       | 12                           | 47    |
| 'M. Peza'                                 | 205         | 22    | 7      | 6        | 1    | 68                        | 4                      |       | 6                            | 91    |
| Burrel                                    | 49          | 15    | 19     | 1        |      | 6                         |                        |       |                              | 8     |
| Fushë-Kruja                               | 32          | 8     | 7      |          |      | 4                         |                        |       |                              | 13    |
| P/Durrës                                  | 238         | 124   | 32     | 28       | 5    | 16                        |                        |       |                              | 33    |
| P/Korça                                   | 96          | 28    | 10     | 8        | 8    | 21                        |                        |       |                              | 21    |
| P/Saranda                                 | 39          | 21    | 3      | 2        | 1    | 5                         |                        |       |                              | 7     |
| P/Tropoja                                 | 3           | 1     |        |          |      |                           |                        |       |                              | 2     |
| P/Kukës                                   | 12          |       |        |          | 1    | 1                         |                        |       |                              | 10    |
| Lezha                                     | 234         | 78    | 70     | 13       | 4    | 25                        |                        |       |                              | 44    |
| Peqin                                     | 156         | 46    | 30     | 5        | 3    | 39                        |                        |       | 7                            | 26    |
| Tepelena                                  | 52          | 12    | 1      |          |      | 36                        |                        |       |                              | 3     |
| P/Vlora                                   | 195         | 73    | 28     | 12       | 2    | 37                        |                        | 5     | 1                            | 37    |
| Rrogozhina                                | 161         | 56    | 37     | 2        | 5    | 32                        |                        | 2     | 8                            | 19    |
| P/Berat                                   | 64          | 15    | 9      | 9        | 1    | 13                        |                        |       | 1                            | 16    |
| P/Kavaja                                  | 19          | 10    |        | 2        | 2    | 3                         |                        |       |                              | 2     |
| Prison Hospital                           | 38          | 1     | 25     | 3        |      |                           |                        |       |                              | 9     |
| <b>Total</b>                              | <b>1883</b> | 591   | 311    | 102      | 37   | 408                       | 4                      | 7     | 35                           | 388   |

Source: General Directorate of Prisons<sup>71</sup>. Statistics, November 2011

<sup>71</sup> Ibid.



Analysis of indicators reflecting the data pertaining the involvement of men convicted in committing various criminal acts, reveals that about 45% of them have committed purposefully offences against life; 19.4% have committed offences against property and economic sphere, 18% criminal offences against public order and safety, 13.6% have committed other offences for which there is no detailed information and only 3% is constituted of men involved in the offence of rape.

#### 2.2.4.3.1 *The types of offences committed by male offenders in prisons*

**Table no. 2.12**

| PRISON        | TOTAL | Theft | Murder | Wounding | Rape | Offences related to drugs | Other |
|---------------|-------|-------|--------|----------|------|---------------------------|-------|
| 'J. Misja'    |       |       |        |          |      |                           |       |
| 'A. Demi' (B) | 86    | 33    | 4      | 1        | 2    | 14                        | 32    |
| 'M. Peza'     | 3     |       |        |          | 1    |                           | 2     |
| Vaqar         | 179   | 49    | 30     | 6        | 7    | 62                        | 25    |
| Rrogozhina    | 242   | 31    | 81     | 6        | 8    | 57                        | 59    |
| Lushnja       | 239   | 28    | 76     | 8        | 8    | 86                        | 33    |
| Tepelena      | 62    | 9     | 19     | 1        | 1    | 22                        | 10    |
| Burrel        | 148   | 46    | 85     |          | 4    | 1                         | 11    |
| Lezha         | 423   | 93    | 202    | 3        | 11   | 50                        | 64    |
| Peqin         | 594   | 71    | 293    | 7        | 17   | 110                       | 96    |
| Kruja         | 65    | 5     | 55     | 3        | 1    | 1                         | 1     |
| Fushë-Kruja   | 357   | 83    | 178    | 23       | 8    | 45                        | 20    |
| Korça         | 280   | 71    | 92     | 39       | 13   | 46                        | 19    |
| Kavaja        | 20    | 13    | 2      | 2        | 1    | 1                         | 1     |
| Durrës        | 35    |       |        |          |      |                           |       |
| Total         | 2733  | 532   | 1117   | 99       | 82   | 495                       | 373   |

Source: General Directorate of Prisons<sup>72</sup>. Statistics, November 2011.

72 <http://www.dpbsh.gov.al/?fq=brenda&m=shfaqart&aid=283>

Indications speak of the tendency of men to be more involved in violent offences than women, but also that in those cases where women are involved in intended crimes against life, the factors that have led them to commission of the violent crime, as already pointed out in this chapter, have been quite different. From information obtained through structured interviews with staff of 'Jordan Misja' and 'Ali Demi' institutions, it was pointed out that among factors<sup>73</sup> that have led women towards these crimes was also their family background, or physical and psychological violence by ex-spouses, the protection of their children from this systematic violence etc., while men who are involved in the same types of offences, were not driven by these factors<sup>74</sup>.

#### ***2.2.4.4 Female prisoners in several countries of the world - A brief comparative overview***

As evidenced also by the tables above, women still constitute a very small part of the population European prisons and even worldwide. However, in recent years, in many countries, the number of women incarcerated in prisons is not only growing, but some international researches in several countries point out to the fact that this number is growing at a faster pace than that of the convicted men<sup>75</sup>. Although all the study is based on the situation of female prisoners in our country compared with some indicators of the situation of women in prison in some European countries, in this part of the study are presented also some interesting evidence from around the world.

So for example, the number of women in prisons in the United States, from 1985 to 1995 has tripled, while, over the same period, the number of men has doubled<sup>76</sup>. In England and Wales the number of women in prison has increased by 33% in a little more than a decade, while the number of men increased by 28%<sup>77</sup>. In the

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73 The factors that lead women toward perpetrating crimes, will be discussed in more depth in another chapter of this thesis.

74 Interview with Mrs.. Ingrid Balluku head of social care in Ali Demi institution and Mrs.. Elsa Trifoni head of social care in Jordan Misja institution in Tirana.

75 Bastic M. and Townhead L.: Women in Prison: A Commentary on the UN Standard. Minimum Rules for the Treatment of Prisoners, Quaker United Nations Office publication, Geneva, June 2008, p. 4

76 Morash, M, Bynum, T.S, Koons, B.A.: Women Offenders: Programming Needs and Promising Approaches, Research, a publication of National. Institute of Justice; August 1998, p. 1.

77 Prison Reform Trust: Prison Factfile, Bromely Briefings, December 2010, p. 4.

period 1984-2003, Australia had an increase in sentenced men by 75%, while the increase of the number of women in prisons scored 209%<sup>78</sup>. A similar trend was observed during the period 1994-2004 in Mexico, Bolivia, Colombia, Kenya, New Zealand, and Kyrgyzstan<sup>79</sup> and in a considerable number of European countries, such as Cyprus, Estonia, Finland, Greece and the Netherlands, for the same time frame<sup>80</sup>.

Regarding Albania, for the period 2005-2010, the number of convicted women and girls increased about 90% versus the increase of about 80% of convicted men and boys<sup>81</sup>. As evident, the trend is similar to that observed in many countries in Europe and in the world.

The reasons why we face these similar trends indicating clearly the fact that the number of women in prison has constantly increased compared to the growth in the number of men convicted in many countries of the world, are various. Stern criminal policies have contributed to the increase in the number of women convicted of minor criminal offences. In some countries, the strict legislation against offences relating to narcotic substances, has influenced this increase in the number of women offenders. The ratio males/females, as mentioned above is also growing in favor of the females. Since these women come from that part of society that is highly marginalized, excluded and economically weak, more and more of them are getting detained, often because they were unable to pay bail to avoid detention or to pay for qualified legal defense services<sup>82</sup>. In many European countries, including Albania, there is a significant number of women on remand and a growing proportion of women on detention, compared with the number of detained men<sup>83</sup>, disregarding the principle of international standards which states that 'detention should be used as a last resort in criminal proceedings, taking into

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78 Bastick, M.: *Women in Prison: A Commentary on the UN Standard. Minimum Rules for the Treatment of Prisoners*, (NGO). Quaker United Nations Office (QUNO), Geneva, July 2005, p. 3.

79 Ibid, p. 3.

80 Quaker Council for European Affairs (2007) *Women in Prison: A Review of the Conditions in Member States of the Council of Europe*, February 2007, p. 25.

81 The data were obtained from the statistical yearbooks of the Ministry of Justice for 2005-2010.

82 UNDOC, Draft Version: *Handbook for female prisoners and management of the prisons for women*, a UNODC publication, September 2007, p. 4.

83 Ibid, p. 4.

account the investigations of criminal indictment for certain offences and the protection of society and the victim<sup>84</sup>.

The data that come from reports of European countries for offences committed by women, indicate key trends for offences mostly committed by this category of persons deprived of their liberty. More specifically, the figures indicate a low level of criminal offences related to prostitution, committed by women. The highest level is recorded in Kosovo (11%). However, it should be noted that prostitution is a very complex criminal justice matter, since in Europe there is not a unified approach about it. Some European countries consider prostitution a legitimate activity and all persons involved in it pay the relevant taxes therefore benefiting social and health insurance.

Based on the data for the offence committed with physical violence by women, it is noticed that the figures range from 1% in Greece to 18% in Finland and England and Wales. This is an issue that deserves further exploring. In the Albanian case, women involved in violent offences were involved due to their family background, economic situation or as they were forced to cooperate with their family members, taking on themselves more responsibility before the court, to 'mitigate' the court situation of their family members<sup>85</sup> etc.

The data below shows that in some countries, such as Greece and Georgia, women are charged/convicted for debts they had, which they could not pay off due to their financial inability. This contrasts the International Convention for Civil and Political Rights, which states that 'No one shall be imprisoned merely because it is unable to fulfill a contractual obligation'<sup>86</sup>.

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84 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted from the General Assembly Resolution 45/110 of December 14, 1990, rule 6.1.

85 This fact was evidenced by interviews with female prisoners in the Jordan Misja and in Ali Demi prison.

86 Article 11 of the international convention "On the Civil and Political Rights".

**Table no. 2.13**

| Country             | Property crimes | Drug Offences | Fraud and forgery | Physical violence | Sexual offences concerning prostitution | Other sexual offences | Homicide | Motoring Offences | Debt | Other |
|---------------------|-----------------|---------------|-------------------|-------------------|---|-----------------------|----------|-------------------|------|-------|
| Armenia             | 9               | 8             | 34                | 3                 | 5                                       | 4                     |          |                   |      | 8     |
| Azerbaijan          | 7               | 16            | 14                | 0                 | 3                                       |                       | 25       |                   |      |       |
| Bulgaria            | 45              | 5             | 11                | 0                 |   | 2                     | 19       |                   |      | 4     |
| Croatia             | 18              | 11            | 11                | 3                 |   | 3                     | 22       | 0                 |      |       |
| Cyprus              | 5               |               | 10                | 5                 | 5                                       |                       | 5        |                   |      | 70    |
| Czech Republic      | 21              | 6             | 22                | 0                 | 1                                       | 0                     | 20       | 0                 | 0    | 30    |
| Denmark             | 9               | 7             | 23                | 19                |   | 3                     | 2        | 17                |      |       |
| Estonia             | 36              | 22            | 4                 | 7                 | 1                                       | 1                     | 21       |                   |      | 10    |
| Finland             | 22              | 19            |                   | 18                |   | 1                     | 29       |                   |      | 11    |
| Georgia             | 10              | 35            | 35                | 15                |   | 15                    | 10       |                   | 15   |       |
| Germany*            | 34              | 19            | 23                | 9                 | 0                                       | 1                     | 5        | 3                 | 0    | 6     |
| Greece              | 18              | 92            | 7                 | 1                 | 2                                       |                       | 11       | 1                 | 5    | 53    |
| Hungary             | 61              | 0             | 15                |                   |   |                       | 12       | 0                 |      |       |
| Island              | 33              | 50            |                   |                   |   |                       | 17       |                   |      |       |
| Ireland             | 29              | 16            |                   | 9                 |   | 1                     | 7        | 3                 |      | 36    |
| Kosovo              | 18              | 8             | 12                | 1                 | 11                                      | 0                     | 16       | 0                 | 0    | 35    |
| Latvia              | 24              | 38            | 2                 |                   | 1                                       | 1                     | 18       | 1                 |      | 16    |
| Luxembourg          | 33              | 44            | 11                |                   |   |                       |          |                   |      | 12    |
| The Netherlands*    | 28              | 38            | 5                 | 4                 |   | 1                     | 12       | 1                 |      | 11    |
| Norway              | 12              | 40            | 8                 | 6                 |   | 1                     | 6        | 9                 |      | 18    |
| Portugal            | 10              | 71            |                   | 2                 | 0                                       | 0                     | 8        |                   |      |       |
| Slovenia**          | 50              | 4             |                   |                   |   |                       | 10       | 3                 |      | 32    |
| Sweden              | 23              | 36            | 8                 | 16                |   | 2                     | 5        | 5                 |      |       |
| England and Wales** | 29              | 35            | 5                 | 18                | 1                                       |                       |          | 1                 |      | 10    |

Source: Quaker Council for European Affairs, February 2007<sup>87</sup>. The data is presented in %.

\* Germany and the Netherlands: Prostitution is legal, so there are no such offences.

\*\* Slovenia, England and Wales have provided data only for women sentenced to prison.

87 Source: Quaker Council for European Affairs, February 2007: Women in Prison: A Review of the Conditions in Member States of the Council of Europe, February 2007, p. 228-229.

The data in the table below indicate the offences for which they were imprisoned, committed mostly by women:

**Table no. 2.14**

| Country        | First most common crime   | Second most common crime  | Third most common crime                                |
|----------------|---|---|--|
| Armenia        | Fraud   | Homicide  | Property   |
| Azerbaijan     | Homicide  | Fraud and Forgery   | Property   |
| Bulgaria       | Property  | Homicide  | Fraud and Forgery                                      |
| Croatia        | Homicide  | Property  | Drug Offences, Fraud and Forgery                       |
| Cyprus         | Other   | Fraud and Forgery   |  |
| Czech Republic | Other   | Fraud and Forgery   | Property Offences                                      |
| Denmark        | Fraud and Forgery   | Criminal offences with physical violence  | Homicide   |
| Estonia        | Property Offences   | Drug Offences   | Homicide   |
| Finland        | Homicide  | Property Offences   | Drug Offences  |
| Georgia        | Combination of criminal offences of drug offences and Fraud and Forgery | Combination of criminal offences of physical violence, sexual offences and debt | Combination of offences against property and homicides |
| Germany        | Property Offences   | Fraud and Forgery   | Drug Offences  |
| Greece         | Drug Offences   | Other   | Combination of offences against property and homicides |
| Hungary        | Property Offences   | Homicide  | Fraud and Forgery                                      |
| Island         | Drug Offences   | Property Offences   | Homicide   |
| Ireland        | Other   | Property Offences   | Drug Offences  |
| Kosovo         | Other   | Property Offences   | Homicide   |
| Latvia         | Drug Offences   | Property Offences   | Homicide   |
| Luxembourg     | Drug Offences   | Property Offences   | Homicide   |

|                 |                   |                   |   |
|-----------------|-------------------|-------------------|---|
| The Netherlands | Drug Offences     | Fraud and Forgery | Homicide and criminal offences with physical violence |
| Norway          | Drug Offences     | Property Offences | Homicide  |
| Portugal        | Property Offences | Other             | Homicide  |
| Slovenia        | Drug Offences     | Property Offences | Criminal offences with physical violence              |
| Sweden          | Drug Offences     | Property Offences | Criminal offences with physical violence              |

*Source:* Quaker Council for European Affairs, February 2007.

In ten countries, drug offences are the most common offences for which women are imprisoned: in five countries it is property-related offences. Taking the three most common offences for each country into account, property-related offences rank highest (listed as number 1, 2 or 3 in 16 European countries), followed by homicide (15) and drugs (14).

The countries with the highest percentage of women imprisoned for homicide are, in descending order, Armenia, Finland and Azerbaijan. As stated repeatedly earlier in this chapter, it is worth studying the factors that lead women to committing the violent crime of homicide. At least in the analysis of factors of the Albanian cases, the women were victims of systematic physical and/or psychological violence perpetrated by their former spouses and, in some cases, because they protected their children from such violence. These were indeed the factors that led them to committing this offence. Offences committed by women prisoners in Albania, which are ranked first (40%), are related to homicide.

Data for offences related to narcotic substances, is difficult to analyze, because of the differences in the legislation that categorizes them as criminal offences, the diligence in prosecuting these offences and the collection of data<sup>88</sup>. According to the above data,

<sup>88</sup> According to the European Monitoring Centre for Drugs and Drugs Addiction, offences are divided into four categories: psycho-pharmacological offences (offences committed under the influence of psycho-active substances), the offence forced by economic reasons (the committing of the crime is related to the desire to finance the habit of consuming drugs), systemic offences (offences committed in the scope of the business of dealing and supplying drugs) and the last are the offences in violation of the anti-drug legislation or issues related to it.

Portugal, compared with other European countries, has more women imprisoned for offences related to narcotic substances, with 71% of sentenced women, of which 28% are foreign nationals; followed by Greece, with 52% of sentenced women and from Iceland, with 50% of sentenced women. In low levels stand the Czech Republic, Bulgaria, Hungary and Slovenia. Albania also has a relatively small percentage of women imprisoned for offences against public order and safety (7.6%) which include offences related to narcotic substances. For sure, in our country as well has been noted a growing tendency for these offences in the recent years. No doubt about it, this issue is worth exploring in greater depth. One of the findings evidenced by the British Home Office is that the sex market can play a very important role in the development of drug markets and vice versa, which leads to the conclusion that women can be victims of these crimes, as they are widely used by men as sex workers<sup>89</sup>.

As indicated in the data presented, fraud and forgery are not among the offences committed mostly by women prisoners in European countries, whereas for Albania, based on the data from the Ministry of Justice yearbooks, is evidenced that the offences of fraud and forgery rank second and third respectively for the frequency of their performance by female prisoners. The level of 8.6% of women prisoners who have committed these offences, remains third following offences of homicide and prostitution, that turn out to be committed mostly by Albanian convicted women. These offences were committed more in Georgia, Armenia, Denmark, Germany and the Czech Republic. The factors that lead women to committing these offences, must be analyzed. Based on confessions of Albanian convicted women, the following factors were identified: their extremely bad economic situation, their family responsibilities mostly toward their children etc. It is also worth finding out whether the prison sentences have been the most effective security measures for women who have committed such offences that are not violent in nature.

The percentage of women who are held in detention awaiting their court decision, compared with the percentage of women who receive prison sentence, is mentioned earlier in this chapter.

Also, it is worth analyzing data related to the length of prison sentences for women in different European countries. The table and charts below for some countries, including Albania, clearly show that the average sentence length varies from a few months to 7 years. For example, as evidenced by the chart no. 2.8 below, in German prisons 33% of women convicted, stay in less than 6 months, while in

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89 Kesteven S.: Women who challenge, Women offenders and mental health issues, April 2002, p. 1.



Azerbaijan only 7% of women convicted stay less than 2 years, as shown in the graph no. 2.6 below and, whereas in Albanian prisons, according to the chart no. 2.9, only 8% of women convicted stay less than 2 years.

If in Germany only 1% of women remain 10-15 years incarcerated in a closed penal institution, in Bulgaria there is 19% of women who stay for more than 10 years in prison. In Azerbaijan women who stay more than 12 years in prison, make up 8%, whereas in Albania, 64.5% of women stay 10 to 25 years in prison. The fact that there is such a large number of women who stay for a very long time in a closed institution is an extremely disturbing phenomenon, due to the negative consequences it has, starting with the institutionalization of sentenced women that is prolonged and the reintegration of women in society that becomes extremely difficult after so great a detachment from it. Resumption of life to find a place of residence, finding a job, rapprochement with children, families and society etc. become extremely difficult after such a long stay in prison.

**Table no. 2.15**

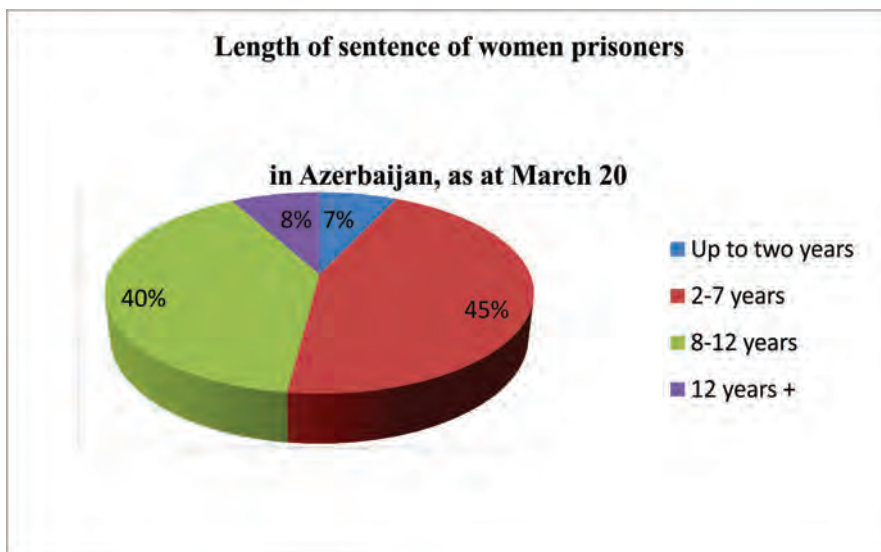
| <b>Country</b>  | <b>The average length of sentence served by women</b> |
|-----------------|---|
| Armenia         | 7 years   |
| Azerbaijan      | See figure no. 5 below                                |
| Bulgaria        | See figure no. 6 below                                |
| Czech Republic  | 3.8 years   |
| Denmark         | 0.3 years   |
| Estonia         | 4.0 years   |
| Finland         | 0.7 years   |
| Germany         | See figure no. 7 below                                |
| Greece          | 3.3 years   |
| Island          | 3.4 years   |
| Italy           | 4.5 years   |
| Kosovo          | 5.1 years   |
| Luxembourg      | 3.9 years   |
| The Netherlands | 2.1 years   |
| Norway          | 0.3 years   |
| Portugal        | 6 years   |
| Slovenia        | 2.3 years   |
| Albania         | See graph no. 8 below                                 |

| Country           | The average length of sentence served by women                    |
|-------------------|---|
| England and Wales | For all sentence lengths but less than life sentence: 12.6 months |

Source: Quaker Council for European Affairs, February 2007.

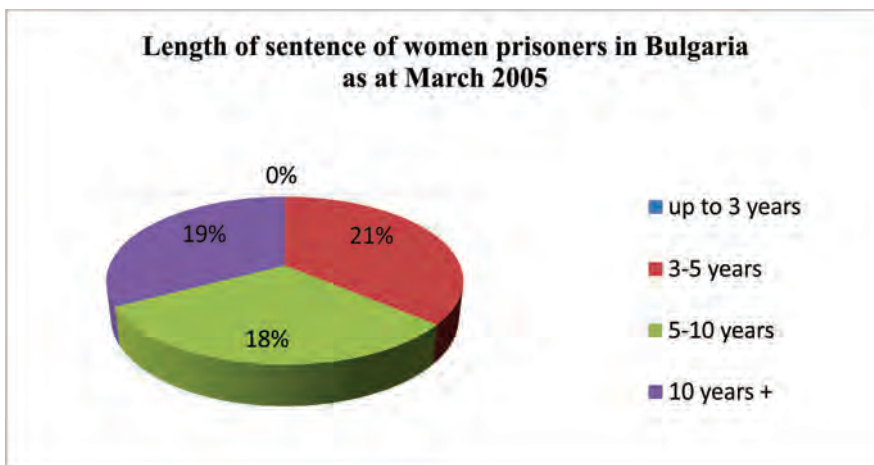
\* Denmark: 2.3-4.4 months or an average of 3.4 months

\*\*Portugal: 3-9 years.



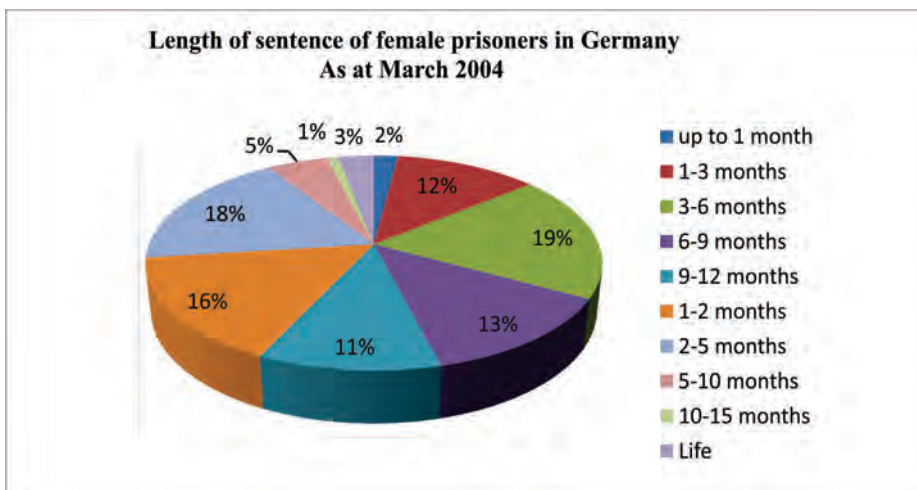
**Figure no. 2.6**

Source: Quaker Council for European Affairs, February 2007.



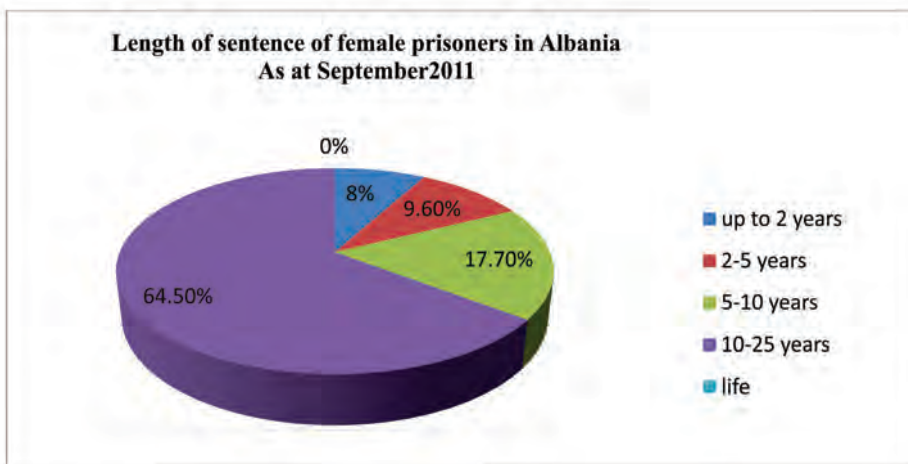
**Figure no. 2.7**

Source: Quaker Council for European Affairs, February 2007.



**Figure no. 2.8**

Source: Quaker Council for European Affairs, February 2007.



**Figure no. 2.9**

Source: Quaker Council for European Affairs, February 2007.

As for the profile of sentenced to imprisonment women in some European countries, such as Hungary, Germany, Spain, England and Wales, and Italy<sup>90</sup>, we will stop and ponder the situation very briefly in this part of the paper, because the issues of the exclusion of the female prisoners will be treated in more depth,

<sup>90</sup> Surt Association: Women Integration and Prison, publication of Aurea Editores S.L, Barcelona, June 2005.

in a separate chapter. The exposition of these theses will include detailed data and indicators related to economic status, education, and various problems specific to women, their family responsibilities, etc. Therefore, in this part of the paper will be mentioned only the main trends that show some similarities regarding the profile of women in the aforementioned European countries.

More specifically, the age of women in penal institutions in some European countries where parallel studies have been conducted<sup>91</sup>, such as in Germany, Hungary, Italy, France, England and Wales, and Spain, is relatively new, although the percentage of the juveniles<sup>92</sup> in the general population of women is extremely small. More specifically, in France they account for 1%, in Hungary and Germany 2%, while in England and Wales, less than 3%<sup>93</sup>. For Albania, among the prison population of women, in September 2011, there were no female juveniles.

In all these European countries, women up to 30 years old, make up more than one quarter of the entire population of women sentenced to imprisonment. Thus, women 19-29 years old constitute: 50% in England and Wales, 42% in France, 32% in Germany, 31% in Hungary and 29% in Italy. For these last three countries more women belonged to the age group of 30-39 year olds. Significant is also the proportion of women over 40 year olds. In Germany they make up 33%, in Italy 35%, in Hungary 37%, in England and Wales they make up 18%, while in France 29%. However, in all these countries 60% of women sentenced to imprisonment, are under 40 years old, so prison population in these countries is relatively new.

In the case of Albania, as shown above, the figures indicate that the majority of women detained and convicted, belong to the age group 35-45 year olds (45% of the convicts and 35.7 % of the detainees), 45-55 year olds (20.9% and 21.4% of convicts and detainees) and 25-35 year olds (14.5% of the imprisoned and 21.4% of detainees). So the age group of 35-45 year olds is of the most considerable age-groups, followed by 45-55 year olds age group. This indicator identifies the trend of women detained and incarcerated in Albania, that is the mature age and entering the elderly age, a trend different from that presented by the aforementioned European countries.

Almost all women interviewed in closed penal institutions in these European countries pointed out their poor economic status before their detention. The low level of education in all closed penal institutions in these European countries,

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91 Surt Association: Women Integration and Prison, publication of Aurea Editores S.L, Barcelona, June 2005, p. 17.

92 Girls up to 18 years and up to 19 years old in Hungary.

93 No data available for Italy and Spain.

was another similarity that was clearly identified. One of the problems faced by most of the women imprisoned in these European countries, were the issues related to their drug use, and a good part of them were imprisoned because they had consumed and/or trafficked drugs. This tendency is indicated also by the data presented in the tables above. Based on the data about Albanian imprisoned women, this is not considered a trend, though, according to data presented for our country, it is clear that the number of women who have been accused or convicted of drugs offences, has been on the rise, especially in recent years.

Also from interviews of women prisoners in European countries, it was found that, in most cases, they had experiences domestic violence or sexual violence. While the first is a trend noticed in the women prisoners also in Albania, the second, which is very common among women imprisoned elsewhere in Europe, is not identified as a tendency among women in Albania. Even among the women prisoners in European countries it is evident that a good part of them had various family responsibilities, primarily, responsibilities related to their children, which are defined also by these women as the most important matter in their lives<sup>94</sup>.

### **2.2.5 Some conclusions and suggestions for penal policy on women offenders**

As stated above, the growing number of women convicts in Europe and the world, as well as in Albania, raises the need of reviewing the policies and practices in force in terms of women offenders. The imprisonment of women has a negative impact not only on the women themselves, but mostly on their children.

In contrast with the convicted men, women commit crimes as a result of a systematic physical and/or psychological violence as well as in protecting their children from domestic violence perpetrated primarily by their ex-spouses. In most cases, they do not commit violent offences. Offences that are committed frequently by women, such as fraud or forgery are otherwise called criminalized poverty<sup>95</sup>. A significant proportion of women get sentenced for committing offences against morality and dignity that in most cases are perpetrated encouraged by the extremely dire economic and domestic conditions. Moreover, punitive criminal justice policies, coupled with the unfavorable economic status of women, have led to an increased number of women held in detention in many countries, as well as in Albania. It is worth noting that based on data

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94 Surt Association: Women Integration and Prison, publication of Aurea Editores S.L, Barcelona, June 2005, p. 26.

95 The United Nations Office on Drugs and Crime: Handbook for Prison Managers and Policymakers on Women and Imprisonment, New York, 2008, p. 82.

presented in this chapter it is clear that the majority of women offenders do not pose a threat to society. Many of these women have experienced direct discrimination and often multiple discrimination, as evidenced from the data on their economic situation, their experiences of systematically domestic violence<sup>96</sup> etc.

Should be taken into account all facts set out above, the profile of women offenders, their parental and family responsibilities, as well as the fact that imprisonment has only negative effects for these women in terms of their return to society, the drafting of a more flexible penal policy that is sensitive to these factors. Such a penal policy should ensure that against women, imprisonment is not used as the primary measure, but as the last resort and that only when it is necessary in cases when they constitute a great danger to society. By keeping women out of prison, where imprisonment is not strictly necessary or justified, their children may be saved from the enduring adverse effects of their mothers' imprisonment.

In accordance with the whole set of minimum rules 'Measures other than arrest,' rule 6, the suspected female, that do not constitute a danger to society, should not be held in detention, except in special circumstances. Responsible authorities should effectively use other coercive measures against defendant women, provided as an alternative to prison Custody Code of Criminal Procedure in Albanian. Professional criminal justice administration, such as judicial police, prosecutors, judges, must have available various measures which make possible the deviation from the process of prosecution, such as mediation between the defendant and the victim, community service order, group family conference, other measures of restorative justice<sup>97</sup> etc. In addition, professionals should be trained continuously to enhance gender sensitivity in cases when the defendant is a woman, to use more effectively the measures provided for in domestic legislation aimed, in cases where the defendant does not pose a threat to society, to avoid placing these women in detention institution by assigning them the restrictive measure of arrest in prison.

In a research of Quaker Council for European Affairs, (February 2007) 'Woman in Prison', a review of the conditions of member states of the Council of Europe, it it stated that there could be benefits by the organization of family conferences in group or by application of other measures, such as circle conviction<sup>98</sup>. The

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96 Van Zyl Smit, D. and Snacken, S.: Principles of justice and European prison policy, New-York: Oxford University Press, 2009, p. 183-184.

97 The United Nations Office on Drugs and Crime: Handbook for Prison Managers and Policymakers on Women and Imprisonment, New York, 2008, p. 83-84.

98 This measure includes the defendant, her family, the victim, the community, etc.. in finding a more appropriate way to compensate the damage caused.

majority of women defendants are mothers with children under the age of 16, and the mother is the primary parent caring for the children. Through arranging the meeting of victims, alleged women, their families and the community together to reach decisions on what is best for repairing the damage, the realization of the defendants reintegration into society and support that ought to be given to children, it becomes possible to reduce the problems of women offenders and to decrease the chances that children of these mothers return to the path of crime<sup>99</sup>.

As stated earlier in this chapter, the number of women who are under probation, remains small. The judges are encouraged that in the case of women who do not pose a danger to society and who have parental or family responsibilities, to implement as many alternatives to imprisonment as possible, of those provided in the Criminal Code.

Since a large proportion of women have mental healthcare needs, are drug and/or alcohol addicted, suffer from the trauma caused by domestic violence or different mental disorders, the authorities administrating the penal justice are encouraged to consider an effective means of avoiding their imprisonment and rather divert them to a suitable treatment program that would address their needs much more effectively than the harsh environment of prisons would.

Given the vulnerability of women in the criminal justice system, the relevant state authorities must ensure access to free legal counsel from the moment of detention/arrest. Almost all women interviewed in penal institutions, claimed that they were not aware of the right of access to legal counsel in the first moments of detention or arrest. Even when some of them were aware of that right and had requested the utilization of it, it was not granted by the police authorities. In most cases, they are met with a legal defense only in the evaluation session of the measure of detention by the relevant courts. Given the importance of taking statements from the defendant women in police stations in the deciding the security measures and in regard to the decision taken by the court on issues relevant to women, it is mandatory, that the legal safeguards be in place, having legal counsel from the first moments of their detention/arrest and for those women who are unable to afford a private legal counsel, to be granted the free legal service. Often, the women interviewed, as pointed out in the above data in this chapter, have complained about the quality of advocacy services in general and in particular of that of the free legal services. This fact deserves special attention by the relevant state authorities (free legal aid commission, the executive board of the chamber of lawyers, etc.) Efficient measures need to be taken, in order to

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99 Quaker Council for European Affairs: Women in Prison – A Review of the Conditions in Member States of the Council of Europe, 2007, p. 8.



ensure not only free legal service in the first moments of detention and arrest, but also to guarantee a more professional legal service for women offenders.

However, the fact evidenced by interviews with female prisoners in Albanian prisons of their stay in the detention institution on an average of 22.3 months before they receive a final decision by the relevant courts, still remains a concern. The judiciary system is encouraged to reflect and analyze the speed, effectiveness of rendering justice to women defendants and consequences of holding them for a long period of time in detention.

As for those cases when women have committed the crime of homicide of their ex-spouses, which accounts for 40% of all cases of women offenders, judges are encouraged that, in deciding the cases of these women, to consider as a mitigating circumstance the fact that they have been systematically abused physically, psychologically and/or sexually prior to the violent crime they committed. The Criminal Code of the Republic of Albania has sufficient gaps to allow for these factors to be taken into account, therefore, it takes only an effective implementation of the relevant provisions for them to be applied.

The fact that a significant percentage of convicted women in Albania (64.5%) are kept for 10 to 25 years in prison, is extremely worrying as regards the reintegration of women back into the society. As stated above, such a long incarceration in closed penal institution has adverse effects and makes it extremely difficult to resume the life of a woman convicted in the community, and the authorities of criminal justice administration, should keep in mind this fact, especially for those cases that these women have committed the crime of murder of their former spouses.

Last but not least, considering that a very small number of women in prison have benefited from the parole for the period 2009-2011, it is suggested that the provision 64 of the Albanian Criminal Code be amended, to bring it into compliance with recommendation (2003) 22. More specifically, by offering the opportunity of parole to all prisoners, thus removing the phrase 'only in special cases', since recommendation (2003) 22, in its Article 23, provides that the parole may be delayed or withheld only in exceptional cases. Moreover, it is recommended that the limits provided in the Criminal Code, be changed, especially those for the offences committed by women, considering the nature of the offence and the causes that have led them to committing violent offences. The period of  $\frac{3}{4}$  of time of the sentenced, served prior requesting parole, is way too long and it does not serve the purpose to be achieved by the parole, as a way to transition to a free life. Also, the criteria to be met by the convicted female, the lack of which becomes an obstacle to obtaining parole, or causes postponing of the judgment, ought to be reviewed.



**CHAPTER****3****KEY DEVELOPMENTS IN ALBANIAN  
PRISON SYSTEM, FROM THE HUMAN  
RIGHTS PERSPECTIVE****3.1 The matters addressed in this chapter**

Prison, as an institution, does not attract wide public attention in the normal life of society. Politicians, the media and the general public become aware of the prisons only when there are situations, for example, in case of an escape of a convict, or when there is a serious incident in prisons. Although there is a generally lack of public interest and attention to what happens in prisons, the prison system of Albania has undergone fundamental changes this period of 24 years of democratic changes. For example, nowadays prisons are no longer thought of as punishing institutions but as public institutions in the service of society, on the one hand to protect society from those who violate the law and on the other hand, to rehabilitate persons deprived of freedom, and to return them to society as better citizens through a humane and dignified treatment. So, starting from the mission that prisons in society have, the philosophy that governs them, the way these institutions function nowadays, has completely changed compared with the early years of democratic changes in Albania.

The ever increasing pressure on the prison system as well as the articulation of problems and challenges that this system faces in Albania, have been constantly in the focus of reports and comments made by both international and local organizations whose mission is the human rights protection. One of the priority areas of the progress report that the European Commission (EC) publishes every year regarding Albania, is also the prison system<sup>100</sup> and respect for the rights of persons deprived of their liberty

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100 Throughout the paper, the term “prison system” includes all local penal institutions of pre-

and their treatment by the prison administration. Priority twelve of the EC Opinion on Albania's application for membership in the European Union<sup>101</sup> focuses on taking additional measures from the relevant state authorities to improve the treatment of detainees and prisoners as well as the prosecution of abuse cases reported through the court and holding the guilty persons legally responsible. Part of this priority is the fulfillment of the Ombudsman's recommendations in this area.

Scientific research at an international level regarding the nature and objectives of prison sentences from the legal and social justice perspective, are numerous<sup>102</sup>, as are several studies on how penal institutions should be directed<sup>103</sup> and what the role of the staff of these institutions is<sup>104</sup>. However genuine scientific studies of the dynamics of change in the context of penal institutions, remain few in number<sup>105</sup>. In Albania scientific research on various issues related to the prison system are nonexistent generally speaking.

Given the above, this chapter provides a historical overview of the developments: in the Albanian prison system by analyzing the mission and responsibilities of these institutions; in the way of management, organization and operation of their architecture; in the handling of detainees/prisoners in their care as well as in terms of the rights of these people that are under their responsibility. This chapter will enable us to understand the features of the development of the Albanian prison system which is necessary for the establishment of the proper framework/context for the analysis and understanding of the issues addressed in this field for the case of Albania.

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trial and prisons, not including police departments. When in this paper the term "prison" is used, remand facilities are implied also. Also, the terms "persons deprived of their liberty" and "prisoner" imply detained and convicted persons. The term "women convicted" implies women detainees and convicted.

101 EC Opinion on Albania's application for membership in the European Union, dated 11.09.2010, outlines 12 priority recommendations that Albania must fulfill before obtaining the candidate status."

102 Van Zyl Smit D. and Dünkel F.: Imprisonment today and tomorrow – International perspectives on prisoner's rights and prison conditions, Kluwer Law International, the Hague 2001.

103 Sparks, R.; F, Bottoms A.; Hay W.: Prisons and the Problem of Order, Oxford: Clarendon Press, 1996.

104 Lombardo, L.X.: Guards imprisoned: Correctional officers at work, New York, Elsevier, 1989. Liebling A. and Price, D.: The Prison Officer, Lejhill: Prison Service Journal, 2001.

105 Coyle, A.: Managing prisons in a time of change, London: International Centre for Prison Studies, 2002.

## 3.2 Brief historical overview on major developments in the Albanian prison system

Since the creation of an independent Albanian state to date there have exceeded 102 years and during this period there have been numerous developments in the political, social and economic conditions inside and outside the country, which have had a direct impact on legal developments and furthermore in the establishment and development of the justice system in general and the criminal justice particularly.

To reflect in detail the main features of legal, institutional and implementation of the legislation in practice mainly in the prison system during these years, it is made a division into three periods: 1912-1944; 1945-1990 and 1991-2014.

### 3.2.1 Legal, infrastructure and treatment developments of persons deprived of their liberty during the period 1912-1944

With the creation of an independent Albanian state, Vlora Provisional Government was faced with the various challenges during the founding of the new rule of law and among others, in determining policies in the fight against criminality in the country at the time ruled by uncertainty, chaos and crime. During this period of political turmoil in Albania, the Assembly of Vlora was forced to retain as far as the penal realm is concerned, the Criminal Ottoman Code of 1858 with additions and amendments of May 27, 1909 and the Code of Criminal Procedure of 1879 until the drafting of new Albanian state laws. The merit of the Government and the Assembly of Vlora was that in a short time they managed to begin establishment and development of the new system of criminal justice, with approval on May 10, 1913, of the Canon of Zhuria<sup>106</sup> which marked the beginning of the implementation of criminal policy and criminal procedure in the Albania<sup>107</sup>. This Act defined the notion of the offense, organization and powers of the court system to adjudicate civil and criminal cases and it stipulated jury trial procedures for serious crimes, which was a form of trial applied only once in the court of Elbasan<sup>108</sup>.

106 The Canon of Zhuria, Published in the newspaper “Përlindja e shqipnjes”, vol. 1, Vlora, 13-14 and February 15, 1914.

107 Anastasi, A.: The Canon of Zhuria (Kanuni i Zhurisë), Tirana, Studime juridike, 2001, no. 1, p. 73-81.

108 Elezi, I.: Brief historical overview of criminal justice in Albania and its challenges, Tirana, scientific judicial magazine “Justiniani I”, no. 1. 2009, p. 8.

Albanian prisons, after separation from Turkish rule, inherited the legal basis<sup>109</sup>, forms and methods of running prisons with poor infrastructure and inadequate facilities that did not guarantee safety and security, sanitary conditions, humane and dignified treatment and opportunity for socialization of convicts.

The most important prisons that were inherited from Turkish rule, were the prisons of Shkodra, Gjirokastra, Korça, Elbasan and other prisons which were in each prefecture center. Most of them were almost in ruins, so a large portion of inmates were held in private homes, rented by the state. In a report of the Tirana Prison, that the Ministry of Justice makes for the Ministry of Interior, on 17/09/1921, among other things it is written: *'... In the three rooms of the prison, 67 people were jammed in. 70 prisoners slept outside in the yard some under shelter. With this standard of living the convict felt as if was sentenced to a painful death. ... This is despotism, an attitude that contradicts human life.'*<sup>110</sup>

As mentioned earlier, while the Provisional Government of Vlora ruled the country, management and organization of the prison system was regulated by the legal acts inherited from the Turkish regime. This is due mainly to the least stable political situation in the country, considering that since the Declaration of Independence of the Albanian state, in 1912, attempts were made to organize the new Albanian state and its legitimate institutions, but these efforts encountered difficulties. First, Albania was confronted with the invasion of the armies of neighboring chauvinist countries, who sought to pursue their territorial claims at the expense of our country. Secondly, the most influential leaders of that time, such as Esat Pashë Toptani did not collaborate with the government of Vlora and prevented the spread of its influence in the Central and Northern Albania.

The peasant uprising in the Central Albania and the eruption of World War I put an end to the rule of Prince Wied. In 1915 almost all the territories of our country were under the control of the deployed troops of neighboring states. With the escalation of military actions between warring countries, in our country's territories were placed Austro-Hungarian, French, Italian and Bulgarian troops, turning the whole country into an occupied area.

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109 The criminal law dated April 28, 1910, in some of its dispositions, regulated the prison management (articles 131-149).

110 Sufaj, F.: Reformation of the pretrial system in Albania in relation with the European Union standards, Tirana: Albanian Magazine for Legal Research, IV meeting, Alb-Shkenca Institute, 2009, p. 2.

During the First World War, invading countries, like Austria-Hungary, France and Italy, took over the administration of the country and, therefore, tried to substitute the applicable laws including those pertaining prison management, but the short period of their occupation did not allow for a proper reform to be carried out in the legal framework of the prison system of the time<sup>111</sup>. The International Control Commission, during the time in which it operated in Albania and even later, and representatives of the invading countries, along efforts to reform the criminal law, have also tackled the problem of the treatment of prisoners, their care and housing, etc.<sup>112</sup> From the examination of archival documents of this period, were found some orders issued by the Austrian command that prescribes a daily diet for each prisoner. In these acts was envisaged also the right of prisoners to make purchases with their own financial means. The archived information reveals that besides the use of prisons of Albania at that time, the invading forces had sent a contingent of prisoners abroad, to their former colonies<sup>113</sup>.

With the end of the First World War and the liberation of Vlora from the Italian invaders and the withdrawal of Serbian forces from the northeast of the country, the political forces of the time along with diplomatic fight to protect the independence of the country, focused on the creation and consolidation of state institutions whose foundations were laid by Congress of Lushnja on 1920, a time when the Albanian higher authorities of the legislative and executive powers were established. The Supreme Council of State and the regency that was elected by the Congress of Lushnja with the decree of January 11, 1921, created the Albanian judicial system. Criminal policy of the Albanian state was also reflected in the democratic government program of Fan. S. Noli (1924) and legal reform with particular focus on criminal justice laws. After the overthrow of the Government of Fan S. Noli and the coming into power of Ahmet Zogu, was adopted 'The Fundamental Charter of the Republic of Albania' on 1925 and 'The Fundamental Charter of the Albanian Kingdom' in 1928. Both of these foundational documents provided the judicial basis for fundamental reform in the judiciary as a whole

111 Sufaj, F.: Ekzekutimi i vendimeve penale, aspekte historike në përfaqje me problemet aktuale (Execution of Criminal Sentences and historical aspects and their relevance to current issues), Tirana, "Jeta juridike", no. 3, 2008, p. 9.

112 "The International Commission made the Municipality responsible of paying for the food and haircut of the prisoners. From Albania's State Achieve, shelf mark 347, file 23, year 1914.

113 Sufaj, F.: Ekzekutimi i vendimeve penale, aspekte historike në përfaqje me problemet aktuale (Execution of Criminal Sentences and historical aspects and their relevance to current issues), Tirana, "Jeta juridike", no. 3, 2008, p. 9.

and in particular in the criminal justice reform<sup>114</sup>. During the years 1920-1928, special criminal laws were decreed. At the same time the common law (the so called ‘canons’) were obeyed, especially in rugged areas in North and South of the country<sup>115</sup>.

For legal, infrastructural and law enforcement developments in Albanian prison system, below are presented the major developments as follows:

Efforts to establish a legal basis for the prison system in Albania entered a new phase exactly after 1920. These efforts consisted mainly in creating the legal framework and the selection of officers who would serve in prison institutions that was something stipulated to be made on a competitive basis. It was precisely this time when the concept of prison administration by civil servants started to be emphasized. Archival resources of that time say that ‘... *in the civilized world, the prison administration is regulated by special norms and regulations*<sup>116</sup> *taking into account prisoner’s need pertaining health, food and education*’<sup>117</sup>. The Supreme Council, in its meeting dated 23.05.1921, charges the government to draft a law concerning the improvement of the life of the prisoner in approximation to the standards of civilized countries<sup>118</sup>. Among the first legislative acts that were developed at that time, was the ‘Law for the use of prisoners’ labor’<sup>119</sup> and for the need of the country to recruit citizens to restore the country’s crumbling infrastructure, but also to have appreciated the importance of the work in the positive developing of prisoners’ personalities.

In reforming the administration bases of various state institutions have also contributed also foreign specialists, in accordance with the law ‘On foreign administrators in Albania’, of 1923. Reforming the prison system was no exception. Some of the key recommendations of foreign experts on the reform package in this field were:

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114 Elezi, I.: Vështrim i shkurtër historik i drejtësisë penale në Shqipëri dhe sfidat para saj (Brief overview of the penal justice in Albania and challenges it faces). The scientific judicial magazine “Justiniani I”, no. 1, 2009, p. 10.

115 Elezi, I.: Zhvillimi historik i legjislacionit penal në Shqipëri (Historical development of the Albanian penal legislation), Tirana: Albin, 1998.

116 With that understand laws and articles. (*Author’s note*).

117 Central Archive of Albania, the shelf mark 317, file 11, year 1917.

118 Ibid.

119 Issued by the Supreme Council on 31.1.1923.

- Classification of prisoners by keeping detainees separate from convicted, the elderly from juveniles, convicted for serious crimes from those of other criminal offenses.
- Construction of two central prisons, one for the North and another for the South, according to projects that met the security conditions and treatment of prisoners, including employment programs, education and medical services. Kavaja and Gjirokastra's castle were thought of as the most appropriate, given the geographical spread of crime.
- Speeding up legal procedures for the sentencing of persons within the shortest time period possible, by means of additional courts of the law.
- Limiting the power of the councils, mayors, deputy mayors to impose sanctions, except in trivial cases.
- The quick development of a law on protection of the rights of citizens, where the arrest could not last more than 30 days after which the defendant must be brought to trial.
- The establishment of a police department within the prison police and gendarmerie forces, which would be responsible of only this particular service and training of this troupe, specific criteria of the gendarmerie that would work in this department.
- Establishment of a three-member committee with representatives from the Ministry of Justice, Interior and Gendarmerie, who researches and reports to the Prime Minister for urgent measures to be taken for better management of prisons and the separation of prisoners from detainees. To overcome the situation and for improvements in the prison system, on the recommendation of a foreign specialist it is highlighted that: *'...I can not thoroughly examine all of the prison system, but for the best interest of Albania, drastic reforms are needed'*<sup>120</sup>.

Some of these recommendations were taken into account in the prison Regulation of 1933, which is discussed below.

The political situation was not stabilized even after Lushnja's Congress. Until 1925, 11 government cabinets were changed. Under these conditions where anarchy

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120 Central Archives of Albania, shelf mark 152, file 923, year 1923.



prevailed, there was no proper ground for the establishment of institutions and the normal functioning of the state. To better understand this situation, we are providing here a description, which a journalist under the penname ‘Shkodrani’ made in the Agimi newspaper in 1921: *‘It is with great sorrow that we hear that throughout Albania there is a lot of propaganda against civilian management and especially against organization of the justice (system), as if we were an African country and not in the heart of Europe of the XX century...’*<sup>121</sup>

During the monarchy period, a step forward was taken in the organization of state institutions and, in this context, significant changes occurred also in the prison system. The Criminal Code, Criminal Procedure Code and the Civil Code were all formulated, that constituted the legal framework of that time<sup>122</sup>. Entry into force of the Criminal Code was of great importance for criminal justice reform, as it marked secession from the Ottoman regime and its influence on the criminal justice provision in Albania. This code was modeled after the European criminal law at the time. In August 1933 came into force the new Prison Rules, designed based on the model of ‘Summary of rules on the treatment of prisoners’, sent by the League of Nations through the Ministry of Foreign Affairs, on 11/09/1931. The regulation was adopted by the government decision and has the signature of the entire government cabinet of the time, because all state ministries were responsible for its implementation, according to their share of obligations.

To better understand the regulation of life in prison on one hand and prison administration on the other, it would be best to consider this regulation. More specifically, the new Prison Regulation contained 12 chapters and 95 articles. The first chapter on Prefectures’ Prisons pointed out the division and categorization of prisoners by crime, age, sex and health status. These prisons accommodated also women and youngsters of up to 21 year olds. The second chapter ‘Sub-prefectures prisons’ stipulated the administration of prisons mainly for detainees, convicts over debt cases and prisoners with a sentence of up to a year and for those who had only a year left from their long sentence. In the third chapter was envisaged the treatment of the defendant about whom the court had ruled that they were irresponsible at the time of the crime, in specialized psychiatric institutions and

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121 Central Archive of Albania, shelf mark 152, year 1921; file 928 (article entitled “Le mepris des lois et ses consequences sociales (Contempt of laws and the ramification in society)”, authored by Daniel Bellet. This article concludes with a comment made by a journalist under the penname “Shkodrani” in Agimi newspaper).

122 Sufaj, F.: Historia e burgjeve të Shqipërisë gjatë shekullit XX (Albania’s Prison History During XX) Century, Tirana, 2000, p. 17.



ailing prisoners with infectious or chronic diseases who were accommodated in Palermo prison. Other chapters anticipated provisions relating to the regulation of life in prison, such as the transfer of prisoners; the service staff, their duties and powers; hygiene, economic and health treatment, work, education, supervisory council duties, etc.<sup>123</sup>.

In terms of prison management, according to August 1933 regulation, its Article 60 stipulates that the prison was run by a supervisory council composed of the mayor, prosecutor, commander of the gendarmerie and the warden. This council was responsible for the overall check of the prison and prisoners every 15 days. Each month, the council reported to the Minister of Interior and Justice for all issues that were ascertained. It was the Council's responsibility to supervise the implementation of this regulation; take disciplinary action against staff and, when the latter committed serious violations and received five punitive measures, were discharged of duty. The Council was obliged to observe prisoners' behavior. For this purpose, in each prison was kept a separate register for the convicts and a register for staff's behavior.

Article 63 of this regulation clearly defines the 12 powers of the supervisory council:

1. Determines the number of prisoners to be transferred as needed.
2. Sets the day and time of classes provided for the prisoners.
3. Makes decisions on reports provided by physicians.
4. Determines every new season the time when prisoners have to go to sleep and wake up, as well as when they should be kept in aeration.
5. Determines the types of jobs that a prisoner can be employed in.
6. Allows for exercise of craftsmanship by skillful prisoners.
7. Takes disciplinary action against inmates upon the warden's proposal.
8. Takes disciplinary action against prison staff.
9. Decides for the accommodation of prisoners in the penitentiary institution.
10. It proposes to the Minister of Justice the pardoning of prisoners on reasonable grounds.
11. Takes every measure to clean the prison.
12. Cares for selling prison's food in accordance with the accounting law.

By the tasks specified in this regulation of prison's Supervisory Council, it is understood that this collegial body is of paramount importance to the life and

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123 Central Archives of Albania, Official Journal no. 57, dated September 27, 1933.

administration of the institution and that it prevents cases of abuse if these powers would gravitate into a single person.

Moreover, through legal acts and archival documents related to the detention centers and prisons, was evidenced the public nature that was to characterize this service. In Korça prosecutor's letter, Mr. Sali Babeni, addressing the Governing Council of the city in 1917, it is stressed that prison, rather than administered by a civil servant, who should be in charge of the things stipulated in the procedure, has remained in the care of only the police. During this period, the detention institutions and prisons were under the responsibility and management of the Ministry of Internal Affairs. At a prefecture level, these institutions were run by directors appointed and removed by the Ministry of Internal Affairs upon the proposal of the supervisory council of the prefecture, while in the remand centers and prisons in sub-prefectures, no director was appointed as a prison governor, but it was directed by the gendarmerie of the subprefecture, which was under the authority of supervisory council for management of certain aspects of security of convicts.

It is worth mentioning that, during this period, in order to reform the Albanian prison system were taken into account the experiences of countries with developed democracy of that time and attempts were made to adapt these practices to the Albanian context.<sup>124</sup>

In all the reports of criminal justice officials, prosecutors, judges, foreign specialists who have been in Albania, it is clearly stated that the purpose of incarceration is the rehabilitation of persons who act in contravention of the laws<sup>125</sup>. Based on a study of a range of archival documents, emphasis was put on a humane treatment of persons deprived of their liberty.

Under the Regulation of 1933 it was provided that prisoners get to go out to fresh air twice a day, given that minors and women went separately to aeration, as well as detainees separately from the convicted prisoners<sup>126</sup>. It was provided that once a week, prisoners take a bath and wash their clothes<sup>127</sup>. The regulation granted also the right of prisoners to food provided by the institution for all those who claimed to be

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124 Prison evolvement. <http://www.dpbsh.gov.al/>

125 Sufaj F.: *Historia e Burgjeve të Shqipërisë gjatë shekullit të XX* (Albania's Prison History During XX Century), Tirana, 2000, p. 34.

126 Article 35 of Prison Regulation, Official Journal no. 57, dated September 27, 1933.

127 Article 36 of Prison Regulation, Official Journal no. 57, dated September 27, 1933.

poor, and food to the specific needs of ailing prisoners<sup>128</sup>. Once a week were envisaged visits to those who had written permission from the prosecutor in the prefecture and the reconciliatory judge in sub-prefectures<sup>129</sup>. Furthermore, the regulation provided special provisions for the continuity of employment and craftsmanship in prison, the religious services and education of prisoners, organization of literacy courses, schedules, responsibilities of the director of the institution and those of the staff, etc.. This regulation obliges the Ministry of Education to pursue educational programs in prisons, as well as provide the necessary textbooks for prisoners.

According to archival sources of 1921 and 1927, it is evidenced that after the 20s, efforts were made to educate prisoners with literacy and oratorical talks on ethics<sup>130</sup>. In 1927 the Ministry of Interior issued a circular letter which was addressed to all prisons and that concerned the organization of literacy, language and reading courses from three to four hours a day by prison officials in order *'to involve more the prisoners, to lift their spirits and somewhat tame their boisterous self...'*<sup>131</sup>. Besides this circular letter, the Ministry of Education, in its two memos of the same year, notifies all prefectures and sub-prefectures that a decision was made on the provision of teaching for prisoners and to carry out this activity, all prisons were instructed to appoint one or two teachers for these purposes. *'Teachers not only will fight illiteracy, - is said in these two memos, - but, with their sermons and conferences, will try to inculcate civility and nationalistic feelings in their hearts, so that when these are released, they would become valuable elements of human and national society'*<sup>132</sup>.

Also, according to these sources, it turns out that prison institutions enabled persons deprived of their liberty to practice their religion. From the correspondence between prefectures, gendarmerie command and the Interior Ministry, it is evident that prisons in the prefectures decided to employ persons deprived of their liberty<sup>133</sup>, although their employment was never at a massive level. The type of work had mainly to do with fixing and maintenance of city streets, parks, gardens, recreational facilities etc. This is supported also by the official correspondence between the prefecture and central government bodies. In some other prisons, employment was organized within the institution in vocations

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128 Article 42 of Prison Regulation, Official Journal no. 57, dated September 27, 1933.

129 Article 43 of Prison Regulation, Official Journal no. 57, dated September 27, 1933.

130 Central Archives of Albania, shelf mark 152, file 379, year 1921 and shelf mark 152, file 837, year 1927.

131 Central Archives of Albania, shelf mark 152, file 837, year 1927.

132 Central Archives of Albania, shelf mark 152, file 838, year 1927.

133 Central Archives of Albania, shelf mark 379, file 8, year 1929.

such as craft work, straw work, joinery, carpentry, shoe repairs etc. To promote hiring by the private business sector, in 1936 the Ministry of Interior addressed the prefectures and chambers of commerce in a circular letter instructing the encouragement of businessmen to expand their activity also in prison. In this circular letter, prisons were instructed to take measures in order to teach prisoners different skills through external specialist of vocational training with the goal that later on, the prisoners could use these skills for employment in prisons<sup>134</sup>.

There were prisons in ten prefectures and in 23 sub-prefectures. According to data dated 09.23.1936, there were 3,874 inmates and detainees. Referring to archival sources<sup>135</sup>, within the premises of the prison prefectures, there was a room for women that could accommodate 5-10 women. Despite the fact that during Zog monarchy Gjirokastra prison within its fortress of the city was rebuild (1928), and retained its function until 1955, its infrastructure, - wrote the inspector of the royal court Xh. Ypi in 1932 - was incompatible with human existence. In 1930 it was built the Tirana prison, which is still functioning in 50% of its old premises<sup>136</sup>. Concerning the complete inappropriate conditions of this prison, the former political prisoner Haki Stërmilli, who was arrested and placed in this jail, stated that: *'... it is not suitable for a prison, as it is not built according to legal provisions. Here are incarcerated both political prisoners with the ordinary ones, both the murderers and the thieves, both the debtor and the forgeriers, both the adults and the young etc. For this reason, the prison has turned into some sort of school that teaches crime rather than an institution where this evil habit is crushed and done away with.'*<sup>137</sup> Besides these prisons, at that time were functional also the prisons of Porto-Palermo, Shkodra, Berat, Voskopoja, Durrës, Peshkopia, Kukës, Elbasan, Korça and the prison hospital of Tiranë<sup>138</sup> etc.

134 Sufaj, F., (2008). "Ekzekutimi i vendimeve penale, aspekte historike në përfaqje me problemet aktuale (Execution of Criminal Sentences, historical aspects toward current issues)", Tirana: Jeta juridike. - No. 3, p.20.

135 Central Archives of Albania, shelf mark 155, file 1242, year 1942.

136 Sufaj F., (2009). "Reformimi i sistemit të paraburgimit në Shqipëri në raport me standardet e Bashkimit Europian (Reforming detention system in Albania in approximation to European Union standards)", Tirana: Revista Shqiptare për Studime Ligjore, Assembly IV, Alb-Shkenca Institute, p.2.

137 Sufaj, F., (2008). "Ekzekutimi i vendimeve penale, aspekte historike në përfaqje me problemet aktuale (Execution of Criminal Sentences, historical aspects versus current issues)", Tirana: Jeta juridike. - Nr. 3, f.17.

138 Porto Palermo, Ardenica and Voskopoja prisons served for the treatment of people with mental health problems, while Tirana hospital for treatment of sick prisoners.

Although the purpose of the detention was the rehabilitation of persons deprived of their liberty, it was noticed that the prison system was still far from accomplishing its goals in terms of the living conditions and activities in prisons. Among other things it is notable that prison facilities were inadequate. There was a lack of sanitation joints, running water, heat, and overall there were extremely severe conditions of sheltering. The lack of medical drugs, malnutrition, overcrowding of buildings beyond their capacity etc. had seriously endangered the health of the convicts<sup>139</sup>. The reports from that time regarding the health condition of prisoners, reveal that many of them suffered from serious, infectious, chronic and incurable illnesses, such as dysentery, malaria, syphilis and other various diseases. One of the most widespread diseases was that of tuberculosis. In the prison hospital in Tirana, only during 1935, 49 prisoners were reported to have died from this disease<sup>140</sup>.

With the invasion of Albania in 1939 by fascist Italy, entered into force also the Constitution, which instituted the state union between Albania and Italy. This Constitution is defined by an American legal scholar as typical of the new order that European dictators imposed on the conquered countries. The Constitution established a fascist military dictatorship, that was authoritarian, hierarchical, overly centralized and anti democratic. It gave executive power to the King, who in Albania was represented by his general viceroy. Justice stemmed from the king and was administered on his behalf by the judges he nominated. In general, the Italians kept the old judicial organization of the King Zog era. The Criminal code used by courts in criminal cases, was the Italian one of 1930, most of which had entered into force in Albania through Jacomon's decree, dated January 6, 1940<sup>141</sup>.

The period 1939-1944 was characterized by a situation of instability in terms of prisons due to the conditions in which Albania found itself during the fascist occupation. During World War II, a few partial changes were made on the prison regulation in 1933 and the organization of these institutions. Thus, in 1942 was established the Central Penitentiary Department. To this purpose was created the archive, which administrated the prisoner's files. With the partial changes in

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139 Sufaj, F., (2000) "Historia e Burgjeve të Shqipërisë gjatë shekullit të XX (Albania's Prison History During XX Century)", Tiranë. p. 44.

140 Sufaj, F.: Ekzekutimi i vendimeve penale, aspekte historike në përqasje me problemet aktuale (Execution of Criminal Sentences, historical aspects versus current issues)", "Jeta juridike" no. 3, 2008, p. 21.

141 Fischer, J. B.: Albania During 1939-1945 war, Tirana, Çabej Publishing House, 1999, p. 70-71, 73.

regulation, the powers of the supervisory council were reduced. Also the securing of prisoners was assigned to the militia units.

Regarding concrete developments in the field by prisons, it is notable that, on 7-9 April, 1939, almost all prisons in Albania were opened and the prisoners escaped. This is documented in the reports of the prefectures and sub-prefectures<sup>142</sup>. The situation of the emptying of the prisons, changed completely soon after, as a result of the escalation of persecution by the fascist regime against its opponents. This resulted in prisons' overpopulation, and the management situation of prisoners in conditions of extremely outdated infrastructure system at the time, which did not ensure adequate security and facilities, it became even more difficult. For these reasons, the general viceroy decided to transfer the Albanian prisoners to Italy prisons with the proposal of the Minister of Justice of that time<sup>143</sup>. The number of prisoners transferred, according to the announcement by the Minister of Justice, was about 70 people<sup>144</sup>. The move was met with reactions and protests from family members of prisoners as well as by an increase of the demands from them for their repatriation. In the second half of 1941 began the repatriation of prisoners. According to a circular letter of the Minister of Justice, it was announced that the Italian authorities had given orders for the transfer of all Albanian prisoners back to Albania, but *'...due to the difficulty of monitoring and communication means, the repatriation that has already begun will be completed gradually'*<sup>145</sup>.

There was a massive displacement of prisoners also within Albania, motivated by the lack of security. This situation influenced directly in the suspension of proceedings and, in many cases, in disregarding the imprisonment decisions by courts for the prisoners. The latter, in many cases, were held in Italy's prisons at a time when, according to the court decision they should have been freed. This is supported also by archival sources of that time that reflected the complaints of prisoners as a result of these transfers from one prison to another<sup>146</sup>.

Overcrowding in prisons was increased especially since 1942 when, as is well

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142 Central Archives of Albania, shelf mark 152, file 29, year 1939.

143 Document dated 11.3.1941.

144 Official note dated 16.8.1941.

145 Central Archives of Albania, shelf mark 155, file 1453, year 1941.

146 On 20.05.1941, the inmates of Burrel, awaiting the decision of the court, in a letter to the prime minister Shefqet Vërlaci, asked for their return to the prison where they were earlier in order for them to be able to attend the court sessions and the court decision. Retrieved from Albania's Central Archive, shelf mark 155, file 1453, year 1941.

known, the National Liberation War took new proportions. Thus, the number of persons sentenced to imprisonment rose to about 2,500 people, not counting the concentration camps at home and abroad and persons deprived of their liberty that were transferred abroad, while the capacity of the prison system of Albania in 1942, was 1,500 males and 60 females<sup>147</sup>. The number of prisoners was ten times bigger if we were to compare the 1939 data with those of 1942. To illustrate this with the data from the Tirana prison, for 1939 there were 85 inmates; in 1940 their number rose to 145; in 1941 their number rose to 560 and in 1942 the number of prisoners reached 800. Although new penal institutions and concentration camps were opened, the shocking overcrowding, malnutrition, severe hygienic conditions and violence committed against the prisoners were some of the most pressing problems of the prison system during this period. In an informational report presented by Vlora's prosecutor regarding the assessment of the situation in prisons, among other things he writes: *'... it is established a psychological atmosphere, with no particular orientation whatsoever, to the detriment of discipline in prison... In the above mentioned circumstances, the prison instead of retaining its mission as a betterment institute, turns to be a house of corruption of all sorts and kinds'*<sup>148</sup>. Despite the pardoning for all offenses of a political and financial nature of 1943, prisons were quickly refilled again by the end of the National Liberation War.

G. Pagrili army General has described the general situation of prison during the War, in 1942 with these words: *'Civil prisons in Albania are in provisional facilities, usually falling short of any hygienic and moral conditions and are not well suited also in terms of security.... In prisons are kept a mix of people among whom some have received a long sentence and some life sentences, together with those of short sentences or awaiting trial. The harm that this mixture causes is evident and the prison fails in its mission of the moral correction of prisoners convicted of serious crimes'*<sup>149</sup>. Also, in his report, Colonel Edmond Dr. Leppo, in late 1942, says that: *'The majority of prisoners are locked in large rooms with 100 people each. From the convenience perspective, the mingling is harmful both socially and also in terms of the hygiene. The windows are designed to be too small which does not allow for air circulation, toilets do not function well, oftentimes there is no running water at*

147 Sufaj, F.: Historia e burgjeve të Shqipërisë gjatë shekullit të XX (Albania's Prison History During XX Century), Tirana, 2000, p. 56-57, 62.

148 Central Archives of Albania, shelf mark 155, file 1242, year 1942.

149 Sufaj, F.: Reformimi i sistemit të paraburgimit në Shqipëri në raport me standardet e Bashkimit Europian (Reforming the detention system in Albania in approximation to European Union standards)", Tirana: Revista Shqiptare për Studime Ligjore, Assembly IV, Alb-Shkenca Institute, p. 2.



*all. There is a lack in mattresses, beds, ambulances, and all medical equipment. The food consists of just one kilo of bread a day*<sup>150</sup>.

### **3.2.2 Key developments in the prison system for the period 1945 - 1990**

The period 1945-1990 was characterized by the rule of the totalitarian regime and, consequently, the justice system, particularly criminal justice, were in the service of the party-state policy. Adoption of the Constitution of the People's Republic of Albania in 1946 called for the dismantling of all previous system of criminal justice and the creation and organization of the justice system, including criminal justice, which essentially was to serve the strengthening of the rule of dictatorship of the proletariat and class struggle against regime opponents. The justice system was designed to protect from any harm the social and state organization in the People's Republic of Albania, as stipulated in the Constitution, the socialist system of economy and socialist property<sup>151</sup>.

With the entry into force of the Constitution of 1976<sup>152</sup> and the intensification of class struggle, the Criminal Code was drafted in 1977<sup>153</sup>, which toughened the criminal sanctions, including 33 political convictions and focused primary on the political crimes. The Criminal Code defines criminal conviction in this way: *'The criminal penalty is a coercive tool of political and ideological character of the socialist state in the class struggle and a powerful weapon of dictatorship of the proletariat in its struggle against its enemies, for the preservation and strengthening of the socialist order'*<sup>154</sup>. The political character of all criminal law is clearly portrayed in Article 1 and 2 of the Criminal Code, stating: *'The criminal legislation of the Socialist Republic of Albania, is guided by the Albanian Party of Labor policy and is based on the ideology of the working class in Marxism-Leninism and stems from the Constitution of Socialist People's Republic of Albania. The criminal legislation is to protect the socialist state, the APL, as the only political force leading the State and society, socialist property, rights and interests of citizens, as well as all socialist social order from socially dangerous acts, by enforcement of sanctions against those who commit them ...'* In the same year, the Criminal Code was developed

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150 Central Archives of Albania, shelf mark 155, file 1242, year 1942.

151 Article 2 of the law "On judicial organization", Official Journal no. 20, July 1951.

152 The Constitution of the People's Socialist Republic of Albania, Tirana, 1976.

153 The Criminal Code of the People's Socialist Republic of Albania, Tirana, 1977.

154 Article 16 of the Criminal Code of the People's Socialist Republic of Albania, Tirana, 1977, edition of the publishing house "8 Nëntori".



alongside the criminal procedure code<sup>155</sup>.

The main constituent institutions of the criminal justice system, in addition to the court and the prosecution, were the State Security Directorate, as the structure of the under the Ministry of Internal Affairs, the prisons, camps and the prosecution office, which after 1983 was established as an independent institution. Their mission was to protect the state. They were known as the dictatorship of the proletariat bodies, so they were therefore instruments of oppression and violence. This function determined the criminal policy and legal-penal fight as the main form of struggle against crime based in penal conviction and coercive measures<sup>156</sup>.

With the establishment of the communist regime, prisons became the clearest symbol of violence, repression and violations of human rights of persons deprived of their liberty. Following the example of the Soviet gulag, forced labor camps were established where thousands of people sentenced to imprisonment were gathered in. They were ordinary and political convicts, who worked in inhuman conditions, not properly clothed and malnourished, who lived at gunpoint. Prisons, turned from institutions of public services, into military institutions. Thus, it was the same bodies that surveyed, detained, arrested and investigated. In 1955, by decision of the Ministry of Internal Affairs, labor camps and prisons were considered military units.

Good practices derived from Western countries during the period 1912-1944 and the positive steps taken in the penitentiary system, not only were not appreciated, but, rather, were destroyed and the prison system displayed all the features of a dictatorial state. Prison was the place where men were depersonalized, where there were not recognized not even the minimum values and human rights, where there was hunger, beatings and torture, lack of hygiene, death and moral humiliation. All former staff that had worked before in prisons, most of whom were intellectuals, not only were dismissed from work, but a part of them were also imprisoned. This led to severe shortages of intellectual pool, which forced the state institutions to be run by people with no experience and a not satisfactory education. Staffing, in general, for each prison was composed of: the Commander, Commissioner, officer, commander of the prison services and physical exercises, 1 doctor, 1 nurse, a platoon of soldiers for the outer perimeter and a platoon of

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155 Criminal Procedure Code of the Socialist People's Republic of Albania, Tirana, 1977.

156 Elezi, I., & Hysi, V.: *Politika kriminale (Criminal Policy)*, Tirana, Pegi Publishing House, 2006.

police for the internal perimeter<sup>157</sup>. From what can be seen from the staffing of the prison, the focus was the securing of the convicts, while social and psychological services to inmates were completely lacking. In other words, prisons were run with a military mentality and were considered in fact military institutions.

The chapter of the rights of prisoners in the prison regulations did not provide for not even the minimum rights enshrined in the Constitution. For example, correspondence with family and relatives was restricted to no more than two letters per month and were not supposed to exceed two written pages each. If the writing was not clear and contained 'false facts', the letter was torn and not sent to the specified address<sup>158</sup>. This was based on provisions of the regulation which stipulated that all incoming correspondence to the convict or the outgoing one from the convict, was to be checked by the command. The punitive measures for the prisoners envisaged the removal of some basic rights which should never be violated or removed, such as: suspension of visits from family from one to six months; termination of prisoners' correspondence with the outside world for up to three months; limiting admission of food parcels by inmates for up to six months as well as prolonged isolations<sup>159</sup>. Family visits were envisioned to only two meetings a month, but, in fact, these visits were very rare and that due to many reasons, such as the difficulty to reach the prison, because their distance from urban centers was considerable; lack of transportation; artificial barriers created by the prison administration and investigators in cases of detained persons, etc. The regulation provided the forced employment of all prisoners which was of a punitive character. Many convicted were self-mutilated in order to escape being forced to hard work. To promote the work of the convicts, in 1950 the law was adopted for the calculation of the prisoners' work, with the benefits of reward, food and clothing, according to which, in proportion to the accomplished work, were envisaged sentence reduction for each prisoner, which were clearly specified in the law<sup>160</sup>. This law was revised several times, but, in essence, remained binding and punishing in its nature towards the prisoners.

In terms of the correctional mission of prisons, the prison regulation of 1986, stipulated that: 'The commands of correctional units and prisons will carry out the correction through:

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157 Evoluimi i burgjeve (Prison Evolution). <http://www.dpbsh.gov.al/>

158 Central Archives of Albania, shelf mark 492, file 21, year 1953, p. 15.

159 Ibid, file 21.

160 The Decree no. 1188, dated. 5.12.1950.

- a) rigorous implementation of all norms governing the regime of prisoners serving their time;
- b) their involvement in manufacturing jobs;
- c) political-ideological educational and cultural work<sup>161</sup>.

In its article 77, this regulation provided that the educational work aimed at educating the perpetrator, creating in him the clear ideology outlook of the system<sup>162</sup>.

The number of persons sentenced to imprisonment rose significantly, because, in addition to people detained for ordinary crimes, were added in prisons also persons convicted of political activities against the state. Since 1947, that is immediately after the end of the National Liberation War, there were a total of 4,749 prisoners, of whom 3,659 were political prisoners and 1,090 ordinary prisoners. Albania now had more prisoners than it ever had during the twentieth century<sup>163</sup>. The number of prison population gradually increased with severity of class struggle and fight against individuals who threatened the socialist order of the time.

It is of interest to note that in Kuçova, in 1966 was established a camp for women who had previously been in the craftsmen state enterprise in Tirana. This move was made so that female prisoners be put to work in agriculture, because the land on the outskirts of the oil wells could not be tilled with mechanized means. This camp too was built of planks shantytown wherewith in one room dwelled 60 women political prisoners. On December 28, 1975 the camp was transferred to the Kosova prison of Lushnja. In 1989, female prisoners were transferred to correctional institute 325, where they are currently today<sup>164</sup>. According to statistics from November to December 1962 are reported 25 women political prisoners and 139 women sentenced for ordinary crimes<sup>165</sup>.

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161 Regulation on security and reintegration of prisoners in correctional and prison units. Publication of the Ministry of Internal Affairs, Tirana, 1986.

162 Ibid.

163 Sufaj, F.: Historia e burgjeve të Shqipërisë gjatë shekullit të XX (Albania's Prison History During XX Century), Tirana, 2000, p. 105.

164 This institution today is called "Ali Demi", and is located in Tirana.

165 Sufaj, F.: Historia e burgjeve të Shqipërisë gjatë shekullit të XX (Albania's Prison History During XX Century), Tirana, 2000, p. 122 dhe f. 127.

The geography of establishing prisons and camps during the dictatorial regime, has changed in relation to the most important needs of the country from the economic perspective, covering the most difficult jobs in the field. For example, the camp no. 1, termed unit 301, which had 1,000 prisoners during its existence, has shifted from the swamp of Maliq in 1951, in Gosë of Kavaja from 1952 to 1953, in the field of aviation of Berat in April 1953, in Rinas in September-December 1953 and, subsequently, in Bulqizë in 1954, where it remained until 1991<sup>166</sup>.

According to periodic reports on the health condition of prisoners, reports indicate a significant and growing number of ill persons in prisons due to: very bad conditions in prisons and camps, the inhumane treatment the prisoners underwent, hard labor they were forced into, as well as due to malnutrition. Most prevalent diseases were tuberculosis, incurable and chronic diseases<sup>167</sup>.

Malnutrition in prisons was another form of abuse and violation of human dignity. Food consisted mainly in corn bread, full of impurities. For those who worked, despite changes in food norm, the calories they were taking in did not match the calories they spent. From calculations made by the prison administration it was evidenced that an inmate spent in Spaç prison 4,400 calories and, according to the food norms, it took in only 1,700 calories<sup>168</sup>.

In 1990, in the wake of democratic development and the end to the totalitarian regime, there were the following prisons and camps: the military unit 311-Qafë Bari; the military unit 305, Saranda; the military unit 321, Burrel (prison); the military unit 303, Spaç; the military unit 301, Bulqizë; the military unit 313, Tirana (prison); the military unit 314, Kavaja; the military unit 327, Gjirokastra; the military unit 305, Saranda; the military unit 325, Tirana; the military unit 318, Lushnja.

### **3.2.3 Key developments in the reform of the Albanian prison system from 1991 until today**

With the overthrow of the dictatorial regime in the early 90s and a transition to

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166 Sufaj, F.: *Sistemi i ndëshkimeve në Shqipëri gjatë regjimit komunist* (The punitive System in Albania During the Communist Regime) (1945–1990), Tirana, 2012, p. 88, PhD theses in <http://www.fhf.edu.al>

167 Archive of the Ministry of Interior, fund-directory of camps and prisons, file 47, year 1956.

168 Central State Archive, Shelf mark 492, General Prosecutor's Office, file 96, year 1974.

political pluralism in Albania, the Albanian state was faced with new challenges in the area of reform of the justice system in general and criminal justice reform in particular. Policy orientation was the dismantling of the previous system of criminal justice and the establishment of a new criminal justice, based on the principles of rule of law, democracy and respect for human rights and fundamental freedoms. With this spirit was drafted and entered into force 'basic constitutional provisions' of 1991<sup>169</sup> which abolished the Constitution of 1976 and provided the basis for the new penal and procedural legislation and for the entire criminal justice system<sup>170</sup>. Also, major reforms were undertaken in all directions to improve the service of both remand institutions and prisons as one of the priority areas in terms of observation of human rights in the process of aligning the country with the European family.

During 1991, the notorious camps of Spaç, Qafë Bari and Bulqizë were closed and within a short time were closed also all labor camps with only two prisons left operational, namely the Burrel and Tirana prison, which were severely depreciated and full of painful stories. Some reforms were undertaken during the period '91 -'97 which will be discussed later on this chapter; however, during 1997-1998, a period when the country became involved in civil chaos, the situation in the prison system was characterized by complete destruction of all facilities and equipment in existing institutions, escape from the detention/prison of 1,302 detainees/prisoners and the amnesty declaration by the Assembly of the Republic of Albania, pardoning the third of the sentence for those convicts who returned voluntarily to their penal institutions. In 1998 there were 225 convicts who returned to these institutions. Gradually started the rehabilitation work of the premises of these institutions and logistical equipment, along other developments in the administration of these institutions<sup>171</sup>.

Reforms in the prison system, especially after 1998 until now, consisted in changing laws and regulations by aligning them with European standards, the change of mission and tasks of penal institutions, the way of management, organization and architecture of them, and last but not least, the manner of treatment of detainees / prisoners.

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169 Main Constitutional Provisions, promulgated by Law no. 29 January 1991.

170 Elezi, I.: Brief historical overview of criminal justice in Albania and the challenges it faces, Tirana, scientific legal journal "Justiniani I", no. 1, 2009, p. 15.

171 Brand van den J.; Boeij, C.; Papavangjeli, E.; Sufaj F.: Human Prison Management (Manual on Senior Management in Prisons), Tirana, Albanian Helsinki Committee. Chapter II, April 2009, p. 2.

Over the years of democratic transformations of the prison system in Albania, the clear definition of the mission of this system received particular importance. It is intended to contribute to a safe society through effective and humane implementation of prison sentences as well as other penal measures, allowing persons who have been entrusted to the care of this service, building a socially accepted lifestyle upon their return to the society<sup>172</sup>. Under this formulation, which comes into full compliance with accepted norms and European standards, the focus is on the behavior rehabilitation of persons in conflict with the law and, furthermore, their reintegration into society. In pursuance to this mission, the Albanian prison system has improved the treatment of persons deprived of their liberty through various events about which we will talk later on in this chapter.

From the management perspective, prisons are public institutions, and as provided also in Article 3 of the General Regulation of Prisons, *'Directorate General of Prisons is a body under the Ministry of Justice, which organizes, directs and controls the execution of penal decisions to imprisonment and security measures to jail arrest throughout the prison system. Directorate General of Prisons takes appropriate measures to ensure enforcement of this regulation, the orders and instructions of the Minister of Justice'*

The accomplishment of the mission that the detention institutions/prisons have, depends primarily on the integrity, humanity, professional skills and personal qualities of the administration working in these institutions. Reform in improving the quality of service of staff in the detention centers and prisons, as well as the continued growth of its professionalism have been and remain among the top priorities of the prison system during the democratic transformation over the years of these institutions. The increase of the type of service and civilian staff, such as social workers, psychologists, experienced employees in pedagogy etc., is another indication that penal institutions are no longer considered military institutions, but public institutions which should be directed with a civilian mentality.

Currently, with the exception of the administration of the General Directorate of Prisons, the staff of the detention/prison institutions is not included in the status of civil servants, hence its management is not done according to the law 'On the status of civil servant', but on the bases of the Work Code. Such a legal arrangement of the staff of local institutions has allowed for frequent changes of the prison

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172 Brand van den J.; Boeij, C.; Papavangjeli, E.; Sufaj, F.: Human Prison Management (Manual on Senior Management in Prisons), Tirana, Albanian Helsinki Committee. Chapter II, April 2009, p. 2. 1.

administration, often unmotivated professionally, political appointments and lowering in the professionalism of services offered to persons deprived of their liberty. The involvement of local prison staff in the civil service, is an imperative that will happen soon under Albania's EU integration. This requirement is already highlighted in progress reports of EU for Albania. On the other hand, apart from the fact that the administration of criminal domestic institutions still does not function according to civil servant status, it does not obstruct the main principles application of this law, dealing with professionalism, independence and integrity, political impartiality, transparency, service to the public, career continuity and fairness in the application of laws<sup>173</sup>.

Important aspects in the process of hiring staff for the prison system are the selection of appropriate skills, personal qualities and education. Especially during the years 2007-2008, the prison system improved the staff selection procedures for detention/prison institutions opened recently. For this reason, besides following the written procedures described in the relevant legal provisions, the Ministry of Justice implemented the method of interviews with potential candidates. This is a very good step forward, but in the future it is necessary to use psychological tests and written tests that would go along interviews with prospective candidates who wish to work in the prison system<sup>174</sup>. Ensuring the retention of the staff of the prison system and the ever enhancement of its professionalism, remain challenges that the prison system will be faced with in the future.

From the structural perspective of the construction of prisons, there are positive developments achieved in creating a multifunctional penal institution which offers accommodation and treatment of detainees/prisoners with different regimes, such as detention, high, medium and low security within the same institution. However, much remains to be done in terms of the full alignment of the penitentiary system with internationally accepted standards<sup>175</sup>.

All the above-mentioned issues which have a direct impact on observation of the rights of women and especially their treatment in closed detention institutions, will be treated in a separate section of this chapter.

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173 Article 3 of the law "On the status of civil servant".

174 Brand van den J.; Boeij, C.; Papavangjeli, E.; Sufaj, F.: Human Prison Management (Manual on Senior Management in Prisons), Tirana, Albanian Helsinki Committee. Chapter II, April 2009, p. 3.

175 A separate chapter will examine women's treatment programs in detention facilities and prisons, from the gender perspective.



### 3.3 Key legal developments in the prison system, 1991-2014

Since 1991, when the constitutional law ‘basic constitutional provisions’ entered force and then the drafting and entry into force of the Constitution of the Republic of Albania (1998)<sup>176</sup> until to date, the legislation regulating the rights and treatment of persons deprived of their liberty, has undergone significant reforms purported to its alignment with European legislation and the international acknowledged standards in this field.

There are drafted and adopted a number of laws and regulations, such as the Criminal Code, Criminal Procedure Code, the law ‘On the organization and functioning of the Ministry of Justice’, the law ‘On the rights and treatment of prisoners and detainees’ the law ‘On the execution of criminal judgments,’ the law ‘On Ombudsman’, the law ‘On Prison Police’ law ‘On pardoning’, the law ‘On legal aid,’ the decision of the Council of Ministers ‘On approval of the Regulation of the prison, the regulation ‘On standards and procedures for supervision of the execution of alternative sentences and the organization and operation of probation service,’ the decision of the Council of Ministers ‘On the inclusion of persons sentenced to imprisonment and of detainees in the category of persons economically inactive’, the order of the Minister of Justice ‘On the rules of conduct for employees of the system of detention and prison’<sup>177</sup> etc.

<sup>176</sup> The Constitution of the Republic of Albania, Tirana, 1998.

<sup>177</sup> Law no. 7895, dated 21.01.1995, “the RA’s Criminal Code” amended; Law no. 7905, dated 03.21.1995, “Criminal Procedure Code”, as amended; Law no. 8678, dated 14.05.2001, “On the organization and functioning of the Ministry of Justice”, as amended; Law no. 8328 4.16. 1998, “On the rights and treatment of prisoners and detainees”, as amended; Law no. 8331, dated 21.04.1998, “On the execution of criminal judgments”, as amended; Law no. 8454, dated 2.04.1999, “On People’s Advocate”, as amended; Law no. 10032, dated 11.12.2008, “On Prison Police”; Law no. 10295, dated 07.01.2010, “On pardoning”; Law no. 10039, dated 12.22. 2010, “On the Legal Aid”; decision of the Council of Ministers no. 303, dated 03.25.2009 “On approval of the General Regulation of Prisons”, as amended; decision of the Council of Ministers no. 302, dated 25.3.2009, the regulation “standards and procedures for the supervision of the execution of alternative sentences and the organization and operation of the Probation Service”; decision of the Council of Ministers, dated 06.04.2011, “On the inclusion of persons sentenced to imprisonment of detainees in the category of economically inactive persons”; Order of the Minister of Justice no. 3052/1, dated 25.05.2005, “On the rules of conduct for employees of the detention system and prisons” etc.



Also, part of the legal reforms are also the ratification and integration into domestic legislation of a considerable number of different conventions and different international rules on human rights in general and in particular in criminal matters among others of the Universal Declaration of Human Rights (1948), European Convention of Human Rights (1953), the Helsinki final Act (1975), the international convention 'On civil and political rights' (1976), standard minimum rules of the United Nations (1955); United Nations Convention 'Against Torture and Other Cruel punishments or inhuman and degrading treatments' (1987), European Convention 'Against torture and cruel punishments or inhuman and degrading treatment' (1987), the entirety of the principles of the United Nations 'On protection of all persons against any form of detention or imprisonment' (1988), the fundamental principles of the United Nations 'For the treatment of prisoners' (1990), optional Protocol to the UN convention 'Against torture and other cruel punishment or inhuman and degrading treatment' (2002), the European Prison Rules (2006), the Convention 'On the elimination of all forms of discrimination against women' (1981), standard minimum rules of the United Nations for the administration of juvenile justice (1985) etc.

Ratification of the European Convention on Human Rights (ECHR) from our country has ensured that victims of violations of human rights are entitled to and eligible for review by the European Court of Human Rights (ECHR). At the national level, the ratification of the ECHR has made possible that its provisions are directly applicable by Albanian courts. Many provisions of the ECHR are of direct importance to the protection of the rights of persons deprived of their liberty. ECHR, the decisions of the issues brought before it by the persons deprived of their liberty, also serves as a source of jurisprudence in this area for our country and the administration of criminal justice in accordance with international standards<sup>178</sup>.

In addition to this regional mechanism, with the ratification of the European Convention 'On prevention of torture and/or inhuman or degrading treatment', the European Committee for the Prevention of Torture (CPT) is mandated to monitor the member countries, and in a number of cases, visited Albanian institutions of deprivation of liberty and presented its observations and recommendations in its reports. Even this regional mechanism serves as a source of design and development of European standards directly related to the system of police and prison.

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178 Some of the court cases in this area (police and prisons) for Albania are: Grori versus Albania (application no. 25336/04), Dybeku versus Albania (application no. 41153/06), Caka versus Albania (complaint no. 44023/02).

This entire legal framework, along with instruments and institutions established for a constant supervision, has made it possible for the Albanian prison system to be considered a system of public institutions and not a military/punishing one. Its mission is to contribute to a secure society through the effective and humane implementation of prison sentences and other criminal measures, enabling persons who are entrusted to the care of this service, to build an accepted lifestyle on their return to the society<sup>179</sup>. The national legislation in force ensures for the persons deprived of their liberty, a humane treatment that respects human rights and fundamental freedoms as well as their human dignity, since, in general, it is in line with international standards.

### **3.3.1 Legal developments for the rights and treatment of women in the prison system from the perspective of international standards and local legislation**

#### **3.3.1.1 Brief overview of the main international legal instruments**

The main international legal instruments and some of the political norms such as statements containing the recommendations and resolutions of various international organizations (United Nations, Council of Europe, European Parliament) to protect the rights of persons deprived of freedom, including women, are intended to ensure their social reintegration into society<sup>180</sup>.

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179 Brand van den J.; Boeij, C.; Papavangjeli, E.; Sufaj, F.: *Human Prison Management (Manual on Senior Management in Prisons)*, Tirana, Albanian Helsinki Committee. Chapter II, April 2009, p. 1.

180 The entirety of minimal regulations of the United Nations, “On the treatment of prisoners” (United Nations, 1955); entirety of principles “On the protection of all persons against any form of detention or imprisonment” (United Nations, 1988); Basic principles for the treatment of prisoners (United Nations, 1990); Standard Minimum Rules of the United Nations “On the alternative measures to imprisonment” (Rules of Tokyo, 1990); Vienna Declaration “On Crime and Justice: Facing the challenges of the XXI century” (United Nations, 2001); The basic principles of the use of restorative justice programs in criminal matters (United Nations, 2002); Action plan for the implementation of the Vienna Declaration “On crime and justice”: Facing the challenges of the XXI century (United Nations, 2002); Human rights in the administration of justice (United Nations, 2003); European convention “On Prevention of Torture and Inhuman and Degrading Treatment or Punishment” (European Committee for the Prevention of Torture and Inhuman or Degrading Punishment, 2004); European Prison Rules (Council of Europe, 2006); Bangkok statement “For Synergies and responses: Strategic alliances in crime prevention

In principle, detainees/prisoners enjoy the same rights as any other citizen. Article 1 of the European Prison Rules states that persons deprived of their liberty shall be treated with respect in terms of their human rights.

In addition to the European Prison Rules, the principles of the rights of detainees/prisoners, including women, who are awaiting trial or those convicted by final decision of the court, can be found in the Universal Declaration of Human rights in various international standards, in the Constitution of the Republic of Albania and the relevant national laws.

Universal Declaration of Human Rights provides that *'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind as to race, color, sex, language, religion, political or different political opinion, country of origin or social, property, birth or other background'*.

International Covenant 'On Civil and Political Rights', Article 3 states: *'The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant'*.

Convention 'For the Elimination of All Forms of Discrimination against Women', Article 2:

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*

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and criminal justice (United Nations, 2006); intensification of efforts to eliminate all forms of violence against women (United Nations, 2006); European Parliament resolution "On the specific situation in prisons and the influence that incarceration of parents has in social and family life"; Child Rights (United Nations, 2008); Rules for the treatment of women in prison and non-prison measures the female prisoners (the Bangkok Rules, the United Nations, 2010).

- (c) *To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*
- (d) *To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- (e) *To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*
- (f) *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*
- (g) *To repeal all national penal provisions which constitute discrimination against women.*

United Nations Declaration ‘Declaration on the Elimination of Violence against Women’, provides in its Article 2 that: *‘Violence against women shall be understood to encompass, but not be limited to, the following: c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs’* and in its article 4/i stipulates: *‘Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women, receive training to sensitize them to the needs of women.’*

Whereas in the principle 5 (2) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment’ stresses that: *‘Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory.’*

It is notable that the version of the year 1989 of European Prison Rules, did not specifically refer to the situation of women in penal institutions. In European Prison Rules (2006) there is a special section for women that provides that:

*‘In addition to the specific provisions in these rules dealing with women prisoners<sup>181</sup>,*

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181 Read detained and sentenced women. *Author’s note.*

*the authorities shall pay particular attention to the requests in terms of their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention'. (rule 34.1)*

*'Particular efforts shall be made to give access to special services for women prisoners who have experienced physical, mental or sexual abuse. (rule 34.2)*

In rule 34.3 it is provided that the measures taken in cases when convicted women give birth during the time that they are held in penal institutions, guaranteeing that: *'The prisoners should be allowed to give birth outside the prison; when a child is born in the prison, the authorities must provide all the necessary support and facilitation'*, whereas in the rule 19.7 it is provided that *'The hygiene and sanitary needs of especially the women must be foremost guaranteed'*.

The entirety of minimal rules 'On the Treatment of Prisoners', as well as a number of international legal instruments, is based on the principle of equality between men and women. International legal rules suggest that men and women in prison be held separately from each other.

It is worth pondering a bit the latest development in the international legal framework on the rights and treatment of sentenced women and specifically the rules for the treatment of convicted women and non-custodial-measures for convicted women, which otherwise are known as Bangkok Rules, adopted by the General Assembly of the United Nations on December 21, 2010.

## **BANGKOK RULES**

As outlined above, until this year, there have been a number of legal provisions in many international legal instruments, but Bangkok Rules only focus at convicted women. It is very important to understand that these rules were added to the standard minimum rules 'For the treatment of prisoners' (SMR) and standard minimum rules 'On measures not with imprisonment' (The Tokyo Rules).

In the following paragraphs are briefly presented those provisions that are of interest for issues with the focus on the women in criminal justice:

### ➤ *Non-discrimination of women in prison*

The principle of non-discrimination of convicted women permeates all the rules of Bangkok. The Rules require the consideration of the individual needs of the

convicted women, so that none of the female prisoners suffers any discrimination in treatment or regarding the results of their treatment. Meeting these specific needs in itself does not constitute discrimination for the rest of the prison population, but rather the fulfillment of the specific needs of certain groups in prisons, practically means to ensure their treatment without discrimination in the enjoyment of all rights on an equal basis with others in everyday life in prison. The principle of non-discrimination and the individualization of treatment, are two of the basic principles of almost the entire international legal instruments in the penal area<sup>182</sup>.

➤ *Rules on non-custodial measures*

The Ten Rules of Bangkok on this issue are based on the principles and provisions expressed in Tokyo Rules, interpreting them from a gender perspective and the latter adds analysis of the researches and data of recent years for women in the justice system which clearly show an increase in the number of women offenders, after the emerging of the Tokyo Rules in 1990.

As stressed by the commentary of the Bangkok Rules, 57-58: 'A significant proportion of women offenders does not necessarily constitute a danger to society and, consequently, their imprisonment will not help them, on the contrary, it will prevent them from reintegrating into society. Many of them are in prison as a direct or indirect consequence of different factors of social exclusion and discrimination, from their husbands, their family and community. Consequently, women offenders should be treated fairly by the criminal justice system. The latter should take into account the conditions, circumstances and causes that have led these women to the commission of the crime, providing them with care, support and treatment in the community to help them get over those factors that led them to the criminal behavior. By keeping these women out of prison, in those cases for which detention is not necessary or justified, their children could be saved from the adverse effects that the incarceration of their mothers brings about, including their potential institutionalization or perhaps their future imprisonment'<sup>183</sup>.

Rules of not custodial measures of Bangkok Rules, provide very important guidance for policy makers, legislators, as well as authorities in criminal and prison staff, to take legal action in practice in order to reduce the number of women in penal institutions, taking into consideration the conditions,

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182 Commentary of Bangkok Rules, Rule 1.

183 Bangkok Rules, Commentary of the Rules 57-58.

circumstances and parental responsibilities of women. The rules require that policy makers and decision makers make decisions that are on the best interest of the children involved and, consequently, to ensure that alternatives that take into account gender specific needs of women, do exist in reality, as well as create safeguards for specific conditions and vulnerability of specific groups, such as women who appeal for protection, girls in the criminal justice system and victims of human trafficking.<sup>184</sup>

In particular, rules 57, 58 and 60 tackle the 'respect for human rights, social justice demands and needs for rehabilitation of the victim' and, in the case of women offenders, take into account their specific parental circumstances and responsibilities. These rules take into account also the fact that women offenders are often victims of domestic violence, that they often suffer from mental problems, and that their children are under their responsibility<sup>185</sup>.

These rules not only stimulate a more extensive use of alternative measures to imprisonment, but also the alternative measures to detention of women, since they understand that the placement of women in detention, even for a short period, may yield negative effect on children and their families and, therefore, urge the authorities to prioritize the use of alternatives to detention security measures for women whenever possible. The rules are in compliance with Article 9 (3) of the International Convention 'On civil and political rights', Rule 6 of the Rules of Tokyo and the body of principles 'For the protection of all persons held in any form of detention or imprisonment' which restrict the use of detention measure only to exceptional cases<sup>186</sup>.

Rule 60 holds states accountable for calculating human and financial resources necessary to enable the implementation of measures and alternative sanctions to imprisonment, which should correspond to the specific needs of women in prison in national legislations.

Rule 64 encourages the use of alternative measures of sentencing instead of imprisonment, especially for pregnant women, those with breastfeeding children and those with children under their care.

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184 Atabay, T.: Handbook on United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), Penal Reform international, (PRI), May 2012, p. 5.

185 Ibid, p. 6.

186 Bangkok Rules, Commentary of the Rules 57 and 58.



➤ *During sentencing*

Rule 61: *‘When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and typical backgrounds’*<sup>187</sup>, is of paramount importance, as there is a significant number of women in prison who have committed violent offenses against spouses or partners in retaliation of the long-term and systematic violence perpetrated by the latter. As there is a growing number of women who are forced or undertake to collaborate in a number of violent offenses or offenses related to drugs, or offenses committed because of their poverty and the desire to address the needs of children they have in their care. Finding themselves in these circumstances, they commit criminal acts sometimes without fully understanding the consequences of their actions<sup>188</sup>.

This rule encourages courts, during the process of administering justice in the cases of women defendants, to consider these very special circumstances that have led them to the commission of violent criminal acts.

➤ *Post sentencing disposition*

Rule 63 encourages the relevant authorities that in: *‘Decisions regarding early conditional release (parole) shall favorably take into account women prisoners’ caretaking responsibilities, as well as their specific social reintegration needs.’* The importance that the conditional release takes in facilitating the reintegration of prisoners, is recognized in the Tokyo Rules, Rule 9, as well as by regional organizations, such as the Council of Europe<sup>189</sup>. Rule 63 is intended to ensure that bodies that have responsibility to make decisions about the conditional release, in the assessment process of the benefits to society by the successful reintegration of women in society, must take into account in particular: the damage caused to women by their detention, their need for contact with the family, their responsibilities and their generally low social risk profile. In this context, should be kept in mind the highest needs and interests of the children who may be living with the women in jail or that are out of prison.

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187 In full compliance with rules 3.3 and 7.1 of Tokyo Rules.

188 Bangkok Rules, Commentary of Rule 61.

189 For more information, refer to Recommendation 22 (2003) of the Council of Ministers to member states on conditional release (Adopted by the Council of Ministers on 24 September 2003).



➤ *Admission, registration and placement in a penal institution*

Bangkok Rules for admission, registration and placement in penal institution of convicted women, specify more detailed requirements which take into account their vulnerability and specific needs and that bring to the attention of the prison administration the importance that they should give to the fact that most women have children who sometimes accompany their mothers in prison but that in most cases are outside the closed penal institutions. These Rules come first in all international standards, which guide the appropriate state authorities on how to treat children of women prisoners in full compliance with the Convention 'On the Rights of the Child' as well as all regional and international instruments. Also, the Bangkok Rules guarantee a positive measure for women to be placed as close to their homes or rehabilitation centers as possible, taking into account their parenting responsibilities, women's own preferences and opportunities for appropriate programs and services<sup>190</sup>.

➤ *Medical services and the hygiene*

Minimum standard rules and the European Prison Rules provide the necessary standards and principles for the provision of services of general medical care and taking into account women's specific needs to ensure appropriate hygiene and sanitary conditions<sup>191</sup>, as well as for the prevention, treatment and care for people living with HIV/AIDS. Bangkok Rules take into account all these standards and complete with specific provisions key aspects of hygiene and medical care for female prisoners and children who stay with their mothers in prison, treating all these aspects from an inclusive approach<sup>192</sup>.

In particular, the Bangkok Rules emphasize that, despite how well the prisons may be managed, they are not designed to address the specific needs of pregnant women, breastfeeding mothers and young children and, therefore, they encourage that pregnant women and mothers with small children are not sentenced to imprisonment unless it is necessary<sup>193</sup>.

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190 Rule 4 of Bangkok Rules.

191 See above for special provisions for women in the European Prison Rules.

192 The rules 5-18 of the Bangkok Rules cover a significant number of aspects of health care and hygiene to the specific needs of women in prison, including: medical checks once a woman enters the institution, general medical treatment sensitive to the specific needs of women, contagious diseases, mental health, reproductive health, women's dependencies, suicide and self-injury prevention, preventive medical services.

193 Rule 64 of Bangkok Rules.

➤ *Feeling safe and secure*

Provisions 19-25 of the Bangkok Rules to feeling safe and secure, are based on the philosophy that prison security can be improved by respecting the rights of convicted women, their gender based needs, with a special focus on pregnant women, breastfeeding mothers and those with young children in prison. Bangkok Rules for this issue are based on the conviction that feeling safe is the most essential need of female prisoners, and that this is key to building the concept of their social reintegration. These rules show how to maintain a sense of security in women taking into account their specific needs, for example, during physical controls, use of restraint means, disciplinary measures, grievance procedures and requirements and inspections in prisons.

➤ *Links with the outside world*

Bangkok Rules recognize the special and necessary need that women have to maintain connections with the outside world, especially with their children, as well as to take into account the extremely harmful effects that isolation/lack of contacts with the family and relatives of convicted women causes. The Rules address these factors, while taking into account the realities that women are usually held in prisons, that are located far from family and the community where they lived before incarceration, due to their small total number and the challenges and difficulties they have to keep these connections with family and friends. Moreover, the rules take into account the specific need to keep these strong links with their mothers while they are in prison, which is a particular aspect that is first taken into account in the entirety of international instruments in this field.

Rules encourage prison authorities to take the necessary measures to enable connections with women's legal representatives so that the women benefit the legal advice and assistance they need throughout the period that they are in criminal detention institutions.

➤ *Prisoner's rehabilitation*

Part of the Bangkok Rules provisions related to the rehabilitation of prisoners, follows the structure of the provisions of SMR<sup>194</sup>, but they bring a gender perspective, keeping in mind the special attention that should be paid to the reintegration of women according to their specific needs. Rehabilitation treatment program for women should be offered both the convicted and detained women.

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194 Part II of SMR, with the subtitle "Rules applicable to specific categories".

These programs are based on data issuing from evaluation reports at the time of admission of women in the penal system, and take into account the most basic gender-based needs and the individual circumstances of each woman in the individualization of the sentence plan.

Part of the rehabilitation and reintegration plan, are also the policies that the relevant authorities out to pursue in placing women in prisons with low security regimes. Prisons should provide reintegration opportunities for women with rewarding system permits, sensitive to essential needs that women have in maintaining healthy relationship with their children and family as well as the possibility of semi-open prisons which would encourage frequent return of women in the community where they live. Rule 45 states: *'Prison authorities shall utilize options such as home leave, open prisons, halfway houses and community-based programs and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage'*

Rule 46 also emphasizes that the successful reintegration of women is a very comprehensive stakeholder process, such as prison authorities in cooperation with probation service and/or social welfare services, local community groups and NGOs, which must develop and implement together a program before and after release, which should take into account the specific needs of women.

Some of these rules were given to programs for specific categories, such as pregnant women, breastfeeding mothers and those who have children in prisons; detained women, convicted girls; women of foreign nationality and women belonging to minority groups.

➤ *Strengthening the institutional and professional capacities of prison staffs*

The seven rules pertaining this issue, emphasize the need to increase the professionalism of the staff that works with female prisoners on issues of human rights and special needs of women, including gender-based violence, various aspects of women's health care and children who are in prisons, etc. Moreover, the rules encourage employment and career growth of prison's female staff.

Many of the Bangkok Rules do not require additional resources to enable their implementation, but rather a change in attitudes and practices as well as an increase in sensitivity by applying penal policy actors. Particular attention should be paid to the training of these actors on the Bangkok Rules and the increase of

their sensitivity to the particular situation in which women offenders are and their specific needs for rehabilitation and reintegration<sup>195</sup>.

Standards discussed above constitute basic principles, which are valid in all prison systems worldwide and apply to all prisoners without discrimination. This makes it clear, too, that the taking of special measures to address the specific needs of women in prison are not in itself discriminatory for the rest of the population in prisons.

### ***3.3.1.2 Brief overview of the national legal framework for the rights and treatment of women in prison***

Albanian legislation is generally consistent with the spirit and legal safeguards detailed above. Therefore, the Constitution of the Republic of Albania (RA) is a legal act of highest legal power that sanctions the equality before the law as the fundamental principle of the protection, respect and promotion of human rights.

According to Article 3 of RA Constitution: *‘Dignity of the individual, human rights and freedoms....are the bases of this state, which has the duty of respecting and protecting them’*. The second part of the Constitution of the Republic of Albania is dedicated to *‘The fundamental human rights and freedoms’* of which Article 15 ensures that: *‘The fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order’*.

Limitations of the rights and freedoms provided for in the Constitution, can only be imposed by law in the public interest or for the protection of the rights of others. These restrictions must not impair the essence of freedoms and rights

The Constitution lays the foundation of criminal justice and clearly defines the procedural rights of the defendant. It may be mentioned here: the principle of presumption of innocence<sup>196</sup>; retroactive power that ensures that no one can be accused or found guilty of a criminal offense which was not considered as such by law at the time of its commission, and that cannot be given a more severe punishment than the one provided by the existing law at the time of the criminal

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195 Atabay, T.: Handbook on United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)”, Penal Reform international, (PRI).

196 Article 30 of the Constitution of RA.

offense<sup>197</sup>; the right for a due legal process<sup>198</sup>; the right not to be subjected to torture or to cruel, inhuman and degrading treatment<sup>199</sup>; the individual's right to not have his liberty denied; the favoring position of juveniles<sup>200</sup>; constitutional criminal procedural rights of individuals who are deprived or restricted of their liberty<sup>201</sup>.

Albanian criminal law provides special legal protection to women in general: it protects the life and health of women from illegal termination of pregnancy, when this termination is performed without her consent or in unauthorized places and by unauthorized persons, beyond the time limit required by law; it protects women from sexual violence, and in the cases when the female is under 14, the law protects her even if the sexual relation was made with her consent; protects her from different kinds of abuses when the author exploits her physical or mental disability or her state of irresponsibility (sleepiness, drunk or drugged etc.); protects her in the case that she was forced to have sex under pressure of her supervisor or at gun point; protects her from trafficking and exploitation for prostitution<sup>202</sup>.

In the context of criminal justice reform, amendments have been made to the Criminal Code<sup>203</sup> which were intended for the effective functioning of alternatives to imprisonment for multiple economic, social and human reasons and especially for the reduction of the phenomenon of overcrowding in prisons.

More specifically, in the Criminal Code are provided five alternatives to sentencing in the following articles: 58 'Half-freedom'; 59 'The execution of imprisonment sentence and placement on probation', otherwise known as 'conditional sentence'; 59/a 'House arrest', 63 'The suspension of the execution of imprisonment sentence and having to perform a job in the public's interest' and Article 64 'Conditional Release'. The essence of these alternatives to imprisonment is to provide restorative justice and reintegration of persons in conflict with the law, avoiding the measure of isolation and imprisonment. The revision of the Code in this regard was a positive step taken towards contemporary trends of criminal justice that focuses heavily on education, reintegration and re-socialization of

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197 Article 29 of the Constitution of RA.

198 Article 42 of the Constitution of RA.

199 Article 25 of the Constitution of RA.

200 Article 27 of the Constitution of RA.

201 Articles 28, 31, 32, 33, 34 of the Constitution of RA.

202 Elezi, E. and Hysi, V.: "Politika kriminale (Criminal Policy)", Tiranë, Pegi Publishing House, 2006, p. 190.

203 Law no. 10 023, dated 27.11.2008.

the individual who has committed the offense, along with compensation to the injured party against who this offense was committing.

Conditions and specific reasons which underlie the decision of the court to implement these alternative sentences in specific cases, are projected for each of the above mentioned provisions of the Criminal Code. Only one of these options, the one about home arrest, provided for in Article 59/a, specifically states that one of the groups that benefit from this alternative measure, are the pregnant women or mothers with children under the age of 10, that live with her. However, women that are in a criminal process can benefit from all the above provisions granted that they meet the requirements set forth in the law, just like all other individuals.

Article 65/a points c, d and e, are notable as well, as it provides legal guarantees for courts to appoint a safety period during which section 64 ‘Conditional Release’ does not apply when the offense is committed: (c) against the minors, pregnant women and other persons who, for various reasons, cannot be protected; (d) taking advantage of family relations or cohabitation; (d) driven by motives related to gender, race, religion, nationality, language, political, religious or social convictions. This provision is seen as a very important penal measure against discrimination, since in principle it serves the prevention of discrimination and protection from domestic violence<sup>204</sup>.

Another positive step taken towards reforming the criminal law from a gender perspective are also the latest amendments in the 2012 Criminal Code<sup>205</sup> and, more specifically, the provision of 130/a. Through this provision it is provided for the imprisonment sentences for criminal offenses of: beating, homicide or serious threat of serious injury and premeditated injury committed within the household. This provision specifically protects women and children who are the most abused subjects within domestic relationships.

With the amendments of 1998, 2001 and recently in 2012 to the Criminal Code, it is provided for the protection of women from exploitation of prostitution<sup>206</sup>, but Article 113, under which prostitution is punishable by a fine or imprisonment of up to three years, punishes victims of exploitation in prostitution as well as

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204 Anastasi, A. Et al.: *Barazia gjinore dhe mosdiskriminimi* (Gender equality and non-discrimination), Tirana, Pegi Publishing House, 2012, p. 121.

205 Law no. 23/2012, “For some additions and amendments to the law no. 7895, date 27.1.1995, “Criminal Code of the Republic of Albania”, as amended.

206 Article 114/a of the Penal Code.

those of human being trafficking. This has been the conclusion of a research of cases of the decisions given by the courts on these issues<sup>207</sup>, which underlines the effects of Article 113 of the Criminal Code as indirect expressions of gender discrimination against women and girls that are victims of prostitution and human trafficking.

For this reason, the CEDAW Committee, after recent Periodic Report of the Albanian government, presented in 2010 to the United Nations, recommended amending the Penal Code in order to discontinue the practice of criminal prosecution and criminal punishment of women and girls prostitution. Despite recommendations made by the Commissioner for Protection from Discrimination to repeal Article 113 of the Criminal Code<sup>208</sup>, this provision has remained in force even after recent changes of the 2012. The content of this article was enriched with the following addition: *'The granting of remuneration for personal benefit of prostitution is punishable by fine or imprisonment of up to three years.'* Scholars have interpreted this addition as an effort from the legislators to correct a direct misbalance that existed in the first version of the article which envisaged only the penalty of a fine and the imprisonment for prostitution. However, even with this change there is no safeguard for avoidance of the indirect discrimination of women who may end up being victims of human trafficking<sup>209</sup>.

Criminal Code, in its Article 48 provides seven different mitigating circumstances of the offense, but which do not constitute however an exhaustive list as long as that article, in the last paragraph creates flexibility and leaves it to the courts to evaluate other mitigation circumstances that are not listed in it, by sanctioning that: *'Regardless of the circumstances mentioned in Article 48 of this Code, the court may also consider other circumstances as long as it deems them as such to justify the lowering of the sentence.'*

It is of interest to note the point b) When the act is committed under the effect of a psychiatric disorder caused by provocation or the unfair acts of the victim or some other person. This is a very relevant circumstance for the cases of women who kill their husbands due to the physical violence and/or systematic

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207 Center for Legal Civic Initiatives: "The effects of Article 113 of the Criminal Code, the expression of indirect sex discrimination", March 2012.

208 Recommendation of the Commissioner for Protection from Discrimination, no. 49, dated. 13.2.2012.

209 Anastasi, A. etc.: Barazia gjinore dhe mosdiskriminimi (Gender equality and non-discrimination), Tirana, Pegi publishing house, 2012, p. 124.



psychological violence by ex-spouses or partners. From the research of several court rulings it is evidenced that there have been cases when judges have used this mitigating circumstance to get lighter punishment measures for women in the context of a deep psychological shock have committed the murder of their ex-spouses<sup>210</sup>. There have been also concrete cases<sup>211</sup> in which judges have taken into account the provisions of the Criminal Code which justifies the case when the woman, in self-defense, killed her spouse and the defendant is considered innocent.

However, based on the study of data files of women detainees and convicts that are brought into focus of the analysis of the second chapter of this paper, it is clear that many of the cases of women who killed their ex-spouses, are the result of domestic violence committed against them and/or their child and in no case the courts have cited as a mitigating circumstance, the systemic domestic violence as the main cause that led those women to the offense of homicides. More specifically, women convicted of offenses of premeditated homicides (Article 76, with prison sentence varying from 10-20 years) and premeditated (Article 78, to a range of 15-25 years imprisonment sentence) were sentenced to an average of 19 years in jail for premeditated homicide cases and 16 years in jail for premeditated homicide.

Article 82 of the Criminal Code provides that '*Homicide committed intentionally in a sudden state of profound psychiatric distress caused by violence or serious offense to the victim is sentenced up to eight years of imprisonment*'. When considering how criminal codes of several European countries envisage this type of crime, we note similarities with Albanian Criminal Code. Thus, the criminal code of Serbia and the Montenegrin one, provide the same sanctions, while the German Penal Code provides for the sentence to imprisonment from one to ten years. Estonian and Macedonian penal code, envisages a prison sentence of up to five years.

It should be brought to the attention of the reader that the Macedonian Criminal Code, considers as one of the reasons that led the person to the commission of the offense of homicide, specifically the domestic violence and, therefore, condemns the author of this offense with imprisonment of up to five years. '*Anyone that would cause the death of another person committing homicide, committed against his will in a strongly agitated condition due to the insults or as a result of domestic*

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210 Anastasi, A. etc.: Barazia gjinore dhe mosdiskriminimi (Gender equality and non-discrimination), Tirana, Pegi publishing house, 2012, p. 124.

211 Decision no. 520, dated 13.12.2002, the appeals court, Tirana, reversed the decision no. 744, dated 22.10.2002, of the First Instance Court, Tirana.



*violence by the person killed, shall be punished with imprisonment of one to five years*<sup>212</sup>.

Given the substantial percentage of women who have committed offenses as a result of systematic violence in families and relatively very long sentences of imprisonment would be considered an appropriate legal provision similar to the Macedonian Criminal Code to mitigate criminal policy for those cases when women are pushed into the path of crime due to domestic violence.

Pursuant to the Criminal Code, Criminal Procedure Code of RA, in its Article 230 provides that *'the jail arrest may be ordered only when any other measure is not proper because of the special dangerousness of the offence and defendant'*. This principle comes in line with the approach recommended of giving the measure of detention in prison, as a last resort and when it is necessary. Article 230/2 is of particular interest to the focus of this paper. It notes that *'There cannot be decided for a jail arrest in case of a pregnant woman or one with a suckling child...'* thus ensuring one of the international standards on this issue. However, practice shows that detention in prison remains a widely used coercive measure against women even when their risk profile is not classified as high toward society and, in this respect, in-depth studies are needed on this issue in order to be followed by concrete measures to mitigate criminal policy against categories such as women and children.

Law no. 8328, dated 16.04.1988, 'On the rights and treatment of persons sentenced to imprisonment', as amended, which is the most specific law for detainees and convicted, in its Article 5 stipulates: *'Execution of sentence of imprisonment is made in respecting the dignity of prisoners and is characterized by humane feelings. The treatment of prisoners should be made without bias or discrimination because of sex, race, economic status and social, political and religious views. Prisoners must be provided with such living conditions as minimizing the adverse effects of prejudices against them following their imprisonment and the differences between their life and that of the rest of citizens'*. Under this law, the rights of prisoners may be restricted or temporarily removed for violation of the law or internal rules only in the cases and according to the criteria stipulated in this Law (Article 6).

The latest amendments of this law<sup>213</sup> indicate for an increase of the gender sensitiveness of the legislator with regard to the safeguards of the rights and

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212 Article 125 of the Criminal Code of the Republic of Macedonia, no. 87/2007, 103/2008 and 161/2008.

213 This law was amended with the law no. 40/2014.

treatment of pre-trial detained and convicted women. More concretely, article 5 of this law is improved in foreseeing the rights for each vulnerable group in the Albanian prison system. Therefore, in accordance with this article regarding women it states: *“Pre-trial detained and convicted women are treated while respecting their rights and fundamental freedoms and without discrimination, preventing all acts of gender-based violence which lead to physical, sexual or psychological damage, suffering or any other forms of abuse and ill-treatment which are condemned in accordance with the laws in force”.*

For the first time, this law in article 5/1 envisages legal guarantees for the prevention of violence and treatment of victims *“The pre-trial detained and convicted women who have experiences with physical, psychological or sexual violence, before or during the stay in the institution, should be offered immediately protection measures, support and legal counseling with the aim to rehabilitate them. In cases of violence against women and juveniles, are taken into consideration their specific gender needs. In cases of the use of violence in the prisons, prison authorities, in each case, make possible the immediate commencement of an independent investigation by structures and bodies mandated by the law, while respecting the principle of privacy, personal protection and security”.*

The law is improved with some specific articles that deal with social rehabilitation and reintegration of pre-trial detained and convicted persons: *“Treatment of pre-trial detained and convicted persons aims at their rehabilitation and reintegration in family, social and economic life. Preparation for reintegration starts in pre-trial detention, continues during implementation of the sentence with imprisonment and after release from the prison. Prisons in cooperation with probation service, social welfare services, local government organs and non-governmental organizations draft the preparation for release reintegration program in addressing gender issues. For the pre-trial detained and convicted juveniles, preparation for reintegration is realized in cooperation with the juvenile, social worker, family members and/or custodian. For the pre-trial detained and convicted persons belonging to ethnic and linguistic minorities, foreigners and persons without citizenship, for as much as it is possible, are given possibility to programs that respect their culture”.* (article 9)

Furthermore, the law is improved with regard to the treatment of pre-trial detained and convicted persons, which should be carried out based on criteria of individualization while assessing the individual psychological, social, gender, health needs, sexual orientation or gender identity, cultural and economic situation, the environment where the pre-trial detained and convicted person has lived, risk indicators and motivation for being involved in the activities that the institution organizes. (article 10).

Article 11 is improved when it states that *"After the assessment process the treatment plan is drafted in cooperation with the pre-trial detainee or prisoner. For each pre-trial detainee or prisoner a reintegration plan is drafted, while for special categories of pre-trial detainees and prisoners an individual plan is drafted taken into account their specific needs. Special emphasis is given to the psycho-social treatment of the pre-trial detained and convicted juveniles, young adults 18-21 years old, women, persons with mental health problems, inherited from the past or the ones gained during imprisonment...."* Whereas article 32 as amended in this law guarantees that *"Treatment of special groups of pre-trial detained and convicted women is done by staff trained for such categories."*

According to Article 32 of the Law 'On the rights and treatment of prisoners', *"The goals of treatment aim at the development of individual skills and abilities for the reintegration into the society, through the involvement of the pre-trial detained and convicted person in education, vocational training, work, cultural, recreational and sports activities, and psychological and social counseling. Socio-educational treatment of prisoners is performed through individual actions and modeling activities. This treatment is realized by prison staff that has an adequate education and professional skills in the relevant field in cooperation with other staff of the institution. The treatment of special groups of pre-trial detainees and prisoners is done by staff trained on such categories. Communication with the outside world and family are encouraged and provided for through individual and group programs"*. More specifically, for women who have minor children and juveniles in Article 40 of this law it is provided that special programs be developed and implemented that are favorable to family relationships.

The national legislation provides for medical service throughout the stay of women in penal institutions. This service meets the needs for prevention and maintaining health of prisoners. Furthermore, the legal provisions take into account the operation of special services for pregnant women and nursing mothers. (Article 33 of the Law 'On the rights and treatment of prisoners and detainees').

Another positive step towards law implementation is the addition that is made to article 33/1 which provides for the health care for special categories which among others guarantees that *"Health treatment of convicted and pre-trial detained women include the complete examination to determine the needs for primary health care such as: presence of sexual transmitted diseases or inborn blood diseases; needs for mental health care, including posttraumatic disorder treatment, risks for suicide or self-harm; reproductive health history; presence of drug addiction; sexual abuse and other forms of violence which they might*

*have experienced before admission to the institution. The pre-trial detained and convicted juveniles are guaranteed specific plans and services with a gender and age sensitiveness. They are informed in an understandable language for health care, for the prevention of different diseases, personal hygiene, for the forms of violence and any other abuse forms. Women and juveniles, that have experienced physical, psychological, sexual violence, are subjected to health care programs for their rehabilitation and treatment”.*

The law ‘On the rights and treatment of prisoners’ also envisages the accommodation of women and children in special institutions, only for them and, in case that is not feasible, in separate sections of other institutions, according to the criteria of this law. Women are held only under the supervision and care of a female staff. Furthermore, article 47 as amended in this law guarantees that *“Body search of women and juveniles pre-trial detainees and convicts is done only by personnel of the same sex, trained with appropriate body search methods in accordance with prescribed procedures.”*

Mothers were allowed to carry with them children under 3 years. For the care and assistance to these children special nurseries are functional (Article 17). There is a nursery only in Ali Demi’ institution and no such a one in Jordan Misja institution where are placed the detained women. Cases of detained mothers with children under 3 years are treated at the Prison Hospital Center, which is not a solution in accordance with international standards.

During 2010, the internal regulation of the institution Ali Demi has improved in terms of taking positive measures to the benefit of female prisoners who have children up to age three years in the care of the institution. Until this year, women spent only a certain time with their children in institution’s nursery, whereas, with the regulation changes, women with children in prison, stick all the time to their children<sup>214</sup>.

Two other legal provisions found in the internal regulation of the institution Ali Demi concerning: 1. periodic gynecological visits once a month for sentenced women and more frequent checks for pregnant women or those after childbirth, in collaboration with the Prison Hospital Center or the closest maternity hospital<sup>215</sup> and 2 medical visits for each child of institution’s crèche, to take measures for personal health records, vaccination and frequent visits to the pediatric clinic

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214 Order of the Minister of Justice, no. 5322, dated 07.06.2010, “Internal regulations of the Ali Demi Prison”, Tirana.

215 Article 36/6 of the Internal Regulation of the Ali Demi Prison, Tirana.

near administrative centers<sup>216</sup>. Although this regulation does contain some gender-sensitive provisions, it was expected that it contained more such with particular focus on the treatment of sentenced women.

It is worth mentioning the fact that women detainees where till recently were held under the auspices of the institution Jordan Misja, unfortunately, the internal regulations of the institution, although rewritten in 2010<sup>217</sup> does not reflect any provision that would have a special focus on female detainees.

The consistent and structured employment of prisoners, as an integral part of their reintegration into society and its relevant remuneration is envisaged in the domestic legislation, however, full implementation of the legislation on the remuneration of labor for prisoners in general and women in particular, are not yet implemented due to lack of budgeted funds

To discipline the behavior of convicts, under Article 53 of the Law 'On the rights and treatment of prisoners', some disciplinary measures are applied such as: a) individual reprimand; b) remarks in the presence of other convicts; c) exclusion from special group activities for up to 10 days; d) exclusion from airing in the group, but not to exceed 20 days; d) exclusion from all joint activities for up to 20 days; f) suspension of permits to temporarily leave the institution. For juveniles and women, the measures provided in the letters 'c', 'd' and 'e' can be taken to last for only half of the original time. For pregnant women or with child that has been allowed to stay with them, can only be applied disciplinary measures provided for in paragraphs 'a' and 'b' of this Article.

In general, the Albanian domestic legislation is in line with international standards and contains several key provisions that focus on female prisoners, as shown above. However, the entire national legislation needs to be reformed, ranging from the criminal code to internal regulations in institutions where female convicts are held in accordance with the latest developments with the Bangkok Rules, in order to not end up with a legislation written in neutral language but rather, one that reflects a gender approach. It is worth mentioning that the latest amendments of the law on the rights and treatment of persons sentenced with imprisonment and pre-trial detainees indicate for the gender sensitive approach of the law, which complies with Bangkok rules.

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216 Article 36/7 of the Internal Regulation of the Ali Demi Prison, Tirana.

217 Order of the Minister of Justice, no. 5280, dated 06.07.2010, The internal regulation of the Prison, Jordan Misja in Tirana.

### **3.4 The institutional and infrastructural reform of the prison system during 1991-2014**

The law 'On the organization and functioning of the Ministry of Justice', the law 'On the rights and treatment of prisoners and detainees', the law 'On the execution of criminal decisions', the law 'On People's Advocate', 'Law for legal assistance', the DCM 'On the approval of the General Regulation of prisons' etc. have created a legal basis for the establishment and operation of a number of institutions that have improved the services offered in Albanian prison system, such as the internal system of inspections and supervision, as well as bodies/institutions outside monitoring of the prison system, probation, structure for providing free legal aid to persons deprived of their liberty as a category that benefits from this service etc.

Given the legal and institutional reforms in the prison system, there are positive steps that have been taken to approximate this system to the international norms and standards, but the implementation of these reforms has either been delayed or not fully accomplished<sup>218</sup>. A matter of great concern which was carried over for many years as an unsolved problem, was the transfer of pre-trial detention from the authority of the Ministry of Public Order, to the Ministry of Justice. Although the law 'On the organization and functioning of the Ministry of Justice' clearly defined the dependence of the detention system from the Ministry of Justice since 2001, and according to the DCM nr. 327, dated 03.15.2003 'On the passing of the detention system under the Ministry of Justice', i.e. that the detention units would be under the Ministry of Justice, the full transfer of detention units became possible only in 2007. This transfer was not simply a matter of organization and violation of the law, but above all, was a matter directly related to the respect of human rights and fundamental freedoms of persons deprived of their liberty<sup>219</sup>. This transfer ended the duality of standards of treatment of detained persons who were in the care of the Ministry of Public Order, in which there was no guaranteed legal rights of detainees, unlike the treatment that was done to them in care of the Ministry of Justice. However, this transfer is encountered for a long time in a number of infrastructure problems because a significant proportion of cells were inherited from environments heavy depreciated of the police stations as well as problems of a lack of specialist staff of different services<sup>220</sup>.

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218 The Albanian Helsinki Committee: Report of human rights in Albania, Tirana, 2006.

219 Article 71 of the European Prison Rules sets the standard by stating that: "Prisons should be under the responsibility of public authorities, separate from military, police or crime investigation service institutions".

220 Open Society Foundation for Albania, SOROS: The monitoring report of Albania in the Stabilization and Association Agreement ", Tirana, October 2008, p. 66.

According to the recommendation (2006) 2 of the European Prison Rules<sup>221</sup>, infrastructural conditions in prisons should be such as to guarantee respect for human dignity for individuals held in these environments, therefore the state authorities are invited to make sufficient investments to meet these standards. In recent years, with the construction of new prisons<sup>222</sup> and reconstruction of old institutions<sup>223</sup>, from the structural perspective, the tendency to concentrate different regimes in the same institution, such as pretrial regimes, regimes with high, medium and low security, is a positive trend.

However, the infrastructural conditions of some detention institutions that are located in the old premises of police stations and in some prisons with old and depreciated facilities, is pretty much unsatisfactory<sup>224</sup>. The lack of electricity and running water 24 hours, dilapidated and damp buildings and their operation over the allowed capacity in some of these institutions, affect directly the poor quality of life of persons deprived of their liberty and make the living conditions in these institutions to be considered as not in accordance with international standards<sup>225</sup>.

Statistics show that Albania has a prison population of about 5868 people, while the official capacity of the prison system is 4,417<sup>226</sup> people. It is noted an increasing tendency of the overcrowding in prisons in the recent two years, a problem raised in a series of progress reports of the European Commission on Albania<sup>227</sup> and in the reports of the Albanian monitoring organizations<sup>228</sup>.

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221 Article 18.1 states: "The accommodation that prisoners are provided with, and in particular all dormitories, must respect human dignity and as much as possible, the privacy, and meet the demand for health and hygiene, paying the proper attention to climatic conditions and particularly space, abundant fresh air, light, heat and ventilation".

222 In recent years are built new institutions such as those in Fushë-Kruja, Vlora, Korça, Durrës and Kavaja, mainly with the financial support of the European Union and in some cases, of the state budget.

223 Almost all the old institutions are restructured, however some of them are badly depreciated and therefore not in accordance with international standards.

224 Albanian Helsinki Committee: Report on the situation of human rights in police stations, in remand houses and penitentiary, Tirana, May 2010.

225 European Commission: Progress Report on Albania in 2011, Brussels, October 2011, p. 16.

226 Data of the General Directorate of Prisons, November 2014.

227 European Commission: Progress Report on Albania in 2009, Brussels, October 2009, p. 14.

228 Albanian Helsinki Committee: Report on the situation of human rights in police stations, in remand houses and penitentiary, Tirana, December 2014.



Treatment of vulnerable groups, by providing them with suitable infrastructure conditions, is particularly important especially when it comes to minors, women and people with various mental problems in prisons. It is worth mentioning that till November 2014, the Albanian government has failed to establish a prison with different regimes for only women with restricted freedom. Women were held in two institutions<sup>229</sup> of depreciated buildings and not at all suited to meet their specific needs thus failing to meet international standards for their living environments. The transfer of pre-trial detained women in December 2014 to the institution “Ali Demi” is undoubtedly a positive step in this direction. Nevertheless, lack of an initiative to build a prison just for women during all these years, at a time when new institutions are built with the financial support of the EU and/or the state budget, is an indication of negligence and, moreover, the discriminatory attitude of the authorities responsible for this category of prisoners in the prison system.

Based on the DCM ‘On approval of the justice cross-sector strategy and its action plan’<sup>230</sup>, for the period 2009-2013 are planned and are in implementation, various projects of construction of new institutions and the restructuring of existing ones<sup>231</sup>, however the strategy and action plan does not provide for the construction of semi-open and open prisons. In addition to having a variety of regimes in a multifunctional institution, there is a need of creating semi-open and open prisons, to ensure implementation of the sentence plan of convicts starting from detention in a closed institution, later in semi-open and, at the end of the sentence, in open institutions, with treatment programs according to the specific needs of different groups in prisons. This will help in preparations for prisoners to be integrated in society, which would also fulfill one of the main tasks of the prison system towards persons under its care.

At the end of 2012, senior executives of the Ministry of Justice have revealed their ideas for further reform of the prison system, moving towards their privatization according to the models offered by the prison system in the UK or the USA<sup>232</sup>.

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229 Women detainees, who are awaiting trial and a final court decision, were held at the institution Jordan Misja in Tirana, and those who have received a final decision of imprisonment, are accommodated in the institution Ali Demi Tirana.

230 DCM no. 519, dated 20.7.2011.

231 Detention centers and new prisons will be built in Elbasan, Fier, Berat, Shkodra, the institution Jordan Misja, institution Ali Demi along with the reconstructions of the existing institutions in Peqin, Korça, Rrogozhina, Kruja, Burrel, Fushë-Kruja, Durrës, Lushnja.

232 Minister of Justice in his annual assessment for 2012, introduced the reforms carried out by the Ministry of Justice in 2013, among others, also the privatization of the low security prison according to the US model. <https://www.justice.gov.al>



Given that the Albanian prison system is still not consolidated on the basis of an effective management and in accordance with the standards and norms of human rights, it requires a complete review of the issue of privatization of the Albanian prisons, even for the low security ones. In depth analysis and discussion among professionals should consider aspects such as how the privatization of prison in a profit-driven environment affects the welfare of prisoners, where work in prison is ever seen as a source of income and has little to do with training and rehabilitation of prisoners. A close look must be made at how private prisons are capable to create all the conditions for a proper treatment of prisoners and what mechanisms are used to protect prisoners from various forms of ill-treatment by staff, but also among prisoners themselves; how do these kind of prisons, affect the levels of recidivism of crime in society; How the private prison is supervised by the public institutions etc. A close consideration of this issue will assess the real costs versus effectiveness of these services and if it really represents value for taxpayers' money to hand over to private companies the management of the prison, rather than have this responsibility retained by state authorities. The analysis of advantages and disadvantages will also consider the effects that the privatization has on the staff and also in the community in general. A matter to be concluded is also whether the fundamental moral principle and administration of the prison system as a public service is a responsibility of the state authorities or to the for-profit-companies.

Lessons should be learned from the experiences of countries such as USA and United Kingdom in regard to the privatization of prisons<sup>233</sup>. For example, the first private prison in the UK was opened in 1992, but it all happened without any public debate or discussion and very little analysis was undertaken before the implementation of the policy of privatization of prisons. The performance has been so poor, that two of the prisons turned back to the public sector. Also, in 2008 it was observed that 10 out of the 11 private prisons in England and Wales, were at the bottom of the list for the worst performance, in a classification made by the Ministry of Justice. In England, many criminal justice stakeholders have called for a moratorium on all prison privatization process and for an independent review of all aspects of this process<sup>234</sup>.

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233 Austin, J.; Coventry, G.: United States., & National Council on Crime and Delinquency. (2001). *Emerging issues on privatized prisons*. Washington, DC: U.S. Dept. of Justice, Office of Justice Programs. <https://www.ncjrs.gov>

234 Poyner, Ch.: *Privatization of prisons will turn into a national scandal*, London, "The Guardian", November 8, 2012. <http://www.guardian.co.uk>

Given the above, it is recommended that before taking concrete steps towards privatization of the Albanian prisons, even those of low security, the consequences of these institution's privatization on the prisoners, the staff and the whole society be first carefully considered. The privatization of some services, such as food supplies, transportation of prisoners, etc., are already in practice in many European systems and have yielded positive results in prison's better management, but to transfer all management responsibilities of these public service institutions to the private and for-profit sector, would be a hasty step with damaging consequences, unless first is conducted an open discussion with all relevant stakeholders of the criminal justice chain.

### **3.5 Treatment of prisoners - overview. Principles of appropriate treatment for detainees and convicts**

Applicable laws and regulations in force, protect prisoners from abuse and arbitrary attitude of state authorities and, along with international instruments they instruct the relevant authorities on how to shape and substantiate the implementation of the sentence execution regime and as to how ensure a treatment that is suitable for persons sentenced to imprisonment. Based on the legal framework in the field, this part will address the main principles for a suitable treatment<sup>235</sup> and how these principles are reflected in the Albanian prison system.

Suitable treatment goes beyond the observation of the rights of persons deprived of their liberty and also beyond the mere performance from the administration of tasks defined in the relevant legal basis. The term 'treatment' includes everything that the institution can provide offenders with. In this way, the principles of proper treatment should include quality requirements in terms of the treatment of prisoners, in the broadest sense of the term<sup>236</sup>. The full implementation and compliance with the standards and principles includes ongoing efforts for improvement, positive goals and a flexible attitude to the changes in the prison system<sup>237</sup>. Appropriate treatment means that attention is given to the individual and not the standard, applying the sentence responsibly even in unexpected situations to which the law and regulations do not have a clear description<sup>238</sup>.

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235 Council for the Administration of Criminal Justice and Protection of Juveniles: Appropriate treatment - principles of how to treat persons deprived of their liberty, The Hague, 2010, "Raad voor Strafrechtstoepassing en Jeugdbescherming". [http: //www.rsj.nl/](http://www.rsj.nl/)

236 Ibid, p. 2.

237 Ibid, p. 2-3.

238 Ibid, p. 5.

According to the makers of these main principles, 'Principles constitute a starting point for assessing specific situations. They help in terms of being vigilant when it comes to regulations and practices when they lie below a minimum standard of appropriate treatment, and when it comes to a deterioration (potentially) of conditions of incarceration. Principles can help to promote the necessary changes, but they can also function as a starting point for a positive assessment of the situation of detention and treatment quality'<sup>239</sup>.

**THE FIRST PRINCIPLE: The principle of fairness and quality of daily contacts** relates to daily treatment and contact with persons deprived of their liberty, should meet contingent liabilities for good quality service, with professionalism, fairness and good ethics. The principle emphasizes the professionalism with which prison staff must manage persons sentenced to imprisonment in different situations, without discrimination<sup>240</sup>.

During the 24 years of constant changes in the Albanian prison system, the increase in the professionalism of the staff has been among the top priorities. There is a higher awareness of the staff of pretrial institutions and prisons for appropriate treatment according to the needs of people that are under their care. Expertise and continuous staff training are provided especially with the consolidation of prison training center, with training modules at all levels of management<sup>241</sup> and with the increasing support that has been provided in this respect by the civil society and international agencies. In its report of 2010, the Ombudsman<sup>242</sup> states that 'steps taken in staff training and their involvement in exchange experiences programs, has been a positive model that has significantly increased their awareness on human rights'.

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239 Ibid, p. 3.

240 European Prison Rules (2006) envisage: Article 72.1- Prisons should be run within an ethical context, which recognizes the obligation to treat prisoners with humanity and respect for the personal dignity of human beings. Article 72.2- Staff should clearly point out the purpose of the prison system. Management, through its leadership must offer different ways to achieve the best way to the goal. Article 72.3-Staff's duties go beyond those simply predefined ones as guards, but should consider the need to facilitate the social reintegration of prisoners into society upon completion of their sentence, through a positive program of care and assistance. Article 75 - Staff, at any time, should behave and conduct its work in such a way that influences the detainees and prisoners through good example and by earning their respect.

241 European Commission: "Progress Report on Albania in 2011, Brussels, October 2011, p. 15.

242 Ombudsman's Report, 2010. <http://www.avokatipopullit.gov.al/>

However, occasionally, the Ombudsman and local and international whistleblower organizations have reported cases of abuse, the use of violence and arbitrariness against persons deprived of their liberty<sup>243</sup>. There have been successful cases when persons responsible were held accountable; however, their number was low compared with reported cases of abuse. The relevant authorities are encouraged to undertake prompt, effective and independent investigations of all claims of cases of torture and/or ill-treatment in accordance with the Rules of Istanbul<sup>244</sup> to ensure that in all cases, the persons responsible for abusive acts are brought before justice<sup>245</sup>.

Survey reports of NGOs in 2011 have highlighted the alleged cases by persons sentenced to imprisonment who complain for a lack of communication ethics, exerting pressure, exercise and psychological violence, and in rare cases, claims of physical violence from the staff of penitentiary institutions and prisons, which have shaken the trust of these persons in the human aspect of execution of sentence of imprisonment<sup>246</sup>. Many civil society stakeholders and international organizations, call for the prison administration to daily quality treatment of people they have under their care.

Qualitative daily treatment of persons sentenced to imprisonment through contacts with staff, guarantees and offers opportunities for solving problems and/or concerns between persons sentenced to imprisonment and staff or between persons deprived of their liberty themselves. This means that prison staff should act with professionalism to resolve these issues through direct meetings with people that are under their care, but also through formal procedures that must ensure reporting of complaints for every aspect of life in the penal institution and ensure a quick, effective and expertly processing of their complaints and taking measures to restore the violated rights, especially in cases of maltreatment.

Referring to the legal provisions in force, it is ascertained that there is an internal mechanism to control/monitor the observance of the rights of persons detained/convicted

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243 Mechanism for the Prevention of Torture under the Ombudsman, the Albanian Helsinki Committee, the European Committee for the Prevention of Torture, denounced concrete cases of maltreatment.

244 Istanbul rules are attached to the resolution 2000/43 of the Commission for Human Rights. [ap.ohchr.org/documents/.../CHR/resolutions/E-CN\\_4-RES-2000-43](http://ap.ohchr.org/documents/.../CHR/resolutions/E-CN_4-RES-2000-43)

245 Albanian Helsinki Committee: Report on the situation of human rights in police directories and stations, in detention and penitentiary institutions, Tirana, May 2010, p. 44.

246 Albanian Helsinki Committee: Report on the situation of respecting human rights in penitentiary institutions, Tirana, December 2011, p. 6.

in penal institutions, but the effectiveness of this mechanism is worth analyzing<sup>247</sup>. It is noted that within the penal institutions, the persons sentenced to imprisonment, address their requests only to GDP and those mainly pertaining transfers, while complaints are in a small number compared with the requests<sup>248</sup>. More specifically, for January-August 2011, the GDP was addressed in 114 requests, almost all pertaining the transfers of persons sentenced to imprisonment to other institutions and only 21 are complaints mainly regarding disciplinary measures taken against prisoners from disciplinary commission of the relevant institutions. For this period there were three complaints of ill-treatment of prisoners by the staff of the institutions.

Mostly, persons sentenced to imprisonment address their complaints to institutions outside the prison system, such as the Ombudsman or Albanian Helsinki Committee (AHC). For the period January to August 2011, were filed 250 complaints with the Ombudsman/Unit for the Prevention of Torture<sup>249</sup>. Their main object has been objections to the investigation and court decisions, the refusal of permission by the prison administration, complaints about the food, lack and doubts about the quality of water in prison, legal aid and counsel, complaints about denial of qualified health service, complaints about violence perpetrated by prisons police, etc. For the same period, AHC has received 106 complaints from persons sentenced to imprisonment or detention in prisons. Complaints have concerned alleged physical or psychological violence, poor living conditions in various institutions, the lack of health care, violation of the rights of persons deprived of their liberty and complaints regarding transfers and geographic distance from family. The fact that complaints are addressed in a significant number to institutions outside the prison system, is indicative of the lack of confidence of persons sentenced to imprisonment on effective handling of their complaints within the prison system.

Based on the findings of the relevant researches<sup>250</sup> it is evidenced that there are different management practices of complaint in various penal institutions, and therefore it is recommended that, in the context of further reforming the prison system, unified procedures are developed in which are defined clearly the procedures for the handling of the complaint as well as efficient and independent structures operating inside and outside the prison system.

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247 Article 50 of Law no. 8328, date 16/04. 1998, "On the rights and treatment of prisoners and detainees", as amended.

248 The data presented were obtained from official sources under GDP.

249 Official data are taken from the heads of the Unit for the Prevention of Torture.

250 Migena Leskoviku, Edlira Papavangjeli: On the evaluation of complaint and request mechanism in institutions of deprivation of liberty, Tirana, 2011, p. 43-44.

As mentioned above, part of prison reform and its approximation to countries with systems of consolidated democracy, remains the improvement of the selection procedure for prison staff which should be handled on the basis of merit; continuity of professional training for all levels of management in prisons and the expansion of civil servant status to all prisons administration, in order to create the conditions for increasing the sustainability of staff and strengthening of its professionalism.

Every penal institution must have a suitable management structure and a sufficient number of specialists on staff, such as: psychiatrists, psychologists, physicians, nurses, social workers, representatives of religious beliefs, librarian, teacher, vocational and skills instructors etc. This need is highlighted time after time, as during the monitoring by institutions outside the prison system, there were identified different standards in different penal institutions. A significant proportion of them are structurally deficient and, therefore, the absence of various specialized services, such as psychiatric services, health, psychosocial, etc., which are essential for the maintenance of life and respect for the rights of persons deprived of their liberty in these institutions<sup>251</sup>.

**THE SECOND PRINCIPLE: principle of perspective, reintegration and post-release care** majors on the purpose that the sentence regime needs to have, which focuses on the return of a person sentenced to imprisonment in the society and thus guarantees an adequate system of care after release. The prospect of a successful return to society after release, should permeate all day programs in prisons<sup>252</sup>. In other words, sentencing programs for each prisoner ought to be designed in such a way with the intention that from the first day that the inmate enters into a penal institution, the institution's staff should work systematically utilizing various activities aiming at person's successful restoration to society.

Albania's legal framework provides this principle as the main purpose of sentencing. What the reality of penal institutions offers us in this regard, is very little. Release preparation programs are limited to only a few months prior the release and return to society of the person. In some penal institutions almost all

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251 European Institute of Tirana: Protection of human rights in Albania: Monitoring Report 2011 for mental health care in the prison system, 2011, p. 40; Ombudsman: Annual Report 2011, Tirana, 2012, p. 143, p. 151, p. 153.

252 Council for the Administration of Criminal Justice and Protection of Juveniles: Appropriate treatment - principles of how to treat persons deprived of their liberty, Hague, 2010, p. 7. [http: //www.rsj.nl/](http://www.rsj.nl/)

these programs are lacking almost completely while, even when they exist, they are almost formal and superficial. There is no structured and comprehensive approach which would begin with the acceptance of a person detained in a detention institution and until he/she is released, and there is not envisaged, nor implemented a concrete cooperation with other local or central institutions, such as probation service, local employment offices, social services, local police, local businesses, etc., to support a person sentenced to imprisonment in the process of reintegration in society.

Based on the assessment data of the relevant monitoring institutions, it has become apparent that the Albanian prison system does little in this direction, and in this process there is no interaction and cooperation at all between the prison system and other important institutions<sup>253</sup> for which we will discuss below. Preparation for release until now is considered a program that starts only in the days, weeks or in some better cases, in the last months of the sentence of convicts, but the experiences of European prisons indicate that preparation for release programs, ought to be started from detention, given that a considerable number of detainees, return to society without going to jail. Besides specific programs that the penal institution should decide to apply in cooperation with the local offices of community services where the convicted persons will return upon release, there must be an awareness of probation service and some local authorities to build a network of cooperative institutional responsibility of convicts return in society and their supervision in the initial stage. Right now, this institutional collaboration across stakeholders outside the prison system in penal institutions, is almost completely lacking, so, given the above, the establishment of the institutional cooperation is of crucial importance to achieve the main aim of the sentencing regime for all prisoners.

**THE THIRD PRINCIPLE: the principle of a meaningful regime** is related to the existence of a meaningful sentencing regime which means that the sentencing regime provides adequate space for necessary and meaningful activities to give structure to the life in the institution, variation to the daily routine, activities aimed at social reintegration as well as to enable persons deprived of their liberty to develop and live up to their potential<sup>254</sup>.

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253 Monitoring Assessments by the Albanian Helsinki Committee during 2010-2011. [http: // ahc.org.al/](http://ahc.org.al/)

254 Council for the Administration of Criminal Justice and Protection of Juveniles: appropriate treatment - principles of how to treat persons deprived of their liberty, The Hague, 2010, p. 9. [http: //www.rsj.nl/](http://www.rsj.nl/)



During all these years of prison transformations, ongoing efforts are made to enrich the educational, sports, recreational and rehabilitative activities, offered in prison during the day program. However, monitoring reports from the field, reveal that penal institutions continue to operate on different standards<sup>255</sup>. In some penal institutions there are only basic programs with significant absence of activities focusing on the specific needs of persons sentenced to imprisonment, while some institutions offer good examples, such as the case of the programs offered at the women's prison<sup>256</sup>.

In this part of the analysis it is noteworthy to stress two problems related to one of the meaningful activities for persons deprived of their liberty. The first has to do with rewarding employment. Although since 2009 has entered into force the amendment of the General Regulation of the prisons that enables the employment throughout the prison system as well as the appropriate remuneration of the prisoners, such remuneration, due to lack of financial resources disbursed for GDP's budget by the Ministry of Finance, is not implemented as provided in this regulation, but the old practice of reducing the sentence by 4 days per month through employment is what continues to be applied instead. This experience contradicts the domestic legislation<sup>257</sup> and is not in accordance with best European practices of prison systems.

According to official GDP data, the organic structure of the prisoner work is suitable for 507 people according to the needs of penal institutions for a total of about 5868 persons deprived of their liberty<sup>258</sup>. Inclusion of such a limited number of inmates in the organic structure excludes the possibility that employment is guaranteed to all persons deprived of their liberty. During year 2014, it is drafted the draft-decision on the organization and remuneration of labor of pre-trial detainees and convicts.

Another issue that is noteworthy in this part of the analysis, is the existence of the duality of standards providing opportunities for education. In December 2008 was reached a memorandum of understanding between the Ministry of Justice and that of Education and Science for the implementation of compulsory education

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255 Albanian Helsinki Committee: Report on the situation of human rights in police directories and stations, and in the detention and penitentiary institutions, Tirana, May 2010, p. 37-38.

256 For more information on treatment programs for female prisoners, refer to the fifth chapter of this paper.

257 Article 34 of Law no. 8328 dated 04.16.1998, 'On the rights and treatment of prisoners and detainees' as amended.

258 The data provided by the General Directorate of Prisons, November 2014.



in all detention facilities and prisons, supported in the 2010 budget with a distinctive voice, which enables the involvement of public school teachers to teach in penal institutions. Education of persons deprived of their liberty is realized in several institutions, but to extend this service to all the detention centers and prisons indiscriminately, avoiding duality of standards, is something that is not accomplished yet. Education takes special importance especially when it comes to minors convicted and detainees, but it is ascertained that not all minors are offered this service in all institutions where they are accommodated. This constitutes a serious violation of Article 37 of the Law 'On the rights and treatment of sentenced and detained persons,' which provides that: 'Education and cultural background of the professional organization, is made by organizing schooling that is mandatory for minors, as well as vocational classes, according to the systems in force.'

**PRINCIPLE FOUR: the individualization principle** is related to the individualization of the treatment of persons deprived of their liberty, which means that the penal institution takes into account the interests, needs and specific conditions of each individual<sup>259</sup>.

According to the national legislation<sup>260</sup> treatment of detainees and prisoners must be made in accordance to the criteria of individualization as well as the situation, characteristics and their individual needs, taking into account the conditions and environment in which the detainee/prisoner has lived, as well as education and social circumstances that have distanced him from the normal life.

The treatment program should be wholly based on a multifaceted approach of intervention to rehabilitate convicts' behavior in prison and to teach them the skills they need for life. The whole emphasis of this approach is based on the individual.

Treatment programs with individual access remain a challenge for the Albanian prison system, since the penal institutions that have adequate and sufficient staff, are only a handful. Also the cooperation with civil society actors who provide specialized services as well as with other state institutions, are very unsatisfactory, and reforming the approach to treatment and the specific interventions, is necessary to be addressed in a comprehensive strategy.

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259 Council for the Administration of Criminal Justice and Protection of Juveniles: appropriate treatment - principles of how to treat persons sentenced to deprivation of their liberty, The Hague, 2010, p.11. <http://www.rsj.nl/>

260 Article 10 of Law no. 8328, dated 4.16.1998, "On the rights and treatment of prisoners and detainees", as amended.

**THE FIFTH PRINCIPLE: the principle of safety in prison** has to do with ensuring the safe feeling of persons sentenced to imprisonment. In other words, this means that the treatment is appropriate only when it guaranteed not only the physical security, but also the mental one for people during their incarceration<sup>261</sup>.

In recent years, in the Albanian prison system is noted a differentiated approach to treatment in accordance with the specific needs of vulnerable groups such as: the mentally ill<sup>262</sup>, drug addicts, juveniles and women. According to official statistics<sup>263</sup>, the number of patients with mental health problems in prisons has been increasing. Currently, the number of persons sentenced to imprisonment diagnosed with various mental problems 267<sup>264</sup>. Not all of them are in all institutions accommodated separately from other healthy people and there is no multifaceted approach to their treatment by specialized staff. Special care units must be opened in all institutions where there is a number of people with mental problems, as well as measures need to be taken that this treatment is provided by a multidisciplinary staff. Although that during the end of 2011 was opened, despite many delays, the institution of Durrës where there is a temporary accommodation for the treatment of people with mental problems, it cannot address the needs of a growing number of people with mental problems in all penal institutions. Therefore, besides the existence of this institution and that of Kruja, in which receive treatment patients with the most severe mental problems, there must be created the possibility of opening special care units in those penal institutions where there is a considerable number of such patients. The best practices of preparing staff for the opening of these units must be conveyed continuously. The preliminary preparation means developing a working strategy with concrete infrastructure measures, human resources, the designing of specific treatment programs and all appropriate auxiliary and operating instruments for staff.

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261 Council for the Administration of Criminal Justice and Protection of Juveniles: Appropriate treatment - principles of how to treat persons deprived of their liberty, The Hague, 2010, p. 10. <http://www.rs.j.nl/>

262 Albanian Helsinki Committee: Report on the situation of human rights and police directories and stations, in detention and penitentiary institutions, Tirana, May 2010, p. 41-42. During the year 2009-2014 special care units are opened for the mentally ill in institutions such as “Ali Demi”, Tirana, Peqin, Elbasan, Durrës, Korçë and Lezha. Such sectors are expected to be established in all institutions that have a considerable number of persons with mental health problems.

263 Director General of Prisons, in his speech at the conference on the law “for the mentally ill in the prison system”, December 2011.

264 According to the data provided by the General Directorate of Prisons, November 2014.

Securing a medical service according to the health needs of detainees and prisoners, in all penal institutions, remains a challenge for the prison system. The existence of double standards in this regard, is evidenced in a number of reports of human rights. A significant number of complaints are received in regard to poor quality of medical service<sup>265</sup>. Reforming this service within prisons with sufficient and specialized staff, with infrastructure investment as well as a functioning system of prevention, diagnosis, medical treatment and supervision of these services, are a must in terms of the future.

Part of the problems that remain unresolved is the treatment of the mentally ill for whom the respective courts have given the measure ‘forced medication’ and that domestic legislation provides specialized treatment in special institutions established for this purpose. According to data provided by the prison system, there are about 148 people that are given the measure ‘forced medication’ and “temporary hospitalization” who are unlawfully held in the prison hospital and in the special institution of Kruja<sup>266</sup>. This situation threatens severely the rights of people who should be treated in specialized institutions of forensic medicine and which the court did not find guilty. Throughout these recent years, the Ministry of Health and that of Justice did not find a definitive solution to this very disturbing problem<sup>267</sup>. This flagrant violation of human rights, physical safety and mental health of patients with the measure of forced medication, but also of convicted persons who are held in the same facilities with these people, is strongly pointed out by almost all domestic and foreign actors who monitor the prison system<sup>268</sup>. The ultimate solution to this problem constitutes a part of further reforming the Albanian prison system.

**THE SIXTH PRINCIPLE: the principle of legitimate implementation** guarantees the comprehensive legal framework rather than simply random decisions that can be taken by prison staff in different situations. As discussed above, this legal framework is already complete, but this principle gives the correct application of the relevant legal framework, especially when it comes to limitations of the rights of prisoners which in all cases should be legitimized by a specific regulation/

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265 Ombudsman, AHC, European Institute of Tirana, Center for Torture and Trauma etc., Reported repeatedly a considerable number of complaints in this regard.

266 European Institute of Tirana: Protection of human rights in Albania: Monitoring Report 2011. On mental health care in the prison system, 2011, p. 73 and 124.

267 Law on “Mental Health” entered into force in 2012, among others regulates the treatment of persons with the measure of compulsory treatment.

268 The Ombudsman, AHC, European Institute of Tirana, CPT, European Commission etc.

protocol/administrative order restricting specific type of relevant restraint, since (very) general definitions of regulations or coercive measures are not sufficient.

In the spirit of this principle, the relevant authorities of the Albanian prison system should consider as crucial the design and implementation of appropriate administrative guidelines for specific situations, such as: management of prisoners who have mental problems and are in a moment of crisis, accommodation and the management of prisoners in isolation rooms etc. Developing and implementing clearly defined procedures for each of these situations will avoid the possibility of abuse of prisoners in specific situations. Based on the recommendations of the monitoring organizations<sup>269</sup> for the drafting and implementation of protocols for a good management of specific situations, in year 2013 entered into force twelve protocols.

### 3.6 Conclusions

As discussed above, the analysis of the historical developments revealed that after the breakup of the Albanian prison system from the Turkish rule, it nevertheless inherited the legal basis, forms and methods of prison's management, and the poor infrastructure and inadequate facilities that did not ensure the safety, hygienic-sanitary conditions, humane and dignified treatment and opportunity for socialization of convicts. During the period of 1920-1939 a step forward was taken in terms of the organization of state institutions and in this context, significant changes occurred in the prison system. Here we distinguish drafting legislation and getting some good experience from the Western countries on how penal institutions should be addressed. However the problems of penal institutions were numerous and far from meeting the goal of the period of detention and treatment services that were guaranteed to persons deprived of their liberty.

During the communist dictatorship, the prison system underwent regression. Prisons were considered military institutions and were managed as such. Prison was the place where people were depersonalized, where no minimum values and human rights were recognized, where there was hunger, beatings and torture, lack of hygiene, death and moral humiliation. Analysis of the historical developments of the prison system of Albania, clearly shows that prison institutions inherited a past that was not democratic regarding how they were managed and

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269 Albanian Helsinki Committee: On the situation of human rights in police directories and stations, in institutions of detention and execution of penal decisions, May-November 2012, Tirana, 2013, p. 36-38.

how they operated within the society. This past has left its traces in the prison system of the post-communist period.

Albanian prison system in these last 24 years of democratic transformation has made progress in the changes and the positive steps regarding its legislation and to some extent, also of its infrastructure and treatment it provides for persons deprived of their liberty. However, as evidenced by the analysis brought to this part of the study, much remains to be done in terms of ensuring adequate treatment of persons deprived of their liberty in general and especially those with special needs in care of the prison system. Despite legal reform in the criminal field and especially the amendments of the year 2014 of the law on the rights and treatment of persons sentenced with imprisonment and the pre-trial detainees, and given the recent legal developments in the international arena, we need all the legal bases of the field to be further reformed, so that our legislation is sensitive to issues of gender nature.

It remains imperative that the principles discussed above for an appropriate treatment of persons deprived of their liberty in care of the Albanian prison system to serve as references for the design of short and midterm policies and strategies in prisons and further improve the law enforcement correctly in practice.

Further reforms in this area require willingness at the decision-making level and contemporary vision for changes that need to be undertaken. A part of prison reform remain: improving the selection procedure of the prison staff which must be carried out on the basis of merit; continuity of professional training for all levels of management in prisons and the expansion of civil servant status to all prisons administration, in order to create the conditions for increasing the sustainability of staff and strengthening its professionalism.

The reform in the prison system must be conducted with a civilian mentality in terms of the way of running and functioning of all penal institutions in the country. A full implementation of these reforms will enable the measurement of progress in one of the priority areas of Albania's path towards membership in the European family.



## CHAPTER

# 4

## WOMEN AND IMPRISONMENT –SOCIAL EXCLUSION MODELS

### 4.1 Introduction on the matters addressed in this chapter

Following the data and indicators of the profile of women in various stages of the penal process, presented in chapter two, this part of the paper focuses on comparative analysis of the dynamics of social exclusion and inclusion. This analysis will help to prove two of the theses submitted in the introductory chapter:

1. The majority of women in the detention centers and prisons come from the categories of individuals who have experienced a certain degree of social exclusion before they ended up in the penitentiary institutions.
2. Sentencing excludes those women who did not experience social exclusion before they were sentenced, and excludes furthermore the already excluded women.

Analysis of factors affecting social exclusion of women who have turned in the way the crime is important because not only will it increase understanding of the causes that lead these women to committing various criminal acts, but what's more, it will create the possibility of reaching the main findings and suggestions for preventing and reducing the incidence of women who commit crimes as well as to improve the criminal policy against women offenders by adapting it to specific conditions and characteristics of these women.

Moreover, the arguments in this chapter will enable the analysis of dimensions of social inclusion, social services and various types of social policies that focus in the marginalized individuals and disadvantaged persons including women sentenced to imprisonment.

## 4.2 Social exclusion of women before their incarceration

Seen from a gender perspective, the main dimensions of social exclusion, which are often associated with each other, are:

1. **Economical dimension:** global changes in the world markets and the reduction of social welfare policies, has led to the exclusion of many men and women from the labor market. However, women in Europe and beyond are becoming more impoverished than men. The national strategy of gender equality and domestic violence (2007-2010) raises this point, stating that: 'In particular, unemployment is affecting the social status of women in Albania. Data on poverty in Albania, indicate a feminization of poverty and an increase in the share of women in the poor's category. Geographically speaking, there is a higher rate of poverty among these women in rural areas, where, besides the many factors that contribute to poverty, economic and social inferiority of women exerts a major influence'<sup>270</sup>. The feminization of poverty is also noted in the increase of the number of women that are heads of households and inequality in wages between women and men<sup>271</sup>. Social exclusion takes many forms such as: unemployment, low income or wages, difficulties in the enjoyment of certain benefits due to woman's unemployed status such as economic assistance etc.
2. **Social and cultural dimension:** women, just like other vulnerable groups in Europe and beyond, experience exclusion also due to discrimination on grounds of sex, color, race, ethnicity, economic status, social, marital and family etc., or due to circumstances where the woman is a victim of domestic violence. In a country like Albania, gender-based discriminatory culture is not simply an issue of violation of human rights, but gender inequality represents a serious barrier to social inclusion. Victims of various forms of discrimination are divorced women, heads of households, women who are economically

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<sup>270</sup> National strategy of gender equality and domestic violence, 2007-2010, p.18.

<sup>271</sup> Surt Association: Women Integration & Prison, Aurea Editores S.L, Barcelona, June 2005, p. 23.



passive/housewives who are not protected by the employment legislation, victims of physical, psychological and sexual abuse within the family, ethnic minority women, minors, lesbian, transgender, former convicts, etc.

Below are some of the key factors noted in the dimensions of social exclusion which emerge from interviews with women sentenced to imprisonment.

#### **4.2.1 The poor economic situation**

Women, before their incarceration, in cases when they have been unemployed, have been very poor and completely economically dependent on their husbands. More specifically, based on the interviews with these women, about 45.5% of all women for which there is data, were unemployed before imprisonment, while about 44% of them have been employed. Unemployed women, in almost all cases, did not benefit from governmental economic assistance and therefore, were depended economically by their ex-spouses or their spouses. When asked why they had not sought to benefit from economic assistance, almost all of them replied with the argument that they were faced with lengthy and bureaucratic procedures. In some cases they did not know how to apply for the financial assistance, or their spouses have been very jealous and, consequently, they did not let them out of their homes. It is worth noting that during interviews with the women detainees and convicted, emerged that a significant number of them (about 83% of all women) were employed in the black market, while not benefiting neither years of retirement pension nor health and social benefits. Many of those employees, did hard physical labor, such as in agriculture, construction, sanitary workers, etc.

The data obtained from similar studies in several European countries on the situation of women in the labor market before they were sentenced, indicate that a significant proportion of women were passive or unemployed, or worked on the uninsured and badly paid jobs <sup>272</sup>. The data covers different time periods, but it clearly shows the trend of the situation of women in the labor market before incarceration<sup>273</sup>. These trends are very similar to those mentioned above for Albania. More specifically, in France, female prisoners in 2002, to the question on the employment situation prior to their incarceration, only 25% of them responded by saying that they had been

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272 Van Zyl Smit, D. and Snacken, S.: *Principles of European Prison Law and Policy*, New-York: Oxford University Press, 2009, p. 184.

273 Surt Association: *Women Integration & Prison*, Aurea Editores S.L, Barcelona, June 2005.

employed; 22% of women said that they were unemployed or passive, while 53% did not provide information on this issue. In Hungary, according to data from 2003, before incarceration, 37% of women did not have a profession, 8% were unemployed, 6% receive social assistance because of their health situation and 14% were housewives. Only 25% of women had a profession before their incarceration and 9% were employed in seasonal jobs. In Italy, according to data from 2003 it is evidenced that only 12% of women in prison were employed before incarceration, 30% of them were unemployed and not looking for work, 15% stated that they were looking for work and 12% were house wives. 28% of them have not provided data on this issue<sup>274</sup>.

#### **4.2.2 Low level of education**

The interviewed women have a low educational profile. More specifically, 31.5% of women detained and incarcerated have only 8-grade education, about 12% have only some education and the same number of women have not completed secondary education, 8.6% of women have graduated high school and just as many have graduated university, while 5.5% are without education. Many of the interviewed women highlighted some of the family factors that had impeded their completion of the elementary or high school, such as marriage and/or pregnancy at a young age. It is notable that a good part of the women were of mature or elderly age and had completed their education during the period of the totalitarian regime, a period not characterized by abandonment of the school, the children in general and girls in particular. Were we to compare these data with field studies in several European countries, it is apparent that there is a higher percentage of women detainees/convicts that had not completed the compulsory education. In Italy and Hungary, compared to male convicts, there are more women who have not graduated. While in England, women's education level is lower compared with women outside the penal institutions. In France, the data indicate the same low educational profile of women entering prison, among which there are many illiterate women or who have not completed compulsory education; a significant proportion of them are foreign nationals.<sup>275</sup> Thus, in England and Wales, 2002/03 data show that 74% of women in prison have dropped out school at age 15 or 16 years old and 39% of them do not have any qualifications whatsoever. In 2003, in France, 15% of women prisoners stated that they were illiterate and 45% had completed only their primary education. In Hungary, for the same year, 5% were illiterate, 20% had not completed primary education, while 45% had completed

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274 Surt Association: Women Integration & Prison, Aurea Editores S.L, Barcelona, June 2005.

275 Ibid, p. 26.

only the primary education. In 2002, in Italy, 5% of women were illiterate, 11% had not completed primary education, 18% had completed primary education and 37% had completed high school<sup>276</sup>.

Another indicator of great interest is the fact that in the population of women in Albanian penal institutions 12.5% of women belongs to the Roma minority and they had not completed the compulsory basic education for the above-mentioned reasons. Even other European countries for which we have data on women in prisons, such as Spain, indicate that 32% of Roma women were illiterate, 28% of them could read, but not write, and 25% had not completed their compulsory education.

#### **4.2.3 Marital status and their family and parenting responsibilities**

From the data obtained from interviews with women in penal institutions it is noted that about 44.5% of their total number is composed of married women, 24.6% single women and 18.5% divorced women. About 10% of women are either divorced or they killed their ex-spouses, or due to having committed a criminal offense and for that reason are placed in the penal institution<sup>277</sup>. 93.2% of all women have children from their marriage and the same percentage has two or more children in the adolescent age group. The data clearly show that women prisoners are mothers and women with family and parenting responsibilities. During the interviews with these women, they have pointed out how much their family means to them, especially their children. From the data presented in Chapter 2 of this paper, it is evidenced a significant number of children were placed in orphanages after their mother's imprisonment. Some of them were staying with parents/close relatives of their mother, whereas most of them stayed with their fathers and/or their father's family members<sup>278</sup>. For them, being a good mother means being near children during their development and growth. We will come back to this factor in this paper when elaborating on the argument that imprisoning women reinforces their social exclusion.

Based on the data from several European countries for the years 2002-2003 it turns out that most women in prison are single and most of them have children under the age of 18. Many of them are separated/divorced or are widowed and,

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276 Ibid, p. 18.

277 Only a very small number of them were divorced long before they were imprisoned.

278 For specific details and some of the stories told by female prisoners go to the second chapter.

consequently, many of them are heads of their households. In England and Wales, two thirds of women in prison are single; 1/5 of them are single parents; 66% are mothers with children under the age of 18. In France, 60% are single, 11% divorced or separated, 2% are widowed, only 25% live married or not married with a partner, and 46% have children. In Hungary, 31% are single, 19% are divorced, 7% are widowed, 26% are married and 18% live with a partner. 50% of the interviewed women have minor children. In Italy 41% of women are single, 14% are divorced, 7% are widowed and 56% have children, whereas many others of them are single parents.

#### **4.2.4 Gender based violence**

Frequency and the influence of the domestic violence has defined the lifestyle of women in prison. Based on the information shared during the interviews, female prisoners have experienced systematic physical and/or psychological violence perpetrated mainly by their husbands. Often they were hoping for this violence to come to an end, but, unfortunately, this has not happened to all those women who ended up in prison. This is evidenced also by the fact that, in most cases, these women have been married for a long time to their spouses. In many of the stories told, women have pointed out that they not only have experienced systematic violence in the family, but, oftentimes, their children have been threatened by their violent fathers who in some cases have endangered the very lives of their children and wives.

The most flagrant case was that of the convicted P.M. which stated during the interview that: *'...My husband was used to violating our own children and myself. I have endured it for a lifetime. He drank and beat me regularly. I married him when I was 15 years old. Even our daughter who has been in prison he threw down from the second floor. I reported him to the police, but he used to buy booze to the local police and they did not bother him. He almost had my son murdered with an ax...'* This woman, along with her daughter, was imprisoned for homicide of the former husband and father.

The fact sheet derived from records of offenses committed by women, is extremely disturbing. It is evidenced that in 40% of cases, women are charged or convicted of premeditated offenses against life, in some cases in collaboration as well as in combination with committing other criminal offenses. This significant percentage remains a concern for the nature of these offenses which have serious consequences, such as loss of life of a citizen, but as evidenced above, the reasons that led these women to the commission of offenses of homicides has been

precisely the issue of 'systematic domestic violence' perpetrated against them. Even in similar studies of convicted women interviewees in different European countries, it is emphasized the vital importance of experiencing domestic violence in the lives of many women in prison. Interviewers consider domestic violence as one of the two main reasons that steer women towards crime, such as murder or other violent offenses against their abuser and the penal acts carried out in cooperation with their abusers, partners in crimes related to drugs. This has been the case presented by the study of women offenses in the French prison system<sup>279</sup>. In the cases studied in Spain and Hungary, it is apparent that such experiences of extreme violence have had a great impact and have been crucial to the lives of women offenders. During interviews conducted in closed penal institutions in Spain and Hungary, the women interviewed claimed that they had experienced various forms of violence against them during childhood by their fathers or their relatives, and later also by the spouses/partners etc., and have interpreted these forms of violence as their personal problems<sup>280</sup>.

Even in the case of Albania, women who have experienced various forms of domestic violence were more than women who have committed crimes against their abusers.

It is noteworthy that, often, issues related to domestic violence and women as victims of the violence, have become part of discussions between specialists in the field and noted that state structures have not worked to effectively protect these victims and have failed in preventing crimes that resulted from domestic violence.

From interviews with many of the women who had the courage to report the violence to local police authorities, it is noted that oftentimes, the women not only are not protected from their abusers, but, rather, they are 'advised' to return to their family. That is so because the authorities have had friendly ties with the perpetrator in a joint community where they lived.

Albanian and foreign scholars in the field tend to support the veracity of the phenomenon of non-reporting the crime to the police, in our case from the victims of domestic violence. They claim that the victims do not report crimes to the police due to lack of confidence that their problem will be solved this way, or they do not want to have contact with the police or fear of any reaction on the

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279 Surt Association: *Women Integration & Prison*, Aurea Editores S.L., Barcelona, June 2005, p. 31.

280 Ibid.

part of the perpetrator. Lack of confidence is also related to the level of corruption among the police force<sup>281</sup>.

### **4.3 Further social exclusion upon the incarceration of women that are already detachment from normal life**

Before there is a brief presentation of an analysis of the main factors that lead to further social exclusion of women caused by their placement in closed penal institutions, it is noteworthy that the Albanian penitentiary legislation, as discussed earlier in this paper, supports and enables strongly the activities that contribute to the rehabilitation and reintegration of persons deprived of their liberty, including vulnerable groups such as women in prison.

Incarceration, in itself, causes the negation of some freedoms for both men and women sentenced to imprisonment, but, in the case of women, incarceration will be analyzed as a further social exclusion and, therefore, as deterioration of this situation that has its strands in the time before they were imprisoned. The data obtained from interviews with female prisoners, indicates clearly the gender nature of such factors such as loss of family ties especially with children, first experiences in dealing with the police and judiciary, difficulties towards their reintegration into society etc. The following factors are not an exhaustive list, but the most important ones, which were identified during the interviews with the women detainees or convicted and in the Albanian prisons.

#### **4.3.1 Police fetching/arrest - mark the first form of secession from 'normal' life**

Based on the experiences shared by women detained and prosecuted, facing the time in the police station and detention institution has been really shocking for almost all women. Besides the shock experienced from the fact that they were held by the police or brought to the pre-trial detention facility, many of the women interviewed indicate many serious infringements of their rights by the police at the moment of arrest or detention and, in an effort to get their confession of the charges or during their stay in the premises of the respective police stations. This research does not undertake to verify the claims of the women interviewed, but it is worth mentioning that the concerns raised by women in the detention facility and prison treatment staff has made during police detention/arrest have been numerous and chilling.

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281 Hysi, V.: Criminology (Kriminologjia), Tirana, KRISTALINA-KH, 2005, P. 205.

About her experience at the police station, a woman says: *'I received a very bad treatment in the police. It is easy to lose one's dignity there as communication there has been offensive. Under psychological violence, I have been asked to accept the charges. I asked for an attorney, and they did not provide me one...'*

A Roma woman said: *'40 civilians were brought in at midnight for being caught red handed in illegal trafficking. At the police station I was having an hemorrhage and had no female staff with whom to talk and ask for help ... I was kept 5 days in the police station, but my family was not notified and no one explained to me why I was arrested...'*

Another woman describes her experience in the police with these words: *'The time in the police station was a tragedy in itself. Here you can be beaten up, they told me ... I was left to urinate in the room and the next day they asked me to clean it up myself ... but I did not comply...'*

Many women shared similar stories, regardless of their social, education and cultural status. Just as there was a significant number of women who claimed they were treated in accordance with the rules by the police staff, apart from the fact that when women have a lawyer in the first moments of their arrest were almost rare. Many women did not even know their procedural rights at the moment of detention/arrest. They were informed later about it when they were accommodated in the detention facility or prison. Many of the interviewed women, recall how during their first months of the detention facility had isolated themselves, unwilling to go out from their rooms, had fallen into depression and just hoping to be released quickly. The procrastination with their legal proceedings worsened their psychological, mental and spiritual situation. Many of the women claimed that their arrival at the prison institution has been as a 'rest' and 'calming' of their situation, because finally they knew how long they would stay in jail, and especially those who had experienced domestic violence systematically, now that they were in prison felt safer. The analysis in this paper will identify the problems associated with the incarceration of women in penal institutions, as a further exclusion of them.

#### **4.3.2 Few prisons for women - their location away from the community, family and friends**

The small number of women in the prison system means that there are fewer institutions that accommodate detained and convicted women and, consequently, many of them are placed away from the community where they live, far away from



their family and close circle of relatives and friends<sup>282</sup>. In our country the only institution where pre-trial detained and convicted women are accommodated is located in Tirana. From the data obtained from interviews with women, apparently only 28.5% of women detainees and only 22.5% of sentenced women come from Tirana or its villages, most of them come from remote districts and villages in north or south of Albania.

During interviews, they noted a number of difficulties faced by families, children, relatives and friends to come to meet them. Some of these difficulties are: lack of financial resources to make visits to prison because many of the women come from families with very poor economic situation; families and relatives often lack the means of transport; some women have children scattered in various children's homes and these institutions are unable in terms of logistics, human and financial resources to bring children often to them; in a considerable number of cases, the parents of female convicts who have taken over the care of their female children, due to their age, and often financially and logistically speaking, are unable to bring children as often as women need to see them.

Many older women who do not have employment opportunities in prison or financial means sent from their families to buy phone cards, often times are assisted by their friends in jail or in a personal way by prison staff that gives their cards to talk with family and relatives. In conversations with them, they have identified their dire financial condition and how that oftentimes becomes a barrier to keep regular contact through telephone conversations with their beloved people and especially with their children.

Contacts with the outside world and especially relationships with families and their children<sup>283</sup> are of fundamental importance for women, the absence of these contacts leads to their isolation and has enormous social and psychological consequences for these women.

From surveys made by female prisoners in Italy, Germany, Hungary and Spain, some similar concerns are raised to those mentioned in the Albanian case. It is worth mentioning that there are also positive measures taken by the authorities

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282 Van Zyl Smit, D. dhe Snacken, S.: Principles of European prison law and policy: penology and human rights Oxford University Press, 2009, p. 184.

283 Relations Theory, treated in the first chapter of this paper, highlights the importance of building and maintaining these relationships as vital to the continuity of life in prison also after release of women sentenced to prison.



in some of these countries, such as overnight permits for housewives in German prisons. With this permission they are free to go and take care of children or care for a sick family member. In Hungary, there is a special project called soft executing rules (LER), within which it is provided that all women can go home for a weekend every month. They appreciate highly the initiative, as they feel that it strengthens their family ties and helps to establish ties with friends and community, therefore, it serves also their reintegration into society. Usually these are regimes of semi-open prisons. There are also experiences of open prison regimes coming from many European countries with consolidated democracies that allow women to work during the day outside the penal institution and only in the evening to return to the institution. We will return to the discussion of this issue when tackling the prison infrastructure and facilities in our country and the conveniences that convicted women should be provided with in order for them to reintegrate successfully into the society.

#### **4.3.3 Incarceration leads to loss of social status, it cracks family ties and impedes the fulfillment of parental responsibilities**

Besides women who have a low educational profile, especially in recent years it is noted that there is a growing tendency in involvement in criminality from women with higher education or those who are about to graduate university. They constitute about 10% of women sentenced to prison. For these women, detention and then imprisonment leads to interruption of their education or loss of their job. Moreover, 10% of women are divorced because they are deprived of their liberty. A significant number of women are abandoned by their families for the above-mentioned reasons or for other reasons, such as the poor financial status which renders it impossible to visit them or the immigration of children and/or of their family members.

Similar data reported by similar surveys in women's prisons in France, Hungary and England and Wales, where women, upon their detention, have quit their work, since a good percentage of women sentenced to imprisonment has worked in a high profile job and used to enjoy a very good integration into society. For the rest, is the loss of opportunity of continuing their vocational training<sup>284</sup>.

From interviews with female prisoners who have children in their care, it turned out that all of them are concerned about their children's welfare and development,

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284 Surt Association: Women Integration & Prison, Aurea Editores S.L, Barcelona, p. 37.

as shown in the second chapter of this paper<sup>285</sup>. In some cases their children live alone, with no adult at home<sup>286</sup>.

In about 5% of cases, before their incarceration, they were taking care of children with mental health problems and these women are extremely concerned that by not being close anymore to them, have more difficulties to provide the same care and specialized assistance for their problems. Many of them blame themselves for not meeting their obligations as mothers and feel desperate from the fact that they are not close to their children.

Some of them have concealed from their children the fact that they are now in prison, some others do not want to have meetings with their children, especially when they have young children, since they find it difficult to explain to them the reasons why their mother is in prison. These cases, when mothers prefer not to have meetings with their minor children while they are in custody or prison, are rare. Some mothers, especially those who killed their husbands, have problems with the custody of their children, as their former spouse's relatives try hard that they (the mothers) do not have any sort of relationship with their children.

In short, there is much evidence that indicate that imprisonment causes women serious problems in terms of 'the rupture' of their relationship with their children. Separation from children is for these women a source of stress, feelings of guilt, worry and anxiety and a feeling of failure in their duty of the mother, although many of them have not ceased to show their care for their children.

#### **4.3.4 The incarceration in a closed penal institution, does not help women to reintegrate into society**

From the official data presented in Chapter Two, is noted that about 77.5% of women in prison are detained under the measure 'detention in prison', 11% of them were tried in absentia and just as many were tried on their own recognizance. Until they receive a final form court decision, the female prisoners remain in detention on an average of 22.3 months. The average stay is a very disturbing indication that sheds light on the progress of proceedings and the speed of rendering justice to the of the alleged women offenders. A very disturbing trend is also the one evidenced from these data, that the judicial authorities have used

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<sup>285</sup> Chapter two.

<sup>286</sup> The case of A. P. is the most flagrant case as all four children live in a miserable hut and without protection or assistance from state agencies.

in a considerable number of cases, the security measure of jail arrest against women defendants, while the trend should be that this measure is used only as a last resort and for those cases when a woman poses a high risk to society.

From the data presented in Chapter Two it is apparent that about 64.5% of the total number of women have been rendered very long sentences, varying from 10-25 years in prison and about 18% of them have relatively long sentences, 5-10 years imprisonment, while a small number of women were sentenced to relatively short sentences of up to 2 years imprisonment or 2-5 years of imprisonment. Taking into account the data coming from similar studies in European countries and beyond, it turns out that the average sentence length there, varies from several months to 7 years<sup>287</sup>.

All these data highlight the fact that criminal justice authorities administer a harsh penal policy and, moreover, not at all sensitive to the specific situation of women offenders. Staying so long in detention facilities and prisons, makes the resumption of life where they left it for this women, extremely difficult in all aspects related to their families, children, education and employment.

#### **4.3.5 Women that are socially excluded, through their imprisonment are even further excluded**

Most women, as elaborated above, belong to the poorest social strata of society, therefore, they have been unable to provide or continue to pay a legal defense while awaiting the court decision and after. More specifically, about 65% of women on remand and those convicted, for who there is data available, are defended from personal lawyers during the initial court hearings. Later it turns out that these women are faced with demands by their lawyers for unsustainable amounts of money and, therefore, more than half of them have resorted to the legal defense provided by lawyers appointed mainly by the respective courts. About 35% of women have not had the necessary finances and are represented at the outset of trials by lawyers appointed mainly by the relevant courts.

Detained and prosecuted women raised these concerns: a) lawyers demand too much money; b) there are no regular meetings; c) did almost nothing to obtain the custody of their children or to resolve legal issues with which they are faced in order to maintain regular contacts with children, d) are not clear about their

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287 Quaker Council for European Affairs, "Woman in Prison", a review of the conditions of member states of the Council of Europe, February 2007.

legal cases from a legal perspective but also for a variety of other legal issues related to the fact that they have lost their freedom, f) lawyers have sometimes been under pressure from the other party of the case, and are withdrawn from the case, g) in some cases, women have pointed out of times when their lawyers have not been in the appropriate professional level in terms of their defense etc.

Even women who had appointed a lawyer by the courts were very dissatisfied with the service that, according to them, is not professional at all, but serves only as a formality, and that serves merely to complete the court procedures.

Thus, it is clear that women who belong to a group of neglected and economically poor, are excluded even further in terms of obtaining quality legal services, which has led to negative effects on their legal position in the investigation and the final form decision by the court.

Moreover, one should consider that, generally speaking, women are ‘speechless’ when it comes to confessing before public authorities their personal experiences<sup>288</sup> and, consequently, gender factors that have led them to the commission of an offense, are not made evident enough before the court. Here I refer to factors such as: the systematic experiencing of domestic violence; their duty to protect their children from this ongoing violence; their hopeless situation, having felt themselves abandoned by society and relevant state structures in their miserable social and economic state etc. Many interviewed women expressed their anger, as they have created the perception that judges although have evidenced the violence they have experienced, did not deem it reasonable enough to consequently pronounce lighter sentences against them. Therefore, their continual access that they should have to a qualitative legal representative is of crucial importance.

#### **4.4 Conclusions and recommendations**

From the above analysis of the social, cultural, educational and economic profile of women offenders in Albania, in addition to a comparison of the profile of women in some European countries, we reach into a consolidated conclusions that most of the women in the detention centers and prisons come from the category of individuals who have experienced a certain degree of social exclusion before they ended up in criminal detention institutions. The facts that were presented in this part of the paper, reinforce the idea that there are certain dimensions and factors

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288 Ardener, S.: *Defining Females*, London, 1978; Warall, A.: *Offending Women: Female Law-breakers and the Criminal Justice System*, 1990.

of social exclusion such as those relating to economic aspects, those related to social and cultural part of which women come.

More specifically, feminization and criminalization of poverty, criminalization of social and cultural factors, such as domestic violence, etc., which we clearly saw in the case of Albania, but also that of different European countries, point to these factors of social exclusion and, the more of these factors are intertwined with each other in a woman's life, the more the woman is intended to take the road of crime.

The analysis outlined above for the second hypothesis: that the detaining/imprisonment of women deepen their social exclusion and excludes those women who had not experienced social exclusion prior to their incarceration, brought to the attention of the reader the fact that the imprisonment of women makes very difficult the maintaining of strong links with the children and family, their return to normal life after release and reinstatement of the same social status after release. Also, their poor economic situation has made unfavorable the guaranteeing of quality legal defense.

Given that women in the prison system in Albania and beyond constitute a part of the population in the prison system, it is necessary to review the policies and practices followed for women offenders. The imprisonment of women has a negative impact not only for the women themselves, but mostly for their children.

In the spirit of the European Parliament Resolution of March 13, 2008 on the particular situation of women in prison and the impact of incarceration of parents in their social and family life<sup>289</sup>, as well as the resolution of the General Assembly of the United Nations of December 21, 2010, otherwise called 'Bangkok Rules'<sup>290</sup> all relevant international instruments are encouraged to address the causes and prevent the factors that lead to social exclusion of women offenders through sensitive policies and measures to situations and specific characteristics of women in the criminal process. These interventions should be part of a comprehensive policy of social welfare, of which, the penal policies are a part of.

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289 P6\_TA(2008)0102

290 Resolution A/RES/65/229, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/C.3/65/L.5>.



**CHAPTER****5****TREATMENT PROGRAMS FOR WOMEN  
DEPRIVED OF LIBERTY - AN ANALYSIS FROM A  
GENDER PERSPECTIVE****5.1 Introduction on the matters covered in this chapter**

Women that are apprehended/arrested by the police, after appearing in the hearing session which determines the measure of arrest and after receiving the appropriate decision by the relevant district court for the measure of ‘indefinite arrest to prison’, are accompanied to the remand institution Jordan Misja in Tirana, where they are accommodated in the women sector<sup>291</sup>. After undergoing all admission procedures in this institution, begins their hard road ahead. They remain in remand for a relatively long time awaiting a final decision of the court, being cut off abruptly from a life that usually was complex, difficult and with a lot of uncertainty in terms of their children that they have left behind.

To better understand what happens to the lives of these women in the care of the Albanian penitentiary system, this part of the paper, admittedly not in an exhaustive way, aims to present an analysis as to what extent the programs and services offered by the administration of prison addresses the specific needs and circumstances of women’s lives using the gender-sensitive theory that was presented in the first chapter of this paper.

Moreover, the analysis that was done to the treatment and programs of the

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<sup>291</sup> Till November 2014 this was the situation. Since December 2014 pre-trial detained women are placed in “Ali Demi” institution, the only institution in the entire prison system where both pre-trial detained and convicted women are accommodated.

institutions where women are placed as well as the data extracted from surveys conducted by various stakeholders who play a role in their reintegration into society, bring another perspective to further exclusion which befalls women upon their incarceration.

That said, this chapter tests, also the last two hypotheses that:

1. The current policies, strategies, measures and programs that aim at social integration or reintegration of ex-convicts are still insufficient if considered from the perspective of European best practices and internationally accepted standards in this field.
2. There are numerous obstacles to integration/reintegration of ex-prisoner women into society.

## **5.2 What are the patterns of profiles of women in prison?**

If we look at the social/cultural characteristics of Albanian women in the prison system, their economic status, educational level, their family situation and the type of offenses committed by them, we can clearly see the emerging of some models of profiles/groups of women in prison.

From surveys with women in two institutions mentioned above, it is evidenced the fact that almost all of them have experienced various forms of social exclusion before their imprisonment and during criminal proceedings, but their exclusion rates are not the same for all women.

The data show that there are three profile patterns or groups of women in prisons. One group is that of women who have experienced various forms of discrimination which inevitably would lead them to the path of committing an offense and this is the group destined '*to committing the crime due to exclusion*'. The other model is represented by a group of women who have been victims of systematic violence in the family and therefore have committed a crime against their abusers, which I call '*destined for crime due to violence*'. While the third pattern is represented by women who have chosen their own path towards crime, so they are those women who are not necessarily constrained by the circumstances of their lives to inevitably carry an offense, so this group is called '*destined for crime by choice*'.

### **5.2.1 Women destined 'for crime due to exclusion'**

The first group of female convicts, which are defined as destined '*for crime due*



*to exclusion'*, are women with low educational profile. Most of them did not finish compulsory education for various family related reasons. Some of them have no vocational training and have experienced poverty or family survival conditions from their adolescence. In many cases, these are women who have worked in the black market and therefore, did not benefit from social and/or health insurances. A significant number of this group of women were housewives and therefore economically dependent on their husbands or families. During interviews with some of these women, it was ascertained the fact that they are often faced with the jealousy of their spouses who have not allowed them to leave the community, and furthermore have been unable to go to the respective local authorities to ask for help, to make a request for work etc.

Most of these women have parental and family responsibilities. Also, it is noteworthy that almost all Roma women and girls in remand and prison belong to this group. It is interesting that a good portion of these women have been emigrants to neighboring countries, mainly in Greece and Italy and, while there, were accused and/or convicted of criminal offenses, mainly for human or drug trafficking.

Many of them have started their marital life at a very young age and therefore were unable to finish the compulsory education and started their lives as mothers at a very young age.

Women in this group are charged with or have committed offenses such as 'theft', 'fraud', 'forging documents', 'prostitution', 'exploitation of prostitution', 'drug trafficking', 'human trafficking', 'production and/or sale of drugs'. It is notable that some of these offenses have been committed in conjunction with spouses, partners or family members, often obliged by family circumstances and/or economic malaise in which they lived in.

There are many indicators that lead to the conclusion that this group of women has experienced more than a form of social exclusion, factors that have a direct impact on the commission of the offense by them.

### **5.2.2 Women destined for 'crime due to violence'**

The largest group of women consists of those women who have committed the offense of homicides against their ex-spouses, in response to experiencing systematic physical and/or psychological violence perpetrated against them and/or their own children. The factor 'physical and/or psychological domestic violence' itself, has led to the exclusion of these women long time before they

committed an offense, the procedures of clarification of the circumstances leading to the offense and then when they were sentenced. Generally speaking they have endured marriage/long relationships under this systematic violence, but, in a certain moment, when they felt like they could not put up with this kind of life anymore, they resorted to crime.

Almost all these women are abused for many years during their long marriage and the intensity of their physical abuse and psychological terror in which they lived, has made their lives very difficult and oftentimes the circle of the abused has expanded to include not only the women but also their children who have experienced severe violence incidents in which their mother has been the subject. There are many cases in which children as well are beaten by their fathers.

Battered women in the family, during the interviews have shown that their husbands have isolated them within families by not allowing them to be employed, to not come out freely in the community, or to continue their friendships. Narrowing of their daily activities only within the immediate family, has led to their isolation and forms of domestic violence have affected the lowering of their self-esteem. The fact that they were mainly housekeepers and dealt only with family and children responsibilities, has led to the situation that they are very dependent on their abusers. Asked how it was possible to endure this situation of violence, they responded by identifying various factors, such as their responsibilities towards children; their powerlessness to change the situation in which they found themselves; the fact that they had nowhere to go; their families had instructed them to stay by their husbands, in good and in bad; inability to find well-paid jobs to provide for their children in case they attempted to flee with them, so that their future looked gloomy and heading towards a dead-end; fear that even if they escaped from their abusing husbands, they would still find them wherever they would go, and so would cause trouble for their relatives or acquaintances etc.

Even when they reported the violence to the police in the community where they live, they are faced with the insensitivity of the police force toward these cases of violence. Moreover, there were times when they were 'advised' to return to their families, and that because the police officer was either friends with the perpetrator, or has prejudiced the woman who reported the violence. Many of the women who are abused come from the outskirts of cities or remote communities or from small towns and, consequently, people know each other, or come from subcultures where reporting violence remains a taboo issue and, therefore cases of domestic violence are not properly assessed even in those cases where this violence resulted in the loss of life of the perpetrator.

Given the aforementioned characteristics regarding the profile of this group of women, we can say that it is a distinct group of women who have resorted to crime as they were affected by domestic violence. It is worth to mention the fact that also during the criminal trial, domestic violence is not considered as the decisive factor that led a woman to the commission of the crime of homicide and therefore, the mitigating circumstances be taken in consideration in the pronouncing of the final form decision to imprisonment.

Return to the family after the release from prison for women victims of domestic violence, seems to be a problem in itself. Interviews in many cases have highlighted the fear that characterizes them for the resumption of life, especially for the full restoration of relations with their children, the nucleus family and the community in general. Some of them have lost contact and close relationships with children. The relatives of their former spouses have contributed to the breaking of these relationships, as their mother started life in a closed penal institution.

Given the above, I conclude that domestic violence has contributed to the isolation of women in the community when they were in the free world, where they have experienced various forms of exclusion and, moreover, has led to the commission of violent offenses.

### **5.2.3 Women destined ‘for crime upon their choice’<sup>292</sup>**

In closed penal institutions of Albania, only a few women belong to this group. In the remand they constitute one third of the total number of women, while in prison institution, there are only two cases of women of this group profile. These are women with a generally good level of education, which may have completed the secondary education or a given vocational training. In some cases they have even completed higher education and, therefore, come with an independent economic past. The part of women who have completed secondary or higher education, have been employed or self-employed in small or middle size businesses.

Generally they come from the middle class of society, from healthy families, with both parents and with a stable economic level. They have lived a good life in their childhood without any serious trauma. From interviews it turned out that they have been employed, but, despite this, they had greater expectations for their

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<sup>292</sup> These are women that were not necessarily pushed into committing a criminal offense by different social reasons or by certain family circumstances, such as systematic domestic violence.

financial situation, because they come from a middle class. Of course, even these women have experienced financial difficulties and a troubled life, but have not experienced the degree of exclusion of women in the first group.

The types of offenses for which they have been charged or convicted, among others are 'fraud', 'violence against police officers', 'counterfeiting money', 'falsification of documents', 'drug trafficking', 'leaking of classified information', 'exploitation of prostitution'.

Most of these women are relatively young and few of them are mothers. These women had an atypical lifestyle, 'not submissive', contrary to that of women of the first and the second group. They are more aware of their rights and often voiced their opinions against the injustices that they were done during their treatment in police stations, court hearings and, later, in the closed penal institutions. However, based on their statements during the interviews, it can be concluded that although these women resorted to an offense as an option, unlike the women of the first and second groups, even these were not fully aware of all the ramifications of the choice they had made, and more so in terms of the consequences of their actions.

Given the profiles of the three main groups of convicted women, it is worth analyzing their specific needs.

### **5.3 What are the needs regarding the specific situation of women offenders?**

The contemporary literature of criminology which has focused its attention on gender sensitivity in dealing with the problems of women in the prison system and their return to society, has identified the specific key aspects that push women towards criminality. Sensitive to gender theory is already addressed in the first chapter of the paper and in this part of it, I will zero in on particular problems women are faced with, associated with their profile and crimes they committed, to take them into account in the analysis of adapting the treatment program for specific women in penal institutions.

Such problems are: 1. victimization and abuse; 2. dysfunctional relationships; 3. mental problems; 4. low self-esteem about themselves and about what they can achieve in life; 5. deep economic and family problems; 6. issues relating to their parental responsibilities.

It is worth pointing out that in the contemporary literature of the field, all these problems are evidenced<sup>293</sup>, along with that of the drug abuse. It has been stated earlier in the paper that this problem is one of the characteristics of the profile of convicted women in Albania, while in Europe and beyond, is one of the problems that characterizes women offenders and that drifts them towards committing crimes<sup>294</sup>.

### 1. *Victimization and abuse*

As noted earlier in the paper, based on data from Albania and Other European countries, and beyond, studies have shown that the convicted women, compared to men, are more likely to experience physical and/or sexual abuse from the time of their childhood and later on during their marriage<sup>295</sup>. Estimates in some US states indicate that 32-75% of convicted women compared to 6-13% of the convicted men, have experienced domestic violence<sup>296</sup>.

Victimization in adulthood plays an essential role in the direct impact of the criminal behavior of women<sup>297</sup> and this finding is confirmed in a substantial part of the literature in the field of modern criminology<sup>298</sup>.

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293 The Invisible Woman: Gender, Crime, and Justice, 3rd Edition. Belmont. California, 2007; poverty, state capital, and recidivism among women offenders\* K Holtfreter, MD Reisig, M Morash - *Criminology & Public Policy*, 2004, p. 185-208.

294 Bloom, B.; Owen, B. and Covington, S.: "Gender Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders." National Institute of Corrections, Washington, D.C, 2003.

295 Principles of European Prison Law and Policy: Penology and Human Rights. By D. Van Zyl Smit and S. Snacken (Oxford: Oxford University Press, 2009, p. 184.

296 Bureau of justice statistics: Special report "Women Convicts", Washington, DC, 1999. McClellan, D. S.; Farabee, D. & Crouch, B. M.: Early victimization, drug use, and criminality: A comparison of male and female prisoners. *Criminal Justice and Behavior*, no. 24, 1997, p. 455-476.

297 The second chapter presents data on female prisoners in Albania as well as in some other European countries.

298 B. Bloom, B. Owen, and S. Covington. "Gender Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders.", Washington, DC, 2003; Covington, S.: The Relational Theory of Women's Psychological Development: Implications for the Criminal Justice System., in Zaplin, R.T. (Ed.): *Female offenders: Critical perspectives and effective interventions*, 1998, p. 113-128; Ritchie, B.: *The Gender Entrapment of Black Battered Women*, London, 1996.

## 2. *Dysfunctional relationships*

As was addressed in the first chapter of the paper, the theory of relations is supported by many researchers of the field<sup>299</sup>. Healthy relationships with others are very important for women. Unfortunately, often, in the Albanian case, convicted women have been victims of domestic violence, as evidenced by interviews with them. Consequently, their ability to build healthy relationships is compromised<sup>300</sup>. Moreover, in many cases, the dependency relations of the spouses/partners have contributed to these women criminal behavior through the criminal activity of the latter<sup>301</sup>.

## 3. *Mental health*

Convicted women are more likely than men to exhibit depression, anxiety, various disorders and self-harming behavior<sup>302</sup>. This paper does not claim to be presenting comparative data on mental health and other gender factors mentioned herein, but simply captures the experiences of women on all mentioned aspects and their impact on their lives. 10.4% of women in prison institution suffer from various mental health issues, such as: mood swings, panic attacks, personality disorders, anxious condition, trauma, post-traumatic stress etc.

The interviewed women stated that before their imprisonment, they did not have mental health problems, however, the institution's staff found that some of them did in fact have but were not diagnosed or treated medically. Another part of the women have experienced mental health problems during their incarceration.

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299 Gilligan, C.: In a Different Voice: Psychological Theory and Women's Development, Cambridge, 1982; Kaplan, A. G.: The "self-in-relation": Implications for depression in women, Wellesley, 1984; Miller, J. B.: Toward a New Psychology of Women, Boston, 1976.

300 Covington, S.: The Relational Theory of Women's Psychological Development: Implications for the Criminal Justice System, in Zaplin, R.T. (Ed.): Female offenders: Critical perspectives and effective interventions, 1998, p. 113-128.

301 Ritchie, B.: The Gender Entrapment of Black Battered Women, London, 1996.

302 Surt Association: Women Integration & Prison. Publication Type, Book Editor S.L, Barcelona, June 2005. McClellan, D. S.; Farabee, D., & Crouch, B. M.: Early victimization, drug abuse and criminality: A comparison of male and female prisoners, "Criminal Justice and Behavior" no. 24, 1997, p. 455-476. Holtfreter, K.; Reisig, M.D. & Morash, M: Poverty, state capital, and recidivism among women offenders. Criminology and Public Policy, 3, 2004, p. 185-208.

Studies conducted in the field of mental health of women in prisons, which have focused on measures that influence the behavior of female convicts, have identified that there is a strong link between mental health problems and recidivism, and that compared with convicted man, this link is not found in their case<sup>303</sup>.

#### 4. *Low self-esteem for themselves and for what they may achieve in life*

Based on the interviews with women and with the staff that works with them in penal institutions is evidenced that, when it comes to self-assessment, it is also meant the other concept, that of empowering women, increasing their self-esteem and skills that they have in order for them to achieve their goals in life. Asked how a woman is affected by her self-confidence in terms of achieving important things in life, prison staff held the view that the strong confidence in oneself and of the skills a woman has to lead a fulfilled life, are closely linked to keeping women away from the path of crime. This finding is also similar to field studies findings that stress as well the importance of the inclusion of this factor in gender sensitive treatment program for women in prison<sup>304</sup>.

#### 5. *Dire economic and family issues*

The data clearly point to the undeniable fact that female prisoners in Albania, as well as in many European and other countries, suffer from a very bad economic situation. The main reasons why female prisoners in our country are poor, are more diverse, such as low education and low profile job skills; and child care responsibilities and family as a whole; work on the black market and with very low salaries.

#### 6. *Issues related to their parental responsibilities*

From the data presented earlier in this paper, it is ascertained the fact that, in most cases, convicted females are mothers with many children and with family and parental responsibilities and that oftentimes, the stress of parental responsibilities is linked to the performance of certain types of offenses. This is the practice of other countries as well<sup>305</sup>.

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303 Benda, B.B.: Gender differences in the life course theory of recidivist: A survival analysis. *International Journal of Offender Therapy and Comparative Criminology*, no. 49.2005, p. 325-342.

304 Schram, P. J. & Morash, M.: Evaluation of a life skills program for women inmates in Michigan. *Journal of Offender Rehabilitation* no. 34, 2002, p. 47-70.

305 Salisbury, E.; Van Voorhis, P. & Wright, E.: Women's risk factors and their contribution to



Given the above, I reach into the conclusion that there is much support in the literature and empirical data to help us understand the importance of analyzing the issues of women from a gender perspective and in accordance to these needs, to build treatment programs for them in penal institutions and in their preparation for release and reintegration into society.

#### **5.4 To what extent do treatment programs match the needs of women in penal institutions?**

The following analysis is focused on both institutions where female prisoners were located till November 2014, since the transfer of pre-trial detainees to the institution “Ali Demi” took place only in December 2014. Both institutions have had a weekly treatment program with a series of different activities<sup>306</sup>. Thus, the PI Jordan Misja, women participate in individual and group therapy, religious rites, book discussions, entertainment and sports activities, and some professional courses such as tailoring, handicrafts and hairdressing. 32% of women work in the maintenance and cleaning in the kitchen. The institution provides differentiated programs for young women aged 18-21 years attended by four women; a special program for women with mental health problems under the care of which was a woman with mental disorders. There is also a special program for women with drug addictions, but, currently, in the institution there is no woman with such problems.

The Ali Demi prison, provides individual and group programs such as stress management, social skills, distance parenting, individual psychological treatment for those women with psychological problems, occupational therapy<sup>307</sup>, library attendance, religious, entertainment and sports activities. Vocational courses, such as: cooking, gardening, sewing, hairdressing, handicrafts, foreign languages (English, Spanish, Italian), hygiene, with a participation of 9-20 women for each course are provided. These courses are licensed by the Ministry of Labor, Social Affairs and Equal Opportunities and upon their completion, the female prisoners are provided with a certificate. This institution has also opened a special care

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existing risk/needs assessment for women convicts in Misuri dhe Maui, Presented in the annual meeting of the American Criminology Association, Los Angeles, 2006.

306 Official data on treatment programs were received during August-September 2011 by the staff of penal institutions and interviews with female prisoners.

307 The occupational therapy is the individualized treatment of patients with various mental health problems or certain physical disabilities to develop, to gain or maintain a daily lifestyle as well as to acquire certain job skills.



unit where 7 women with various mental problems receive a differentiated treatment with a special program, in separate areas. 47% of women are employed in occupations such as: sanitary, house painters, cook, tailoring, maintenance, hairdressing, storekeeper, working in greenhouses, etc. working in the library. Preparation for release programs are carried out with the women in the last 3-6 months of their stay in jail, and involves those women who seem not to have the necessary support, knowledge and skills for a successful interaction and return in the community where they live. Women are helped to get acquainted with the labor market, various bodies of employment as well as other social services. During January-August 2011, 50 women have participated in the program.

From an analysis of women's treatment in these institutions, we come at the key findings presented below:

***Finding no. 1:*** *The buildings in which female prisoners are held in, do not address their needs. The lack of diverse regimes that provide different levels of security, makes the lives of women in these institutions difficult.*

The premises of both institutions are extremely depreciated and not suitable for these women. Both institutions are adapted to accommodate women. They also accommodate adult men, as is the case of Ali Demi prison, while in the Jordan Misja prison, besides women, are accommodated also juvenile detainees, and there are also high security regimes for male convicts. Women who have stayed at both institutions, emphasize the fact that closed regimes of high security in the Jordan Misja prison, do not allow for a more flexible life for women, while almost cherishing the life outside the cells provided in 'Ali Demi' prison, despite the fact that even this building has many infrastructural problems. Lack of dedicated prisons for female convicts, along with the absence of closed, semi-open<sup>308</sup> and open regimes, allows not the creation of the conditions for a successful return of the women in the community after their release.

***Finding no. 2:*** *Assessing tools of the needs and risks of female convicts used in penal institutions do not address the specifics of women.*

Risk/needs assessment and treatment of the risk factors, are the essential tasks for closed penal institutions, as well as other public institutions, such as public health

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308 If the Albanian prison system would have semi-open and open prisons/regimes, the women would be given the opportunity that in the closing period of detention to have the right to once a month go to their family for the weekend in case of semi-open regime, and in case of the open ones, every weekend women could go back to their families.

service and mental health institutions. Throughout the world, in penal institutions in particular there is a standard practice by which it is assessed the risk of recidivism. Based on the data, these institutions determine the security level of person's incarceration. The decision of placing the prisoners in a certain level of security, is related also to methods of treatment programs and rehabilitation of the person concerned, since the emphasis is on rehabilitation and lowering the risk of recidivism and the basis of this approach, is the behavior of the person sentenced to prison<sup>309</sup>.

If in many European countries the risk and needs assessment and classification of prisoners in designated security levels, is made by the prison authorities, in Albania the decision about the security level for the convicted person is a competence of the relevant district court. European Best Practice of the prison system, shows that there are specially designed instruments to assess the risk and needs of persons deprived of their liberty, while in the practice of the Albanian prisons, there is a standard admission report for all detainees and those convicted which began to be implemented from 2009 and that it is improved over time.

This report contains general personal information: the family circumstances, the type of relationship built with family members, social and cultural level of the family, whether the inmate receives visits from family members or not; health records, including psychological and physical disorders; personality data, including personal balance, self-esteem and self-confidence, psycho-emotional state, degree of aggressiveness, etc.; criminal history, including the type of the offense, prior criminal experience, potential conflicts with other persons and types of conflict in case there are such; various activities of daily program, such as sporting and cultural activities as well as vocational courses, the type of job, education programs; probation service, which includes contacts with the Probation Service and NGOs and ends with specialist assessment, including identified needs and proposals for intervention. The admission report is filled out by the social worker and it becomes part of the psycho-social file that accompanies the detained person even in the prison if he is transferred there. This admission report serves two main purposes: first, to decide the room and the sector where the detained or convicted person will live, and second, to build a detention plan, including individual treatment programs. The report has been improved in the light of international best principles, as well as best practices streaming mainly from the Dutch prison system.

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309 Van Voorhis, P.: Classification of Women Offenders: Gender-Responsive Approaches to Risk/Needs Assessment", USA Center for Criminal Justice Research, University of Cincinnati, 2005, p. 1.

In many European countries and beyond, a significant number of assessment reports were originally created for men but they are also applied to the population of women in prison, without first assessing whether or not they are suitable for them<sup>310</sup>. There have been studies on the appropriateness of the classification practices applied for female prisoners in various prison systems<sup>311</sup>.

Studies conducted have reached conclusions such as:

- Many policy makers share the view that convicted females are less dangerous than the convicted man.
- Women have different needs from men, but these needs are rarely taken into account in the assessment system used by the penal institutions.
- Systems of classification of prisoners in various security regimes usually put women at higher security regimes than is needed for female prisoners.
- Rarely happens that the assessment reports of female prisoners be evaluated.

These studies have highlighted that the assessment instruments to measure the risk and needs of women, should better support the design of gender-sensitive programs so that women convicted of non-serious offenses would pass more easily from one security level to another<sup>312</sup>.

However, there are studies that have improved and adapted the classification and evaluation mechanisms to the specific needs of women prisoners in various countries in Europe and the US. These mechanisms are used to classify women into the appropriate level of security in penal institutions as well as to assess the level of risk in the communities where they live or will be restored to.

The evaluation and classification system is based on the individual characteristics of the convicted woman. Several variables are used to make a full assessment of the convicted women, such as:

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310 Bloom, B., Owen, B., & Convington, S.: Women Offenders and the Gendered Effects of Public Policy. Review of policy research, 21, 2004, p. 31-48.

311 Van Voorhis, P. & Presser, L.: Classification of Women Offenders: Gender-Responsive Approaches to Risk/Needs Assessment”, USA Center for Criminal Justice Research, 2001.

312 Ibid, p. 4.

- criminal record,
- education,
- financial situation/employment,
- family conflicts,
- other conflicts with acquaintances/friends,
- residency stability,
- history of anti-social behavior,
- history of drugs/alcohol,
- drugs/alcohol used at the moment,
- history of psycho-social conditions/potential issues with mental disorders,
- the actual level of depression,
- the actual psychosis,
- present antisocial attitudes,
- anger,
- childhood abuse,
- violence perpetrated against her in adulthood.

These variables highlight and separately evaluate the strengths and weaknesses, such as education level; family support; support by the circle of friends and relatives; self-assessment by women prisoners and assessment of their effectiveness; the level of stress in them; abuse experienced in childhood; physical abuse in adulthood; emotional traumas experienced in adulthood; sexual harassment in the adulthood; dysfunction in the establishment of relations with others. These variables are evaluated by a scoring system that determines the standing for each variable<sup>313</sup>.

It is worth mentioning that these variables are used for three different stages of evaluation and classification of persons sentenced to imprisonment in the criminal justice system, both by: probation service, when persons with judicial decision are placed under probation in terms of the implementation of this service for the implementation of alternative measures of punishment; penal institutions, where persons deprived of their liberty are sentenced to imprisonment and, lastly, the relevant judicial or prisons authorities in the cases when the prisoners obtain conditional release.

Contemporary studies in this field, indicate that in small penal systems, the lack of infrastructural facilities for women makes it impossible to make full use of these

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313 Bloom, B.; Owen, B.; Convington, S.; Raeder, M.: *Gender-responsive Strategies: Research, Practice and Guiding Principles for Women Offenders*, 2002, p. 28-30.

instruments of assessment and classification. Morash and Bynum (1999, p. 18) say that states which have only one premise for female prisoners, find it difficult to manage women accommodated according to different levels of security and also to address their needs such as aging, mental problems, long sentences or health related needs

The same can be stated also for the case of women convicts that when detained and until they receive a final decision by the relevant court, remain in the remand institution Jordan Misja which is a high security institution and where, in addition to women, pre-trial men are also accommodated who are being tried for serious offenses, and even juvenile detainees.

Moreover, the classification instruments tend to give more importance to the offense committed, as the main indicator of the dangerousness of women, but, meanwhile, researches show that the type of offenses women perpetrate, has little relation to the adaptation of women in prison and classification of women, primarily based on the type of offense, does not guarantee a successful return of women back into society after release<sup>314</sup>. More than to crime related factors, risks of women to return to the path of crime are associated with the lack of programs and supporting instruments that would help them for a successful reintegration into the community in which they live.

In conclusion of this part of the analysis, I recommend that the Albanian prison system, in designing the assessment instruments and their classification into different security levels, bear in mind the specific needs of convicted women. Such valuation reports will highlight the need for programs that address the needs of convicted women with the purpose of their rehabilitation for as long as they remain in penal institutions, supporting programs that will help them to successfully return to society after release and in this regard, the main factors are those of their role as parents and family ties. Lastly, assessment instruments, sensitive to conditions and specific needs of women, will assist judicial system authorities as well as the probation service to keep outside the penal institutions as many women as possible by supporting and supervising them through rehabilitation and supporting programs, in order to enable their living in the community.

Field researchers encourage that, if these instruments of assessment and classification are considering women, the attention will be focused on factors that are very important for the reintegration of women in prison, such as: their

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314 Shaw, M. and Dubois, Sh.: Understanding violence against women: A literature review, 1995.

children, their relationships with others, abuses experienced, health problems or those of mental disorders, job skills<sup>315</sup>. Given this finding, I suggest that there is a need to assess all the instruments of evaluation and classification of women offenders used by various bodies of the criminal justice system.

***Finding no. 3:*** *Most women who have committed violent offenses, are victims of persistent physical/psychological violence perpetrated against them and often against their children and that the traumatic/psychological problems and mental disturbances that these women have experienced even before incarceration, have remained unaddressed.*

About half of the convicted women have committed the crime of homicides, in most cases of their ex-spouse or other family members who systematically violated them. From their life experiences it is evidenced that these women have lived in a vicious circle of domestic violence. Factors that have inhibited them to break free from this vicious circle, were things like not wanting to tear apart their families and that for the sake of the children and in almost all cases due to the economic dependence on the husband. Most of these women have experienced post-traumatic disorders or mental health problems. In the above-mentioned institutions, there are activities such as individual therapy, psychological assistance, etc., However there are no ongoing services for handling the consequences of trauma caused by systematic physical violence experienced by these women. Gender responsive theory stresses that addressing the causes of trauma experienced by abused women in the family receives the utmost importance in preparing convicts for their release and rehabilitation<sup>316</sup>.

***Finding no. 4:*** *Most sentenced women in prison have children under their responsibility. The incarceration of mothers is much different from the imprisonment of fathers, and mothers incarceration impact on children is many times greater.*

Interviews revealed that 63% of women in prison are mothers with children and that 33% heads of households with children under their care. Most of them have minor children. The staff of institutions emphasized that women are more concerned about their children than for themselves during incarceration and that

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315 Van Voorhis, P. & Presser, L.: Classification of Women Offenders: A National Assessment of Current Practices. Washington, DC: National Institute of Corrections, 2001, p. 24.

316 Department of Corrections Commission on Women's Issues and the relevant policies office: Breaking the circle, rebuilding lives - gender analysis of programs and services for women sentenced to imprisonment in the county of Santa Clara, Santa Clara, 2008, f. 24.

this phenomenon is not noticed in the case of convicted men. During the interview, almost all women, mothers expressed concern that with their sentencing to prison, their children would suffer in various and significant ways the consequences of their incarceration. Most of them hide the truth from their little ones, and do not tell of their imprisonment. A part of their children abandon school or their performance there deteriorates and/or are faced with stigmatization/taunting by their peers for the fact that their mother is in prison and, in some cases, they are discriminated against even by their teachers. According to the information from the staff of institutions, female prisoners are visited less frequently than convicted men, for reasons that have been set forth earlier in this paper.

***Finding no. 5:*** *Women who participate in the activities offered by institutions, appreciate them greatly. When women actively participate in these programs, it is not only the women that benefit from them, but also the staff of the institution. However, there are women who, for various reasons, do not benefit from the various activities.*

Almost all interviewed women participate in activities that are provided by the institutions while understanding that these provide a structure to their day and keep them engaged, acquire new professional skills that they will need when they come out of prison. Staff added that the diverse activities create a healthy climate between them and the convicts as well as between convicted persons themselves. Moreover, women who participate in various treatment programs, have acceptable social behavior<sup>317</sup>.

However, almost all women with short sentences, admitted that they were not offered employment opportunities. This is because the number of jobs comes defined by the Directorate General of Prisons (GDP) and that should be respected by local institutions. This number is in no case equal to the total number of convicts in institutions. Of the 66 women convicts at the Ali Demi prison, only 31 women are employed, as this is the maximum number of the approved for employment. Meanwhile, in the Jordan Misja prison, the situation is even more problematic, since only 9 women are employed out of the 29 total women. Considering the fact that women stay in Jordan Misja penitentiary institution on an average of 18 months, awaiting the final form decision of the court, it is important that there be a variety of activities, including employment and vocational courses that ought to be offered to women at this stage.

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317 Bloom, B.; Owen, B. and Covington, S.: Gender Responsive Strategies: A Summary of Research, Practice, and Guiding Principles for Women Offenders, Washington, DC, Justice Department, National Institute of Corrections, 2003.



Based on the concerns expressed during the interviews by mothers, concerning their seldom meetings with their children, it was requested that institutions enable ongoing programs focused on mothers with children. The ‘distance parenting’ program, offered by Ali Demi prison is appreciated, but women stressed that it is insufficient, as it includes a limited number of convicted mothers, whereas in the Jordan Misja prison such a program does not exist.

***The finding no.6:*** *Women with various mental problems attend the programs and services offered in the special care unit. This pilot initiative for Albanian prisons, is positively appreciated by the staff as well as female prisoners.*

Since 2010, the Ali Demi prison has opened special facilities in which women with various mental problems receive differentiated treatment by a staff trained beforehand on the treatment and programs to be implemented in this unit<sup>318</sup>. The program of this unit is different from that of other units. The dominant activities are occupational therapy activities, individual psychological treatment, group work with social workers, medical treatment in accordance with their needs, a policy of disciplinary measures quite different from that applied in other sectors, etc.<sup>319</sup>

In these units there are 7 women who are treated for various mental problems. From this unit benefit not only the women with mental problems, but also for the entire institution, since their grouping in specific environments and the differentiated treatment they receive, avoids the problems that usually arise when these women are accommodated with other women that do not have mental problems. Even the staff of the institution highly appreciates the initiative, because also to their opinion, the existence of this unit contributes to a better management of these women.

***Finding no. 7:*** *Sentenced women need a comprehensive approach in terms of their preparation for release and for the time of their return to the community.*

Although that in the Ali Demi prison a good job is being made in preparing the convicts for release, most of the women interviewed think they are still disoriented in preparation for release. In the PI Jordan Misja, this program is not offered at all, although that based on the institution’s records it is evidenced that only 30%

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318 Albanian Helsinki Committee: Report on the situation of human rights in police directories and stations, in pre trial institutions and prisons, Tirana, 2010, p. 41.

319 Best experience of the Dutch prison system was brought into the Albanian prison system through the Dutch prison experts and AHC experts.



of women on remand end up in jail for January-August 2011, which means that a significant part of them return into society.

Many of the women interviewed emphasized their thorough lack of legal information about complex legal issues that await them after their release, including parental custody issues of their children. They claimed that they receive only a little legal assistance from the institution and from any NGO for these legal processes which they are or will be faced with. They stressed that legal aid programs would be a boon for them.

Individual psychological support should be intensified for any woman who is prepared for release, on issues such as behavior related to offenses committed by them, the consequences brought about by domestic violence, the consequences that resulted from the separation from family and especially that from children. These are very important issues that need to be included in individual psychological support program specifically for women preparing to resume their lives outside prison.

In addition to these topics, of much interest are also the critical issues, such as how women face successfully the anxiety, fear of resuming their lives outside prison, and the assistance that should be given to them in order to identify positive projects to resume their lives after release from prison etc. Individual psychological assistance, as part of their plan of release for such issues, is of paramount importance. In Albanian penal institutions where the pre-trial and sentenced women are kept, little work is made on individual psychological level and that for many reasons, but mainly due to the fact that the psychologists of institutions are overloaded with tasks of an ordinary worker of social care and that does not create spaces for providing professional psychological help in the right intensity and to focus on the issues that concern women who are preparing to return to life outside prison.

Although positive efforts are made by social workers in Albanian prisons to provide assistance for women in their preparation for release, yet little is accomplished in existing programs for specific issues of interest, such as preparing for job interviews, preparation for application for social services, to file a request for social housing requirement, to take advantage of the free services offered by the local government, social residential centers, NGOs etc. Assistance provided by social workers in preparing women for release, remains in the general picture and still does not focus on concrete individual projects for each woman that plans to return soon to society.

From interviews with women, staff and stakeholders involved in the provision of services in prisons, it was highlighted that there is no institutional cooperation program between penal institutions and local government bodies, probation service, police, NGOs providing services etc. This cooperation should commence from the imprisonment and continue with the return of the convicted women in the community. Until now, the preparation for release is realized mainly by the prison administration.<sup>320</sup> As mentioned above, mainly by social workers, while all stakeholders should become aware that this is a common institutional task to realize the return and successful reintegration of formerly convicted women in the community.

According to official information from the Probation Service<sup>321</sup>, the latter has signed 203 memorandums of cooperation with local government bodies and specifically with 8 city councils, 56 municipalities and 139 communes throughout the Republic of Albania. The purpose of these agreements with local governments is:

- to provide jobs for people living in their community, for whom the court has ruled an alternative measure of work on public interest;
- to support prisoners with other alternative sentences, for who the local government bodies are directly concerned to re-integrate into the community as well as to guarantee the public safety of the community.

Given the above, it is clear that there is a lack of cooperation between probation service, local government authorities and prisons for male and female convicts who are preparing to return to community.

In brief, training and mentoring programs in the scope of preparation of women for their release, in most cases are insufficient, uncoordinated and not sufficiently individualized. Insufficient, since there is not a common standard in the detention facilities and prisons. Preparation for release programs are not offered from the time that the women enter the penal institutions and from that point on. Also the

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320 According to official data in Ali Demi prison, there is one NGO that has offered its assistance in the last 4 years to help women after release. Ali Demi prison does not cooperate with other institutions or organizations that provide assistance for female prisoners after release. The program offered by this NGO assisted 11 convicted women who are currently employed, and a success story is considered the work done with 5 ex-convicts, 4 in Tirana and 1 in Fushë Kruja.

321 According to information passed via e-mail from Mr. Erion Ruka inspector in the inspection department and community services in the Probation Service, dated September 20, 2012.

range of measures and current interventions of these programs is still narrow, focusing mainly on only some aspects of teaching skills, such as professional courses and work in prison, as well as the ability to search for a job.

Efforts to a successful implementation of these programs remain uncoordinated with actors of criminal justice and other local government bodies and NGOs that provide various services. There is no coordinated cooperation not only in practical terms, but also in the conception/development stage of the program of preparation for release, which causes this stage to remain without a designated group of stakeholders responsible for the treatment and counseling program. Consequently, even if there is some cooperation between the prison and any NGO that provides certain services designed to help and support women who return to society after their sentencing, no woman is likely to be offered a comprehensive and individualized assistance by all state and non-state stakeholders to make concrete plans to prepare women for their release.

And, finally, the Albanian prison system should calculate the budget costs and sufficient and specialized staff in order to provide continual and sustainable services and support for the implementation of programs for preparation for release for all persons deprived of freedom and in particular to specific groups, such as women and children.

### **5.5 Suggestions for concrete intervention to improve treatment programs and services for female prisoners**

For each of the above findings, the following appears in the list of proposed interventions that will lead to significant improvements to services and programs for women in penal institutions, but also after their release:

| <b>Findings</b>  | <b>Recommended interventions</b>  |
|--|---|
| 1: The buildings in which female prisoners are held in, do not address their needs. The lack of diverse regimes that provide different levels of security, makes the lives of women in these institutions difficult. | The working group that is set up for the project of construction of new institution designated for women in the future, must take into account the specific needs of women in the construction of suitable facilities with different pretrial regimes as well as in closed, semi-open and open prisons. |

| Findings  | Recommended interventions  |
|---|--|
| <p>2: Assessing tools of the needs and risks of female convicts used in penal institutions do not address the specifics of women.</p>   | <p>Albanian prison system should take into account the specific needs of women in prison in the designing of assessment instruments and their classification into different security levels. Such valuation reports will highlight the need for programs that address the needs of women in prison with the purpose of their rehabilitation for as long as they remain in penal institutions, supporting programs that will help them to successfully return to society after release and the main factors here, are their role as parents and their family ties.</p> <p>Evaluation instruments, sensitive to the specific conditions and needs of women, will assist the judicial system and the Probation Service to keep outside the penal institutions as many women as possible by supporting and supervising them with rehabilitation and supporting programs in order to enable their living in the community.</p>  |
| <p>3: Most women who have committed violent offenses, are victims of persistent physical/ psychological violence perpetrated against them and often against their children and that the traumatic/ psychological problems and mental disturbances that these women have experienced even before incarceration, have remained unaddressed.</p> | <p>The administration of institutions must provide specialized services to address the consequences of domestic violence perpetrated against women through the establishment of a network of stakeholders who provide services in this area</p> <p>The development of a specific program and its implementation with a consistence and persistency with women victims of violence, by the psychologist of relevant institutions</p> <p>GDP should review the way how psychologists are utilized in daily practice in penal institutions. They must be freed from the routine loads of regular employees of social care and focus only on individual cases of persons deprived of liberty who have specific needs to be addressed in order to get an individualized treatment by the psychologist of the institution.</p> <p>The development and implementation of a specific training with elements of the gender sensitive theory where all staff working with women is trained by prison training center in collaboration with various stakeholders in the field.</p> <p>GDP and institutions should establish institutional cooperation with the National Council for Legal Assistance to ensure them a free and effective legal aid from lawyers trained in domestic violence as well as with NGOs that provide free legal services and that are specializing in this direction.</p> |

| Findings  | Recommended interventions  |
|---|--|
| <p>4: Most sentenced women in prison have children under their responsibility. The incarceration of mothers is much different from the imprisonment of fathers, and mothers incarceration impact on children is many times greater.</p>   | <p>The staff must prepare basic legal information about the rights that women have concerning the custody and other matters related to their children</p> <p>The institutional cooperation that exists with orphanages enable the taking of measures to place children in institutions that are located in the vicinity of the penal institutions where their mothers are kept, to enable regular meetings between them and their convicted mothers</p> <p>The development of child-friendly brochures for children with imprisoned mothers, will contribute to breaking down of some concepts that children have for their convicted mothers and will help them cope with stigma in society and schools.</p> <p>Institutional cooperation can be established also with schools and psychological services for them, in order to help the children with mothers in prison.</p> |
| <p>5: Women who participate in the activities offered by institutions, appreciate them greatly. When women actively participate in these programs, it is not only the women that benefit from them, but also the staff of the institution. However, there are women who, for various reasons, do not benefit from the various activities.</p> | <p>GDP and the Ministry of Finance should consider the specific needs of women by providing them with equal employment opportunities regardless of the length of their sentence.</p> <p>Treatment programs, such as distance parenting, should be guaranteed both in the remand and in prison for mothers with children. A concrete cooperation should be sought by the prison administration with NGOs or other national bodies to enable this program to all mothers in need.</p>  |

| Findings  | Recommended interventions   |
|---|---|
| <p>6: Women with various mental problems attend the programs and services offered in the special care unit. This pilot initiative for Albanian prisons, is positively appreciated by the staff as well as female prisoners.</p> | <p>Such positive initiatives should be continued and consolidated also in the future in the prison system, especially for female prisoners who, as described earlier in the paper, need differentiated services and programs in accordance with their mental problems.</p> <p>Calculation of sufficient human, financial and logistical support will ensure the continuation of this initiative. The support of the instruction of the staff in penal institutions by expertise from European best practices in this area, ought to continue well into the future, since this is a brand new initiative for all the prison system.</p>  |
| <p>7: Sentenced women need a comprehensive approach in terms of their preparation for release and for the time of their return to the community.</p>  | <p>Preparation for release should not be regarded as a program that ought to be started only in the last months of the sentence of women in prison, but rather since pretrial considering that a considerable number of women return to society without going to jail.</p> <p>There needs to be an awareness from the part of the Probation Service and some local authorities to build a network of institutional cooperation in terms of their responsibility of prisoners return to society and their oversight in the initial phase.</p> <p>Concrete programs of cooperation should be established between the GDP, penal institutions and local employment offices, offices under the communes and municipalities that offer social services for the vulnerable categories and state police, where the female convict will return after release as well as NGOs that provide various services</p> <p>Developing information packages to help women return successfully into their communities</p> <p>Exploration of options offered for fast relief to women who are in urgent needs such as housing or some initial financial support for the beginning of life in the community.</p> <p>GDP should calculate sufficient human, financial and logistical support that would ensure implementation in a comprehensive and individualized way of programs for the release of female convicts.</p> |

## 5.6 Conclusions

While the prison itself is a punitive measure, programs and services are a crucial opportunity for effective treatment interventions in the lives of women and, in the long term, are determining factors in their successful return to society. As a result of the research for the purposes of this paper, it turns out that the programs and services are not only good for women in prison, but also the life and climate in the institution. Consequently, even institution's staff benefits. When there is an intervention with services and programs that address their specific needs, the female prisoners are trained in many respects, supported and rehabilitated, but the climate of feeling safe as well as the security in the institution is enhanced. Moreover, with the realization of women's successful return as responsible citizens that abide by the law, the penal institutions fulfill their mission toward society itself.

Based on the empirical data and best European experiences, and beyond, I would like to highlight the fact that the programs and services that address the needs of women and that are sensitive to their gender, are key to the rehabilitation of women in prison and one more guarantee for their successful return to the family and community.

The main challenges in the implementation of programs sensitive to gender, pertain not only efforts to ensure sufficient resources, but also to ensure an institutional environment that supports the rehabilitation of women. It remains very important the continuous training of staff working with female prisoners in order to obtain more effective management skills of their specifics. I recommend the consolidation of the good practices observed in the Albanian penal institutions where female prisoners are held, that there be a staff of men and women, in which, of course, women as staff and prison specialists predominate in number and functions in the internal regimes in the institutions/sectors where female prisoners are accommodated.

And last, but by no means least, to face the challenge of good management of women in prison and especially in their preparation for successful return to society, an institutional cooperation between penal institutions is needed where female prisoners are held, together with many other actors of the criminal justice chain.





## **CHAPTER 6**

### **A COMPREHENSIVE APPROACH TO GENDER-SENSITIVE POLICIES FOR WOMEN WHO VIOLATE THE LAW. CONCLUSIONS AND RECOMMENDATIONS**

#### **6.1 The matters addressed in this chapter**

In previous, chapters we discussed the profile of women offenders and proved the hypotheses posed at the beginning of the study about the social exclusion of women and girls before they were imprisoned during detention and later in their efforts to reintegrate them into society. Further, the analysis is also concentrated in the scrutinizing the legislation, its implementation in practice in the prison system and the administration of criminal justice by all stakeholders of the criminal justice chain where the subject is a woman offender, to watch closely how gender sensitive are all these components. The profile of women offenders as well as their distinctive traits, require greater attention by all stakeholders of the criminal justice chain. This chapter offers recommendations on all important aspects of the criminal policy of gender-sensitive pertaining women offenders.

In the analysis offered, a special place is left to the specifics of the stories of women who killed their abusive husbands. Interviews with women detainees and convicted in Albanian prisons, offer a unique view of the lives of women who murder their abusive husbands/partners. One thing that stands out in these interviews is fear, fatigue, stress and giving up of their lives during certain moments of their lives.

Women who have shared their painful stories in this study, are living proof of the failure of a series of links and social system state bodies that address various aspects of violence against women perpetrated by their former spouses/partners.

Many of the interviewed women have stated that early in their story of abuse, they have attempted to appeal to the different social systems, such as their family and that of their abusers, the local police, different specialists of the healthcare, friends and other relatives etc. In almost all cases treated in this paper, these social systems could not prevent what would happen afterwards: the death of the abuser, sentencing with imprisonment of the battered woman and children left without parents close to them after this painful event.

Many of the interviewed women, indicated that they attempted to avoid violence, by going back to their parents, asking for help to the relatives of their abuser in the hope that they could influence his behavior. Often they pleaded for help from friends and other relatives, and in some case, they have reported to the police or some NGO that provided counseling to battered women. Some of them have gone for treatment of various health services for injuries that have been caused by the actions of perpetrators of violent attacks. These survival strategies have demanded that women be bold, determined and creative. Unfortunately, based on the resulting interviews, cases are identified that show that their efforts to survive and come out of situations of systematic domestic violence for themselves, but often also for their children, have fallen on deaf ears, have encountered indifference, hopelessness and, what is more serious, the insensitivity of certain state structures which should on the contrary be effective and proactive in taking appropriate measures to prevent serious situations as a result of domestic violence.

The inability of social systems to effectively help these women has created in them the conviction that they have no resolution to their big problem which questions even their own lives except taking that lethal action against their abusers or otherwise, sooner or later they must accept their own death or serious injury of children in their care.

Taking not into account just the actual number of battered women who kill their abusers, but also the extremely harmful effects on children, their families and beyond that in terms of the consequences of the whole society, the question arises: what can be done to reduce this phenomenon, to prevent systematic physical and psychological violence that also other women may experience, in order to prevent violence and trauma that other children may experience in similar situations as well as to prevent the turn to the road of crime of the lives of these women?

Although in the last decade there have been substantial and important developments for the prevention and fight against the phenomenon revealed

domestic violence, ranging from the legal framework that has come to improve and along with it the institutional reforms have been undertaken and are enriched services to women who are victims of domestic violence, the findings of this study highlight the need for further reforms in public policy, changing the way of thinking of policy makers and professional behavior of relevant authorities of the executive and the judiciary powers.

## **6.2 A brief overview of contemporary literature for battered woman syndrome**

The attention in many countries for about a half-century has focused on vulnerable and somehow repressed groups in order to address problems within social justice reform. In the early '60s abuse against children began to be recognized as a social issue, especially through the work of pediatrician Dr. Henry Kempe (1962) and his book 'Battered child syndrome'. With the emergence of the women's movement, also the domestic violence against women would be recognized as a social problem.

Lenor Uolker (Lenore Walker, 1979) founded what is today known as the phenomenon of 'battered woman syndrome' which is used as a tool to explain how and why battered women stay in abusive relationships. Over the years, the Walker's research works and that of her followers has led to further development of the theoretical approach to the phenomenon. This researcher and others have identified a set of psychological characteristics of women abused physically and psychologically. Walker (1979, 1982) has evidenced that battered women come from different economic and educational backgrounds, however, they are usually economically dependent on their abusive husbands. They believe that men who beat them, can even kill them. Moreover, possessive and controlling behavior of their abusive husbands, isolated these women from their families and friends.

In order to come up with a policy that is sensitive to gender specifications, in the first place we should be aware of the characteristics of battered and psychologically abused women. For some of the characteristics of battered women, Walker (1979, p. 31) says: *'The battered woman has low self-esteem, believes all myths about violent relationships between husband and wife, is traditional in terms of the family, believes strongly in the unity of the family and prescribed stereotypes regarding gender roles, owns responsibility for the actions taken by the abuser, suffers from the feeling of guilt, although she denies the terror and anger she feels, appears passive to the world, but has the power to manipulate the circumstances in which she finds herself, in order to prevent the escalation of violence and situations*

*that can cause her death, reacts following a severe stress, accompanied by psycho-physiological complaints, uses sex to establish intimate relationships, believes that no one is able to help her solve her troubles except herself’.*

Then, what are the two most important characteristics of a violent relationship with which the violated woman has decided to live? Based on the consulted literature of the field, but also from the stories told by Albanian women convicted for murdering of their husbands, emerge two main features: repeating pattern of violence and feelings of helplessness with which the violated wife starts getting used to.

During the phase of reoccurrences of violence, tension is built between husband and wife, after minor incidents of violence are happening and the woman is more vigilant not to escalate the violence. During this phase, women experience constant trauma and develop mental disabilities in several respects, they develop also the ability to detect the risk that comes from the perpetrator of violence.

Tension building phase is followed by the phase of ‘acute battering’, during which violence escalates and the woman is subjected to violent incidents of battering. Within this cycle, the victim’s intention is only to survive and often she is afraid and feels powerless to counter these violent attacks.

Later on follows the phase of repentance of the perpetrator who understands that he has gone too far and seeks reconciliation with his battered woman. This period of repentance and calm, partly explains why women stay in these relationships full of tension and violence. Confirmations of love and promises that violence will not reoccur, convince the wife to live with the abuser, despite the experienced violence. Moreover, as outlined above, battered women have traditional views of the role of women. Her full commitment to family unity makes her even weaker to easily obey the abuser.

The abuse continues, reoccurs, until the stage of repentance occurs less and less often and these periods go towards complete extinction. Stages of repetition of the violent incidents occurring under the same model and, consequently, the women immediately recognizes when the next battering incident is about to happen. The frequency and escalation of violence increases. Walker asserts that for women to be classified as battered, the battering cycle should be repeated at least 2 times.

Besides the repeated battering cycle, Walker (1979) used the theory of Martin Seligman (1975) ‘learned helplessness’ to explain why women stay with their

abusers. Seligman described the damage that is caused by the lack of the perceived control by an experiment carried out on dogs. He put the dogs in cages equipped with devices that caused them a state of shock, to teach them that they cannot avoid or control the shock. When these same dogs were given the opportunity to flee from the aversive stimulus, they did not leave, but remained fearful and passive and endured as stoics the adverse stimulus. Based on this experiment, Seligman suggested that people who experience depression or violence, similarly can learn to be helpless. Therefore, regardless of her efforts, the battered woman cannot stop and/or control violence perpetrated against her. Consequently, they fall into a state of depression and learned powerlessness. Various scholars in the field conclude that it makes the battered woman believe that nothing can change her situation. This situation worsens for the battered woman after she is threatened by her abuser, if she tries to leave or asks for help, she will experience more violence.

So, the cycle of violence and learned powerlessness, helps us to understand why battered women continue to live with their abusers. This context of experienced violence by battered women helps the main stakeholders of the criminal justice such as prosecutors, lawyers and judges to justify their perceptions on issues that they address when the defendant is a battered woman who has killed her husband, partner or boyfriend.

For many individuals who recognized the battered woman syndrome, the word 'syndrome' probably provokes discussion stemming from different perspectives, and perhaps misunderstandings and sometimes also concerns. Thus, for example, among feminists is discussed the fear that maybe the term 'syndrome' leads to labeling of battered women as abnormal and, therefore, public opinion justifies the victim/perpetrator and exonerate her from responsibilities regarding the newly created or/and accumulated situation for the battered woman. In medicine and psychology, the term 'syndrome' is a combination of several clinically recognizable features, signs (observed by someone other than the patient), symptoms (reported by the patient), phenomena or characteristics that often occur simultaneously, so that the presence of one or more characteristics serve as an alarm indicator for health care providers regarding the possible presence of other characteristics. In recent decades, the term is used outside of medicine to refer to a set of phenomena, seen in combination, as is the case of the battered woman syndrome.

For defense lawyers who use the battered woman syndrome to explain that their clients' actions were actually reasonable, the biggest challenge with which they are encountered during the defense, is exactly this ability that they should have to avoid any adverse implication that even the term 'syndrome' carries in itself

during their reasoning in the court session. Judges, prosecutors and lawyers should know this syndrome, without relying only on grounds that the woman stands with her abuser, because it is precisely this abuse that has damaged her ability in making a rational decision to leave the abuser. The most difficult part to be understood by the actors of the judiciary is exactly the lethal action committed in circumstances of a self-defense as a reasonable action, as the woman in her previous decisions reflected the absence of reasonable actions as may be the decision to leave the abuser, thus avoiding lethal action against the latter.

Thus, instead of focusing in the debates that the term ‘syndrome’ can evoke, I think that it is better for all actors involved in the judicial system, to consider the battered woman syndrome as backlash and characteristics of a normal woman, who finds herself in damaged and dysfunctional relationships within the reality that the everyday life offers to this woman. So, larger defects associated with the battered woman syndrome should be understood in the context of the relationship between the abuser and society itself.

Let’s look in more detail in the analysis below how the stakeholders of the criminal justice approach properly this phenomenon and how to respond more effectively to social justice within the scope of criminal justice.

### **6.3 A criminal policy sensitive to the peculiarities of women who commit offenses**

#### **6.3.1 The battered woman syndrome used in litigation**

*A.P. comes from a family of a poor economic situation in the village Baldushk of Tirana. She has been married for 25 years. She has 5 daughters and 2 sons. 2 of her daughters are married, whereas the other five of her children, at the time the crime was committed, were minors. Before A.P. was convicted she was busy all the time with work in farming and cattle. Her husband drank too much alcohol and was unemployed. She stated that together with her children was subjected to physical and psychological violence by her spouse for a very long time.*

*The events that led to the murder of her husband, were as follows. One day, in the family of A.P. had come to visit some friends with whom they also had marriage ties. They had had a good time together and in the afternoon the guests had left. Thus, in the home had remained the 2 spouses and their little girl. Between spouses had erupted a bitter conflict for reasons of jealousy on the part of the victim, who had*

*dragged forcefully out of the house their little daughter and closed the door from the inside. Right at this moment, at the height of exacerbation of the conflict and during the physical altercation of spouses, AP picked up a piece of wood from the fireplace and struck with it her husband in the back of his head, leaving him dead on the spot. After this event, A.P. took in their little daughter who had been waiting behind the door, and told her about the murder she had committed and ordered her not to tell anyone about it. Later on, both had washed away the blood and put the victim in bed. When other children came, they told them that their father was sleeping and at night when the kids were asleep, they both carried the body near the forest where they dug a pit and buried him. The next day A.P. told the children that their father was gone to Greece, but, with the passing on of days, children and brothers of him were constantly asking about the victim. Relatives of the victim notified also the police. In these circumstances, A.P. turned herself in at the office of the police inspector of the area and confessed the crime she had committed.*

*The prosecutor declared the defendant A.P. guilty for the crime 'deliberate homicide' and, under Article 76 of the Criminal Code, asked for a sentence of 12 years in prison.*

*The defense lawyer asked for changes in the legal qualification of the offense by qualifying it as a crime of 'homicide committed in conditions of deep psychological shock' provided by Article 82 of the Criminal Code.*

*Meantime the defendant has begged for mercy and summary trial. When asked in court, A.P. has shown that the impetus that led her to the commission of the crime has been precisely the maltreatments, threats, constant conflicts stirred by her husband, the resulting trauma of which led to the commission of the offense.*

*Children have confessed before the court, the conflicting relationship and constant bickering between their parents. Also, these problematic and conflicting relationships have been reported before the court also by the police inspector of the Baldushk area.*

*In the trial testified also the siblings of the victim who confessed that they were not aware of the strained relationships between the defendant and the victim and that they were not aware that the defendant was being mistreated by her husband. While A.P. had confessed about the episodes of violence, which will be mentioned below, she has also claimed that she had complained several times to the brothers and sisters of the victim and that they had said that they could not intervene because the victim did not heed to them.*



*At the stage of final conclusions of the trial on this issue, the defense lawyer asked for the psychological examination of the defendant. This request of the lawyer was turned down by both the prosecutor and the court for the following reasons:*

- *Such a claim was not required in any stage of criminal proceedings or at trial.*
- *The defendant had not displayed in any case disorders of mental balance, not even before the crime.*
- *At the beginning of the trial the defendant and her lawyer filed a court request for an expedited trial, acknowledging the validity of the acts and that it was not necessary of take new acts.*

*Also, in the final conclusions, the defense of the defendant sought to change the legal qualification of the offense, from that of premeditated homicide, to that of homicide committed in conditions of profound psychic shock, provided for in Article 82 of the Criminal Code.*

*Based on the evidence that the court administered, it found it not legally motivated and rejected this request. The Court considered as mitigating circumstances the following:*

- *The fact that the defendant has no previous criminal record.*
- *She appears remorseful about the offense committed.*
- *The composition of her family (has 7 children, some of whom are minors).*
- *Her economic difficulties.*

*The court ruled guilty the defendant A.P. for committing the offense of ‘willful homicide’ and under Article 76 of the Penal Code sentenced her to 11 (eleven) years imprisonment.*

*A.P. appealed the decision of the first instance court to the appellate court, Tirana, which in turn decided to uphold the decision of the district court Tirana.*

*During her stay in pretrial and later on in prison, she has confessed to have been physically and psychologically abused systematically by her husband. During conversations and consultations with her, from the first moments of entering the detention facility and later on in prison, social care workers of these institutions have noticed her major concern for her children who are left on their own after her imprisonment. Neither the family of origin of A.P. nor her husband’s family are caring for her children.*



*During the interview for the purposes of this paper, A.P. tells in tears several episodes of violence exercised by her husband against her. She says that most of the time he drank alcohol and this was one of the reasons that made him feel jealous and suspicious that maybe A.P. cheated on him. After wrangling that began on the basis of jealousy, he exercised physical violence on her, hitting her and even causing her different wounds.*

*She tearfully tells that at the beginning of their marriage he was a very good husband and very caring both towards her and towards their children and that their problems started after he began to drink alcohol.*

*She talks about her health problems and how her older children, mostly her daughters, were forced to take care of household chores, go and chop wood in the forest as well as care for their cattle, as the sole source of income for the family. In the beginning, her husband worked in the forest, chopping wood to sell it, but, having started drinking, he cared not even for himself anymore, let alone the economic situation or their children's welfare.*

*A.P. shows that episodes of violence involved not only her. Her husband violated even his own children that in most cases took sides with their mother, because they believed that their father was bringing false charges against her. He violated the children in many cases even for petty things such as for example why they had not done the housework, why they had not cooked the food he wanted, why they intervened during his disputes with A.P. and why they took her side.*

*A.P. recalled an occasion when he had slammed on the table their little son. The son had started to bleed from the nose, had urinated involuntarily and crying incessantly. The father was not feeling at all remorse about this situation. A.P. tells that he used to hit the children and later the defendant, and did not let A.P. to care for the children he had battered. The father hit the children also with nearby objects, such as dishes, household furniture, etc.*

*She claims that she had complained several times to the brothers and sisters of the victim regarding the violence perpetrated from her husband and that they said that they could not intervene because the victim did not heed their words. Complained she had also to her family of origin and had left several times her home together with the children to go to her parents, but he had come to pick them all up and threatened to kill her if she abandoned him again. The only solution that A.P. and her children had found to manage the situation, was to keep calm and the fulfillment of the whims of the victim when he came home. She and the children could hardly wait for the victim to fall asleep, because only then there was peace in the family.*

*Regarding the moment of the homicide, A.P. tells how the day she had had over for lunch at home the relatives of the husband, during lunch they had had a considerable amount of alcohol and immediately after the guests had left, he had started as always with a host of accusations about her morale and had seriously insulted her. Also, he had hit their little daughter that was there in the room with them and had dragged her out of the room. After that, when they were left alone, he had begun to hit her and that in the fight, she was forced in self-defense to hit him with a piece of wood that was near the fireplace. She says that she hid the body as at the moment, due to the shock and fear of being imprisoned and therefore being separated from her children she loved so much, that had seemed the best thing to do.*

The above case is one of many cases of Albanian women and girls who systematically get violated by their husbands/partners, but that in certain situations, under the conditions of the fear-influenced perceptions of the reality, typical for a battered woman, take lethal action against their abusers.

Fear-influenced perceptions of reality from the battered woman, her alternatives and justification of her actions, are at the core of the case of self-defense. By analyzing alternatives, we come to understand the dynamics that lead women to lethal action against their husbands. This will help judges decide whether the battered woman syndrome is a helpful tool for the assessment of responsibilities in such cases.

In many jurisdictions, defense lawyers have two ways of building their case to obtain a not-guilty verdict for their clients in the case of women who kill their abusive husbands: self-defense or mental disability. Given that domestic violence is a social problem in many countries all over the world, in recent years self-defense is used for pleading innocence for systematically abused women by their husbands, who in turn get killed by their wives. A significant number of such cases utilize the battered woman syndrome to base their case of self-defense.

The battered woman syndrome is a relatively new psychological phenomenon, as discussed above by pioneering scientific research of Walker and other followers of her, and the connection between the battering and self-defense is in itself new to the criminal justice.

The so-called 'self-defense of the battered woman' is nothing more than the use of evidence and expert assessments (psychiatrists and psychologists) in matters of self-defense, as a way to explain the actions of women in the context of what she has experienced over the incidents of violence by her spouse/partner/boyfriend. When applied in the context of criminal cases, the battered woman syndrome

provides the defense counsel with a means of explaining the behavior of women in violent relationships, that fight back and kill their abuser. Since the reactions and behavior of a battered woman are already argued in scientific research papers, the battered woman syndrome can be explained by the court panel through testimonies and evidence presented by the experts. Experts should point out as a fundamental argument that a battered woman is a normal, rational person, caught up in irrational circumstances and that reacts as any rational person. In other words, the defense counsel's duty is to prove before the court that what happened to the woman in question, can happen to any other woman in similar circumstances.

If the woman's actions are not understood in the context of ongoing violence, the danger that threatens her, may not be apparent to an outside observer, and the use of a lethal weapon in self-defense against an usually unarmed aggressor, casts doubt on the necessity and the proportion of response versus the danger of attack by the perpetrator.

The literature of the field acquaints us with many cases when battered women preferred to respond to their husband's violence in confrontation not immediately during the battering incident, but at a moment when their abuser was asleep or as he turned his back to leave.

Thus, we can mention the criminal case number 28-0402004 in Breda, Netherlands, where a woman of foreign nationality who had a son, kills her husband with a gun, by shooting him twice in the time that he starts to leave after a dispute incident between the perpetrator and the woman. The woman had been for years systematically subjected to violence by her husband. In April 2007, in Massachusetts, USA, Ann Grybovski, a renowned physicist, killed her husband. A day earlier he had hit her repeatedly creating bruises in her face. The next day, their 25-year-old son, after seeing his mother's bruises started to argue with his father. During this contention Anne killed her husband. Later she confessed to police that she had been physically abused for years by her husband, but the violence she had not previously reported to the police and neither had said anything to her family.

Even in the criminal case with the defendant P.M. and her daughter S.M. tried in 2004 by the district court of Bulqizë, the murder took place in the defendant's home in the late afternoon of February 02, 2004. The following is an excerpt from the text of the decision of the case above mentioned.

*The victim returned home at about 5:30 PM, found his wife doing dishes and has started arguing with her since according to the customs of the area, washing dishes*

*at that time was 'a bad omen' as by then it was dark already. The defendant had replied that she had not had time for doing the dishes earlier that day because they had had over their daughter's husband. This has frustrated the victim, who has started to argue with the defendant until the row degenerated into physical violence towards P.M. and verbal humiliation towards the other defendant, A.M. who is the daughter of the defendant. After the intervention of the guests for calming down the situation, the victim was feeling even angrier. Has requested to eat, but, having been drunk, has zonked out without eating anything, in their bedroom. Thereafter, the defendants organized the plot of the crime: P.M. taking up a pickax and S.M. an ax. Initially, they have entered into the room, turned off the lights and then began to hit the victim. The deadly blow was the one on the head, but there were multiple injuries also in other parts of the body. Both perpetrators took the victim's lifeless body in a blanket and threw it into a river nearby their home.*

The defendants and the other children of the defendant P.M. have been victims of systematic violence. P.M. has told of many violent episodes in circumstances when the spouse was drunk. Oftentimes, these repeated incidents of violence have caused physical harm to children. She has shown that in one of these cases of violence incidents, her husband had returned home drunk and had thrown from the second floor of the house one of their daughters who was then a minor, consequently leaving her unfortunately physically disabled.

Similar cases in which the defendants did not immediately take action, are the cases *State against Allery* (1984), *State against Nunn* (1984), *La Vallee against Regina* (1988) etc.

Various scholars have explained that because women generally do not have the same physical body, mass and power as their violent husbands, they prefer to use lethal means to ensure getting rid of their abusers in a non-impromptu moment of confrontation/violence incident caused by the perpetrator.

Another element that constitutes a dilemma for defense counsels, is the fact that battered women who have learned to accept to stay in violent relationships and are accustomed to the feeling of helplessness to come out of the situation they are in for a long time, at one point they come out of this situation by using violence. This violent reaction that often leads to death, can be explained as justified behavior and right in terms of a given reasonable person. This behavior can be explained also in terms of instinctive reaction in circumstances in which the abused desires only to survive. It should be borne in mind that it is the battered woman that has experienced the repeated cycles of violence and assesses the level of escalation

of violence and, consequently, also the eminent danger that may result, therefore, can cause death or severe physical damage of her by the abuser, and she decides to react using lethal force in the given circumstances.

An analogy that helps us to understand the imminent danger, in circumstances when the battered woman does not immediately retaliate against physical violence from her husband, is the understanding of the battered woman as a person taken hostage. The kidnapped wife is told that she would be killed the next day and, when the hijacker is asleep, she strangles him to death in order to escape and regain her freedom. This perception of reality of this threat over a long time, is accepted as imminent/instant threat that would justify every kind of force that is necessary to regain the freedom of the person taken hostage. In other words, returning to the cases of battered women, the latter are very well acquainted with their 'kidnappers' and it is this fact that makes them the only persons who assess the real level of risk and the issuing consequences. While battered women learn to be powerless, this feeling of impotence is due to the realities that she faces every day in her life and should not be considered as a monstrous product of violence.

Although the legislations of different countries have different definitions of self-defense and each issue is tried on an individual basis, the basis of self-defense is constituted of three elements:

1. Deadly force may be used when the risk of death or serious bodily injury is imminent. This means that the defendant fully believes that there is a risk to her life, so therefore it deems necessary to kill the victim, in order to save herself from death or grievous bodily harm.
2. The used force must be proportionate to the risk of the situation, therefore the necessary force ought to be used or what is deemed by the defendant as necessary under the given circumstances to protect herself from death or physical harm that may be done against her.
3. There ought to be a reasonable and fair conviction from the defendant that there exists an imminent danger for her life caused by the abuser, which means that she has a reasonable belief that the present situation has created this conviction in her.

The Albanian legislation, in its Article 19 of the Criminal Code of R.A. defines the necessary defense with these terms: *'A person bears no criminal responsibility if he commits the act while being compelled to protect his or somebody else's life, health, rights and interests from an unfair, real and accidental attack, provided that the*

*defense is proportionate to the dangerousness of the attack. Obvious disproportion between them constitutes excessiveness over the limits of necessary defense’.*

In the legislations of several different countries, in addition to the above elements, is required the obligation of the defendant to withdraw, if this is possible in order for her not to resort to deadly force. There are also several other legislations that contain provisions for the lack of attack or provocation on the part of the defendant.

Regardless of the specifics of each national legislation for proving the case for a self-defense, it becomes clear that the essence of a case for the innocence of the defendant/battered woman using the thesis of self-defense, is:

1. necessity or not of the use of deadly force,
2. evidencing the imminent/instant risk, and
3. definition and acknowledging of that which is reasonable.

The key is to persuade the court panel for all three aforementioned aspects. If the defendant can prove that she was convinced of imminent/instant danger, but her actions are not considered rational, in some legislations there are legal provisions that recognize this as a partial defense or the so-called imperfect self-defense . This type of defense is used to utilize mitigating circumstances, thus denying the defendant’s malice, but, on the other hand, does not relieve her of the guilt of the commission of the offense of first-degree murder. In short, judges recognize situations where defendants have a honest conviction, however not substantiated, that they would suffer death or serious bodily injury. In these cases, the court recognizes the defendant’s guilt for the homicide, but also understands the mental state of the defendant, which serves as a mitigating circumstance.

Under Article 82 of the Criminal Code of the Republic of Albania, *‘Homicide committed intentionally in a sudden state of profound psychiatric distress caused by violence or serious offense to the victim is sentenced up to eight years of imprisonment’.* Article 83 provides for the offense of homicides in exceeding the necessary defense by providing that *‘Homicide committed through the use of excessive force for self-defense is sentenced up to seven years of imprisonment’.* Moreover, the Criminal Code of the Republic of Albania, in its Article 48 defines one of the mitigating circumstances: *‘When the act is committed under the effect of a psychiatric shock caused by provocation or the unfair acts of the victim or some other person’.*

So, these provisions create legal spaces for defense lawyers to convince judges regarding the type of offense committed by battered women and the circumstances in which it occurs, effectively mitigating the sentence that can be pronounced against the battered women when they have killed their husbands, perhaps when they were asleep or at a time not necessarily in a direct response to violence exerted impromptu from the abuser.

In these cases, to assess the reasonable or unreasonable actions and the defendant's mental state at the time of the commission of the offense, particularly important from the defense perspective, is to evidence the abuse/violence perpetrated by the abuser in the past. Experts who assess the abuse/violence of the past, must testify in court to explain scientifically the fear experienced fairly and reasonably by the defendant for her life or for eventually serious bodily injury that she believed she could suffer by the violator.

Also, the evidence presented by the experts must clearly show, on the one hand, why the woman had not been able to leave from that abusive relationship, demonstrating this way the learned helplessness by the defendant on one hand, and on the other, explain the characteristics of a violent relationship and repeated cycles of violence explained above. In explaining the concept of learned helplessness in the battered woman, there should be listed a considerable number of different types of constraints that have prevented her from leaving the abusive relationship. This may include evidence that indicates a poor performance of the police and courts of the law to enable effective protection of women from domestic violence; lack or inadequacy of shelters for women and specialized services for them, the potential escalation of violence against the woman once the abuser feels/finds out that she is about to leave, financial difficulties of the battered woman and her financial dependence, fear of possible violation of her children after her escape or problems that her escape can cause to her children in terms of their welfare.

All these factors, together with the evidence presented so far related to the violence experienced in the past by the defendant, are part of her mental and psychological state and are key factors in defending the woman to convince the court panel that the actions of the battered woman are not the product of poor or wrong thinking from her part.

Moreover, it is the duty of defense counsel to highlight, based on the information of experts, and to justify how the trail of systematic violence perpetrated in the past by the abuser has affected the alleged perpetrator in



terms of her mental and psychological state and therefore even in her actions against the violator.

These evidence help the court panel in determining whether the defendant acted out of fear and at imminent risk conditions and whether she acted appropriately for the given circumstances, and therefore, based on these assessments, pronounce the right decision for the battered woman.

### **6.3.2 Various problems faced by women during the proceedings**

From experience of other countries of the world when it comes to the use of the battered woman syndrome as a basis to seek acquittal or mitigation of the imprisonment sentence rendered by the courts, there was feedback and influence by the public opinion. It therefore affects also the prejudices that these women face in the society they live in. She has gotten used to be seen as the weak sex, the key person in children's rearing and in caring for the family, and it is recognized in this way first and foremost by men in society, but also by women themselves in general, then, these stereotypes are rooted in the social culture of society in a country where a significant role is played by the media that shapes the beliefs, expectations and opinions of the wider society itself.

The existence of these stereotypes for the classical roles of men and women in society, constitute an obstacle to getting rid of the prejudices with which these battered women are faced during the trial, when they seek to be understood by decision makers of criminal policy.

From interviews with women in the pretrial institution and prison, it is evidenced that for the women who have been attacked and terrorized by their husbands/partners, it is very difficult to discuss with male policemen, lawyers, prosecutors, judges etc. the painful details that are traumatic and sometimes humiliating, with which they were faced in incidents of violence during its cycle of repetition in their daily lives. Often women victims of systematic violence have felt that police officers, prosecutors, judges and lawyers who they have met during their court case, have had difficulties in adapting their approach to their case and experiences brought by women who have ended up killing their abusers. As a result, unfortunately, valid information that can actually justify the woman's action, is not investigated in detail, evidence/proof presented by experts in the field that are very relevant to the battered woman syndrome, remain undetected and, consequently, many such women in such litigations are left without effective legal protection.



During the interviews, to the question about how was their encounter with the policemen, many of the women responded that they were prejudiced by them, and that they were often even treated with no respect and dignity, and even less empathy for the traumatic and violent experiences in their lives. In some cases, the women knew that the policemen were friends with the victim, their spouse that they murdered, especially in the context of small towns and villages. There were also cases in which women have claimed that these policemen use to be drinking buddies of their spouse.

A woman that was asked about how she recalled the moments of questioning by judicial police, says that:

*'It was a lot of stress ... everything I said was not convincing enough for them. They looked at me as if I was a liar. Moreover, when I said that I had reacted without thinking and struck my husband powerfully, they said: 'there is no way; you must have premeditated everything really well.' They told me that they would say in the court that I was an abused woman, but this constituted for them the motive, the reason why I had killed my husband: that he had violated me. I could not use this motif in my defense, whereas they could use it for my conviction ... This was the essence of the charge!'*

Oftentimes, the prosecutors, during prosecution, and judges during the litigations, put out of context the offense of homicide. In all cases taken into consideration for this study, judges and prosecutors systematically distinguish between the lethal action taken by the women, from the continued and escalated violence along with ongoing threats of the violator. The strategy pursued by prosecutors and judges in their decision, does not create for women the necessary space to reveal all the details of their story and deny them the opportunity to provide evidence of experts such as psychiatrists, psychologists, in support of their claim for the needed defense. Hence, therefore, what is disclosed in court proceedings, is nothing but an incomplete representation and often confusing and distorted version of the events that occurred.

Another concern remains the legal representation during the litigation of women who have committed the offense of homicides after they have been abused by their husbands/partners. The judicial practice of women who are today in Albanian prison system, shows that there is little or no awareness of the application of necessary defense/self-defense based on the battered women's syndrome. As explained in chapter two of this paper, but also earlier in this current chapter, when the defendant has possessed the financial means

of affording a personal attorney, they have generally required mitigation of the imprisonment sentences for these women, utilizing provisions 82 and 83 of the Criminal Code.

Meanwhile, in none of the criminal files of the convicted women, examined for the purposes of this study, it appears that defense lawyers have built their defense on the basis of necessary self-defense using battered woman syndrome. No to very little attention is paid to how a battered woman is defended before the court and that first and foremost as a fault of a legal defense, in most cases nothing but a routine, which is greatly unsatisfactory from the professional perspective. As noted in the explanation of the case of A.P., the defense counsel, at the conclusion of the case has sought examination of the case by psychiatrist experts, albeit not considering this fact from the beginning of her defense. All of the defense focused from the beginning to the end at the lowering of the imprisonment sentence, without exploring all the possibilities of interpretations to use the battered woman syndrome and to establish a judicial precedent, where to argue and defend the thesis that A.P. had taken reasonable action in circumstances of an imminent danger to her life and that she was trying to defend herself in this situation of escalating violence, thus requiring even the innocence of these women, given that her actions were made in circumstances of necessary self-defense.

Generally speaking, the role of defense counsel is a very important element for any successful defense, but in a criminal case in which the defendant is a battered woman, the role of defense counsel is of special importance. In these cases, the defense counsel must have the right vision to structure the issue in question very carefully and, on the other hand, judges should be willing to listen to arguments presented by the defense who claim a case of necessary defense/self-defense for the defendant, as well as to allow their claim to be accompanied by evidence of experts in the field who support the thesis of self-defense.

To illustrate the unwillingness of the court panel to bring before the court expert evidence that supports claims by the defendant and her defense attorney to mitigate the lowering of the sentence of imprisonment, as there were no cases of self-defense in the case files examined for the purposes of this paper, is again the case of AP that was mentioned above. As understood from the case explained above, the request of the defense council from the court for permitting the conduct of a defendant's psychological examination, was deposed both by the prosecutor, as well as from the court panel for the following reasons:

- Such a claim was not required at any stage of the criminal proceedings nor during the trial.
- The defendant had not shown in any case mental balance disorders, not even before the event.
- At the beginning of the trial the defendant and her attorney filed a court request for an expedited trial, recognizing the value of acts and needlessness of taking new acts.

Consequently, the district court of Tirana rejected the request of the defense lawyer for changes to the legal qualification of the offense, with the argument that, based on the evidence which it administered, it did not find this request judicially motivated.

This case illustrates not only the lack of vision and professional skills of the defense lawyer to break through a judicial practice in which to request innocence of the defendant, claiming a case of necessary self-defense, but, on the other hand, clearly shows a lack of will on the part of other professionals, such as judges and prosecutor of the case, to consider all possible evidence to prove whether or not the defendant is innocent.

Referring also to the data presented in the second chapter of this paper on the sentences requested by the prosecution and final sentences given by the courts, as well as based on the perceptions of female convicts given during their interviews, it turns out that the prosecutors and judges respond to these issues with skepticism in considering the claims of the defendant's motive for committing the offense on the basis of the battered woman syndrome, although this syndrome is not mentioned in any of the cases examined in this study. Despite this fact, considerations of prosecutors and judges show that they share the view that the defense seems to build the case on very technical bases and virtual not legal principles when seeking alleviating of imprisonment sentences because these women have been systematically abused and, therefore, their cases require evidence of the experts in the field, such as psychiatrists, psychologists etc.

Other criminal cases of convicted women that are taken into consideration in this study, indicate that the most that the defense lawyers sought for, was the alleviation of the sentence to imprisonment considering reasonable the legal interpretation that women have committed the offense of homicides under a strong state of psychological shock caused by violence or serious insult by the victim. Therefore, the main problem is the inability of defense lawyers

to accept the simple reality that the necessary defense of battered women is a form of application of the self-defense as a result of the conditions and circumstances of the life of the battered woman.

In this analysis, it is notable the financial inability of women, a factor that has been important in their being 'pinned down' in their violent domestic relationships. It is this factor that 'punishes again' these women by not having the possibility of a legal representative with experience in issues of domestic violence and abundant knowledge from the contemporary literature that European and world criminal justice has to offer about cases of battered women who kill their husbands.

Convicted women often accept the charges filed by the prosecutor of the case and legal options for accelerated proceedings, in order to protect their children, to save them and their relatives from the cavalcade of protracted litigation processes, placing themselves often in a humiliating position that comes with the court verdict, in order to benefit one third sentence reduction, in order to quickly terminate the judicial process because they know they cannot prevent the occurrence of what is inevitable, that is their imprisonment sentence.

Lawyers, prosecutors and judges need to be closely acquainted with the battered woman syndrome and its implications regarding battered women cases, now defendants in criminal matters. In this context, one should consider the fact that every case is unique and consequently there is no classification 'model' to determine whether a woman belongs to the group of battered women in terms of the battered women syndrome as a basis to build the case of the necessary self defense in cases of homicides of their husbands.

Firstly, all the actors involved in such a penal process should accept without prejudice the unbiased legitimacy of the use of the battered women syndrome as the basis of the explanation of her lethal actions against the victim.

The gender-specific nature of violence against women perpetrated by their husbands and then the taking on of the lethal action by the battered woman against her abuser, requires more involvement of women in all levels of criminal justice. As in the cases of domestic violence, so in those of the homicide of their abusers, the battered women feel much freer and, therefore, are better able to explain their experiences and their actions to the female staff of the judicial police, female lawyers, experts and judges. Interviews with women in this research, revealed how difficult it had been for them to discuss

the details of their stories that often times are traumatic and painful, with the male police, lawyers and judges. For various reasons, women indicated that they felt that the aforementioned show more understanding for the male victims of homicide, than for the battered women.

Also, to increase the sensitivity and professionalism of all executive and judicial state bodies, it remains necessary the continuous training on gender issues, domestic violence and women offenders. In all bodies involved in the implementation of criminal justice, there must be specialized and well-trained structures for the administration of justice in cases of battered women who kill their abusers.

Secondly, these stakeholders must allow and use, when deemed appropriate, the evidence based on the specialized expertise of the present case.

Thirdly, mostly the judges, in their reasoning and decision, should avoid prejudice towards the battered women and the use of a one-size-fits-all model for each battered woman that kills her husband. The battered women who manage to kill their husbands are not identical line products of a certain model of certain characteristics. Therefore, not all battered women are passive, submissive housewife who know how to be kind wives towards their abusers. Admittedly, not all women necessarily possess a character 'without blemish' and likewise, not in every case have they reported the violence to the police and/or the victim's relatives.

In the case of criminal policy in Albania, more sensitivity must be shown toward the cases of battered women using as a legitimate basis the battered woman syndrome, from the perspective of the individual circumstances of each case. Although, in recent years the media has led a more intense awareness raising campaign of the general public in terms of cases of domestic violence, there is much work to be done to bring in the court a legal protection and judicial decisions that are sensitive to cases in which the female defendant has experienced systematic violence by her husband and she in a moment of her life decides to end this unacceptable situation of violence using lethal action against the violator.

And, finally, most importantly, all society should accept the fact that, unfortunately, every woman can experience violence, beatings and mistreatment in her family. Every woman, no matter how independent really is or seems so on the surface, can fall prey to a domestic violent relationship. Given this fact,

all stakeholders involved in the social systems, in the criminal justice and the wider society, must demonstrate the necessary sensitivity to the phenomenon of battered woman by her husband which, because of the offense committed, comes in contact with various judicial and state authorities.

### **6.3.3 Gender perspective in preventing the commission of offenses by women offenders**

#### **6.3.3.1 Arrests and prosecutions**

As already mentioned in chapter three of this study, a positive step taken towards reformation of the criminal law from a gender perspective, are the recent amendments to the Criminal Code in 2012 and, more specifically, the provision 130/a. Through this provision are envisaged prison sentences for crimes of battering, serious threat of homicide or serious injury and premeditated injury done within family relationships. This provision protects in particular the women and children who are the most abused subjects within the family relationships.

In application of the provision of the law, the police and the prosecution must implement proactive policy of arrests and prosecution of abusers of women and children in the context of domestic violence. Only such a strict and effective policy of arrests and holding accountable before the court of law of the abusers of women and children, will manage to minimize the alarmingly increase trend of recent years of the women victims of violence perpetrated by their husbands/partners/boyfriends. Furthermore, the prosecution of systematic abusers of women should be proceeded with or without charges in police by the women that are victims of cases of domestic violence. This, obviously, requires an effective collaboration between the police and the prosecution.

A significant number of cases of domestic violence are brought before the European Court of Human Rights (ECHR) by women who have experienced systematic violence. ECHR found a violation of several provisions of the ECHR and in most cases has concluded that the criminal justice authorities have not been effective in preventing domestic violence against women. Some of these issues ECHR has found to be in violation of Article 2 and 13 of the ECHR, and in violation of the Article 8 of the ECH, in violation of Article 3 and 8 of ECHR and in violation of Articles 2, 3 and 14 of ECHR. None of the cases filed in the ECHR resembles the cases treated in this paper, in the sense that none of the battered women who have sent their cases to ECHR have committed the crime of homicides

against their abusive spouses. However, these cases are of exceptional importance for the stakeholders of the chain of criminal justice, such as police, prosecutors, courts in the effective prevention of violence against women and girls.

The important role of the prosecutor in a case when the battered woman is a defendant in a criminal case, was discussed earlier in this chapter. However, it is worth emphasizing the need that the lethal actions of the defendant women should be understood within the context where the woman has been a victim for a relatively long time and there was no help to overcome this situation. It was observed during the close examination of the women that were the subject of study of this paper that oftentimes during the hearings, the case's prosecutors have omitted valuable evidence to build the necessary defense case relating to violence exerted by the victims of these cases as well as their continuous threats against the defendant. When we study closely their charges and the sentence requested by them before the court, it is easily understood that they perceive the defendant women who commit the offense of homicides as well as other individuals who commit the same offense, despite the fact that in all cases these women have not been previously convicted.

Of course that it is in the judgment of the prosecutor of the case as to what charge he would raise and what kind of sentence he will ask the judges in the case of the battered woman who kills her abuser, but in those cases when the lethal action of this woman has come as a result of a systematic and escalating violence, it is the prosecutor's duty to distinguish between ordinary law violators and those who resort to crime in a certain situation, and therefore pose no risk to the wider society. In the case when the prosecutor decides to prosecute a battered woman who kills her abuser, then the maximum penalty that may be required by the prosecutor may be the one envisaged in section 83 or 82 of the Criminal Code of the Republic of Albania.

As we have discussed already, oftentimes the prosecutors, judges and defense lawyers prejudice the deadly actions of the woman as the only solution to the situation of violence created between the woman and her abuser. They often share the conviction that the woman could have avoided the lethal action against the victim. Given this, it becomes necessary that prosecutors continue to be trained constantly to increase sensitivity and their knowledge on the dynamics of a domestic violent relationship and the implications of this violence. Also, part of the professional growth should be the approach of including all relevant evidence and facts to a case in which the battered woman kills her abuser. The inclusion of the evidence and assessments of expert psychiatrists, psychologists



and medical in the judicial process takes great importance in terms of the help for the prosecutors to seek the appropriate punishment and for the judges to take the right decisions in these cases.

### **6.3.3.2 *Reporting violence to the medical service***

Most of the victims of domestic violence, among them women who are the subject of this study, tend to downplay the violence they experience even in the cases when it escalates and turns into a threat to themselves and sometimes also for their children. Unfortunately, most of these women do not identify themselves as battered women or as life-threatened. Women fear, feel oppressed in their marital relationships, often feel abandoned and without hope that someone can draw them out from their troubles. Oftentimes they do not understand the dynamics of violent relationships and fail to put their experiences in the context of gender violence.

Given all these factors, the responsibility cannot be left to rest only with these women to find ways of escape from the systematic domestic violence. Therefore, to the aid of medical service employees come the protocols through which are recognized, documented and reported cases of domestic violence. These protocols provide the necessary legal evidence needed to prosecute and hold the perpetrators accountable and to build the legal defense during the trial for the battered woman who killed her abuser.

The cases of women examined in this paper, indicate that even though these women have experienced complete repeating cycles of violence, which have at times been dying out and at other times intensified, in any case they have not reported it to the employees of the medical service. Even when they suffered various injuries from violence perpetrated against them, in most cases they have preferred not to go for treatment, but even those who went to the doctor, in some isolated case, did not report the violence. The doctors on their part were not sensitive enough to detect such cases related to domestic violence.

During interviews with women detainees and prisoners, was discussed if they deem effective the assistance that they can obtain through their medical services in reporting cases of violence. They admitted that despite whether or not these women want to report violence perpetrated against them, when the medical service employees visit them for various reasons, they necessarily have to report to the police or the prosecution the case that implicates domestic violence against women, by taking on an active role themselves.



In order to assist the growing number of Albanian women who find themselves the victims of domestic violence and in many cases even in conflict with the law, emerges the need for training and continuing education of all medical staff in order to prevent, diagnose and treat cases of domestic violence and gathering medical evidence which are of legal value in a trial for battered women who kill their abusers. This topic should be part of the compulsory educational curriculum of institutions where the future doctors and nurses graduate.

And, lastly, the primary care medical centers should make available to the public and especially the patients, the complete information on the phenomenon of domestic violence and medical services through leaflets, brochures etc..

### **6.3.3.3 *Legal aid***

In most cases treated in this paper, when they received the first contact with the police, the women have been traumatized and terrified of the consequences of their deadly actions and have cooperated to uncover the story during the interrogation by the police officers.

When asked what were their expectations of the authorities, they indicated they expected that they show common sense. They believed that, by revealing the entire circumstances of the murder, the state and judicial police would understand their actions as committed by a victim of continued and intensified violence and as the constant threats of their husband. However, what these women realized much later, was that their statements given without the presence of personal counsel, often times were used against them in the criminal proceedings. They realized that the purpose of prosecutors and judicial police was to build a 'successful' criminal case, in which they as alleged criminals would receive the penalty deemed right by the prosecutor as the right one.

It became evident during interviews in almost all cases, the disappointment that they have for advocacy services available for them. Their lawyers had met them for a very short time, while in the process of building their legal defense. Often they carry prejudices which we have treated also above about how they had solved their case. For the battered woman syndrome for which we spoke in more depth earlier in this chapter, they had little or no knowledge. A legal defense that is well built and well documented in terms of a history of domestic violence that has escalated, has good chances of minimizing the sentence requested by the prosecutors of the case, or in the best case to prove that the woman acted within the necessary self-defense and, consequently, that she should not be prosecuted.

When the successful lawyers are able to effectively help their female clients articulate their actions, they reduce feelings of shame and enhance the capability of the defendant to build her defense. Moreover, defense lawyers can help women to understand their rights and legal framework in building their legal defense. About how necessary it is that lawyers have full knowledge about the battered woman syndrome, is something that was already covered in more depth above.

A legal defense that is sensitive to gender is necessary not only for women victims of violence, that manage to kill their abusers, but for all women offenders. During the defense, lawyers should take into account the profile of the female defendant, the nature of the offense with which she is charged, that in most cases is not violent, as well as her parental and family responsibilities. Therefore, it is very important that in the education of future law students that are the future lawyers, prosecutors and judges, a special attention be given in their curriculum to the gender aspects in the administration of justice when women are defendants in the criminal proceedings.

#### **6.3.3.4 *Protection orders***

Unfortunately, the phenomenon of domestic violence is of global proportions. From the statistics of the United Nations, from a global perspective, a quarter up to half of women have suffered abuse perpetrated by their partner. Even in our country, the statistics show that violence among Albanian women is in very high figures. Specifically, the first national survey conducted by INSTAT, in collaboration with UNDP and UNICEF, showed that at least 56% of Albanian women have experienced some form of domestic violence.

Given the broad scope of this worldwide phenomenon, another effective preventive measure to avoid lethal action against the abuser with the defendant woman: the issuance of protection orders and emergency protection orders by the courts of the judicial district, family department, to ensure the protective measures provided in the law 'on measures against domestic violence'. This law, among other things, strengthens the judicial power through detailed validation of protective measures against domestic violence. Also, it is peculiar to this law the envisaging of obligation of state bodies to cooperate with civil society organizations that provide assistance to victims of domestic violence, by institutionalizing this cooperation to enhance the effectiveness and harmonization of all relevant activities in the fight against domestic violence.

Forms of filing a suit can be downloaded from the website and be filled out not only by victims of domestic violence, but also by the police, prosecutors, representatives of social service offices and representatives of NGOs, and, subsequently, can appear in district courts (family department) to request the issuance of protective orders.

None of the women interviewed for the purpose of this study has benefited from this legal safeguard and that for several reasons. Some of their cases are earlier than the adoption of this law, some others dared not to report the violence perpetrated by their husbands to the state authorities, some did not have adequate information or simply have been fully convinced that the situation in which they were in, did not have a way out. However, there have been isolated cases when women went to the local police in the community where they live and have met oftentimes with an indifferent attitude there, as explained above.

All subjects, whom the law gives the right to file a suit at the appropriate court, are encouraged to be proactive and use this measure in an effective way to prevent the escalation of domestic violence situations.

#### **6.3.3.5 *Other Sources***

Women, whose cases have become the subject of this paper, had no alternative solutions to create ways out from their abusive partners. These women have a strong conviction that there was no alternative whatsoever for their relief.

In most cases, they did not have information about the existence of shelters where they could find psychological and legal support. Many of them come from remote rural areas of the country where these shelters are completely missing. Currently, the number of shelters is insufficient and their geographical extension does not address the ever-increasing cases of women abused by their husband/partners/boyfriends. Consequently, there is a need of opening more shelters to support quality services for women that are victims of domestic violence, especially in areas that are accessible by women in rural areas.

Women need to have more information about such alternative sources, and the increase of the awareness of women, girls and children by the referral mechanisms established in the recent years to prevent and combat the phenomenon of domestic violence perpetrated against women and children, remains a priority. These mechanisms should play a proactive role in disseminating information and providing various services to battered women

and their children. These services should ensure physical safety, legal and psychological support, and alternatives to restart a new life away from the abuser, such as vocational training, finding a job and an apartment where abused mothers and children can live.

### **6.3.4 A gender perspective in the conviction and in the Albanian prison system**

#### **6.3.4.1 *Other alternatives besides the security measure of jail arrest and imprisonment***

Women, who do not have financial means to pay bail in order to not be staying in detention while awaiting the rendering of the court decision on their case, are in unfavorable positions. Standing in the remand house awaiting trial makes things very difficult in all cases for battered women. Children stay with their families of origin or with the family of their abusers or are placed in orphanages. Whatever decision is taken for children, the main concern for battered women, locked in detention, as a person who is most connected with children, are her children, their wellbeing in a time when meeting with them are either impossible or very limited, is not something to be expected.

From interviews with detained and convicted women, this concern emerged as one of the key findings. Separation from the children, lack of information on what is going on with them, when will they see them again etc., especially for detained women, were the main concerns that aggravated their psychological and mental conditions.

A battered defendant woman that has no previous criminal record, does not pose a danger to the community and even fewer are the chances that she escapes justice. The same can be stated for all other cases of women who have committed other non-violent offenses, therefore prosecutors that deal with cases of women defendants, should be sensitive to the specifics of the situation of these women and consider with priority other options to coercive measures provided for in the Code of Criminal Procedure of the Republic of Albania, using the security measure of jail arrest as the last alternative, only when all other measures are inadequate due to the particular dangerousness posed by the offense and the defendant.

By the use of other coercive measures against women who have murdered their abusers there are benefits for the detention system itself, and it is in

the best interest of the defendant woman also, since their residence outside of the remand while awaiting trial, carries in itself no financial costs for the system, reduces overcrowding in these institutions and creates more space for defendants with higher risk to society and, moreover, it allows the mother to be with her children, and it helps the latter to heal the 'wounds' caused by the grave domestic violence incidents. These arguments hold true also for all women and girls who have committed other offenses, which, as it resulted from the analysis provided in the second chapter of this study, they are no violent offenses and that these women do not constitute a danger to society.

The profile of women offenders, ought to be taken into account along with their family and parental responsibilities and the fact that imprisonment has only adverse effects on these women in terms of their return to society, in the design of a criminal policy more flexible and sensitive toward these factors. The judicial authorities ought to have the tendency of giving priority to the implementation of alternatives to imprisonment, instead of incarceration of women. Turning away the women offenders from the security measure of jail arrest, is another means proposed by the criminal policy. Such a criminal policy must ensure that against women, the imprisonment is not used as a primary security measure, but only as a last resort and only in necessary cases when they constitute a great danger to society. By keeping women outside prisons in those cases when their detention is not a necessary measure, children do not experience the negative effects of their mothers' imprisonment, including their institutionalization.

Also, professionals, such as judges, prosecutors, state police and the judicial police, ought to be trained continuously to increase gender sensitivity in cases when the defendant is a woman, to more effectively use the coercive measures and alternatives of imprisonment provided for in the Albanian legislation.

It is worth reemphasizing that the trend in our country in terms of the length of sentences of imprisonment for women, is relatively considerably longer compared with other European countries. The analysis presented in Chapter Two of this paper highlighted the need of analyzing this situation mainly by judicial authorities and the taking of concrete measures to change the situation. Without prejudice of the individual decisions case by case, given by judges when the woman is the defendant in litigation, the relatively long sentences usually rendered for them are indicative of a rigid penal policy that is not at all sensitive to specifics of offenses committed by women offenders and their particular profile.

The prolonged stay in a prison institution, which does not offer semi-open and open regimes for these women, has a very adverse effect on the reintegration of women as well as in their children. It also makes more difficult the conditions for women to benefit sooner from provisions of parole. Moreover, women's imprisonment costs more to the state budget, as it does also in the long-term to the society in general, as its individuals, such as the women offenders and their children find it too hard to resume their normal life after a detention for a long time.

#### ***6.3.4.2 Gender sensitive policies in the Albanian prison system and the necessity of cooperation with other actors from the criminal and social justice***

Whenever the detention measure is used against persons deprived of liberty, it must have a rehabilitation purpose and ensure that persons after their release will resume their interrupted lives due to their imprisonment on a as normal as possible way. It is for the prison system to provide rehabilitation and reintegration services for people in its care. Such an approach respects the human rights and dignity of persons who have violated the law; is an approach with lower financial costs to society, as it tends to reduce the relapse to crime and, lastly, the long term effects in the free society are very positive.

Offering rehabilitation programs and those who assist the reintegration of persons sentenced to imprisonment, remains part of the mission of the prison system and special attention should be paid to specific groups in prisons, such as women and children both detained and convicted.

A criminal justice system which manages to successfully rehabilitate persons sentenced to imprisonment, saves financial resources and best meets the needs of society, because long and very long detentions, do not yield lasting solutions.

The following are some important issues in terms of best policies and practices that the Albanian prison system must follow in cooperation with other criminal justice and social relevant authorities, to further improve the rehabilitation nature of imprisonment with the focus on the convicted women. Of course, I am not professing that my recommendation would constitute solutions to all problems with which it is encountered today the Albanian prison system, but they are nevertheless among the main issues that should be considered by the prison administration, not only in their efforts to rehabilitate women and for their successful return to society.

As elaborated in Chapter three of this study, the legal framework governing

the lives and treatment of persons deprived of their liberty has improved, and its observable the application of some positive measures for the treatment of convicted women in the internal regulations of Ali Demi prison in Tirana. However, an issue of priority is the further improvement of internal regulation of the institution that guarantee care for detained and convicted women.

More provisions should be reformulated in these regulations with particular focus on the treatment of convicted women particularly categories such as pregnant women, breastfeeding mothers and those who have children in prisons; women who have minor children outside the closed penal institutions; women detainees, convicted girls and their rehabilitation and reintegration programs, and especially maintaining relationships with the family from the first moments of detention; foreign nationals women and women belonging to minorities.

Sufficient financial resources ought to be allocated to penal institutions that have women in their care in order to enable the implementation of diverse rehabilitation and reintegration programs for them. These programs should include therapeutic activities, psycho-social and continual support for women who have experienced domestic violence, for those who suffer from various mental health issues, concrete support in the preparation for release, etc.

Institutional reformation of prison regimes ensuring the opening of prisons with semi-open and open regimes, is crucial in terms of the rehabilitation and concrete assistance of women for a successful return to society after release. These regimes provide women with great opportunities to restore ties with their children and enable them to actively participate in their children's lives; returning occasionally in a free society, women have the opportunity to work for settlement and resolving of many of their problems, such as housing, employment and vocational training after returning to society.

One of the aspects that should get special attention to gender sensitive policies against women in the prison system, is the preparation for release of women from the first moment when the woman is placed in a closed penal institution. To not restate the recommendations presented in the fifth chapter of this study, here I will only focus on some good practices brought about by the initiatives undertaken by the prison system in the Netherlands and Belgium.

The initiative 'Balancing the Future' reflects European Guideline to employment which place much importance to the promotion of social inclusion and prevention of exclusion from the labor world market of marginalized groups and individuals.



*‘Balancing the Future’ is a project with broad dimension that has been very important for the reintegration of women, just as collaboration between the prison service and chain partners of criminal and social justice.’* The concept of making gender policies the key common issue among the partners involved in this initiative, makes this cooperation count for a good practice.

There are many problems that need to be addressed when it comes to women’s successful return to the community, such as psychological problems, problems with the economic situation of women, childcare problems, problems with employment, housing and education, as well as problems with the low self-esteem of women to resume a normal life. To address this complexity of problems faced by every woman who returns to society after release from prison, a comprehensive approach is needed and this initiative provides exactly this model of good cooperation between stakeholders inside and outside the prison system.

The partnership built through this good practice, includes sectors, departments and institutions within the prison system and those outside the system. Certainly, organizational and management structure of this positive model, is under the direction of the Dutch Directorate General of Prisons, as explained below.

In prison, the individual work begins with a needs assessment plan for: 1. All official documents that may be helpful to the woman when appearing before public health, education, employment offices and economic assistance institutions; 2. Individual practical problems that every woman has, such as issues related to children and family as well as with her financial problems; 3. housing needs; 4. The need for further vocational education and employment needs 5. Health problems that the woman may have.

This individual plan of needs assessment is compiled by an employee of the social care sector in prison in cooperation with the convicted woman herself and other actors outside the prison system. Based on the defined needs of each woman, is created her sentence plan that addresses all the problems and needs that she has. This plan outlines all the way a detained/convicted woman should go to find a job or some form of vocational training, followed by a possible employment.

In the scope of this model was achieved the unification of admission procedures, registration of women available for selection of women in reintegration programs offered in the project; are unified the assessment methods of the needs of women throughout the prison system as well as methods of motivating women to select a particular job career. The interviewing of women before they are released of



the prison system is now standardized, and it required of them to make concrete commitments for their involvement in this project's initiatives.

In providing intensive support and facilitation for issues related to education and employment, housing, support for various family problem-solving, especially for those related to the care for minor children, the probation service, local government bodies, such as employment offices, social service offices and local education play a major role.

Also, there are three different non-profit organizations, which are active and provide specialized support services in the three areas mentioned above. Each of these organizations is specialized for one of areas: housing; education and employment and support to resolve family problems, including childcare. Thus, according to their expertise they help each woman that is preparing for her release by following up their case at all relevant bodies or private businesses depending on the case.

➤ *How the Social Reintegration of Women project is organized*

Sector Platform of Women's Prison is the national consultative body for women prison's directors at the National Agency of Correctional Institutions in the Netherlands. The platform is also the body that selects the project's office staff for social reintegration of women, as well as serves as a partner and social focal point of contact for the social partners of the line involved in this project. A cooperation agreement was signed with the main partners of the project.

Sector Platform objectives focus on the development and coordination of policies on women's prisons in the broadest sense. The platform is responsible for the development, monitoring and evaluation of partnerships within the social reintegration of women detainees/prisoners project. Sector Platform acts as a partner in international contacts and is an official partner of three non-governmental organizations involved in this project. To fulfill its duties relating to the social reintegration of ex-prisoner women, the Sector Platform has opened a project office.

The office of the social reintegration of women project, is run by a project manager who is supported by the person responsible for projects at the National Agency of Correctional Institutions (NACI). The project manager is responsible for initiating and carrying out the activities specified in the agreements of cooperation for post-release programs for women and national platform of the

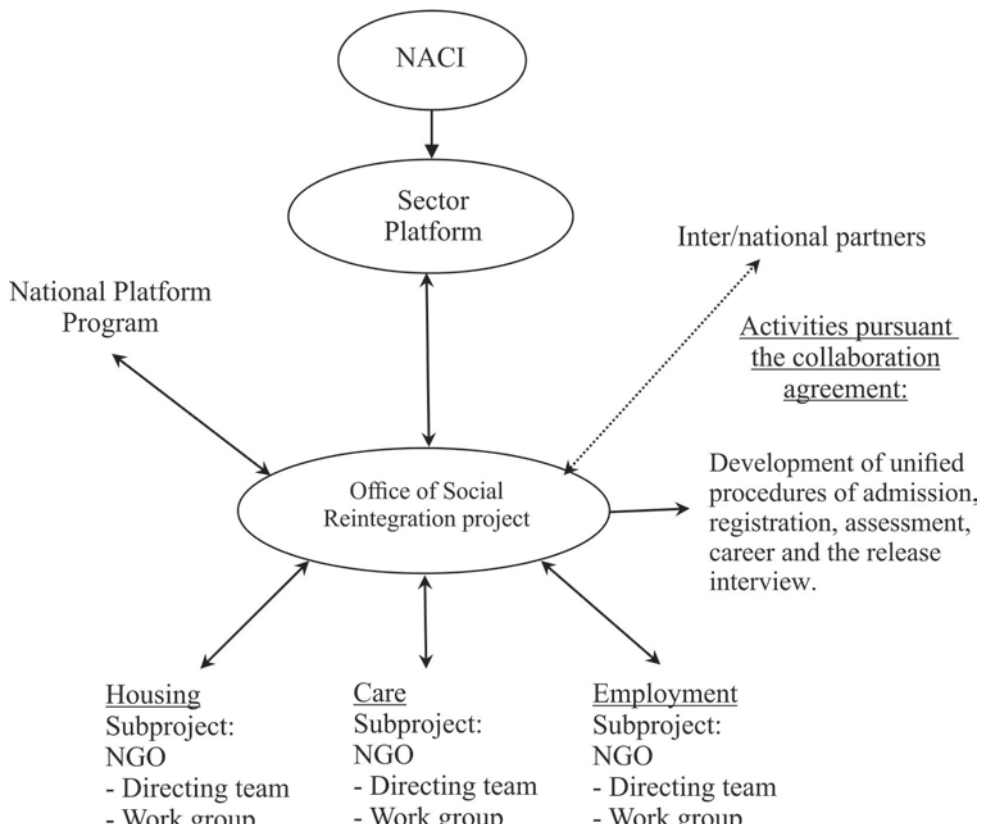
development program for women's prison. The project's office functions also as the 'coordinating hub' for programs involving various organizations.

The national program of the platform is a consultative body composed of employees of the National Agency of Prisons Service, the managers of programs that are being implemented in penal institutions, and the partner organizations involved, coordinators of reintegration programs from all five women's prisons and national leader of women's social reintegration project. This body plays an important role in monitoring the quality, feasibility and development programs. The program reports four times a year to Sector Platform of Women's Prison.

All three projects on employment, care and housing of women, are virtually identical in terms of their organizational structure. Partner organizations begin to be involved as soon as the need arises for potential employment, care or shelter, identified in the moment when the individual plan for a convicted woman is designed. If these three needs are identified to address the three organizations involved, coordination of activities is essential. This is facilitated through the national platform program, in which participate partner organizations. If some partners are needed to be involved in a woman's individual program, a case manager is appointed.

Direct management and supervision of projects regarding preparation for release is in the hands of individual management teams of each project. Each is made up of national and regional representatives of various partners and is managed by a coordinator of the organization that runs the project. These teams meet four times a year. Head of social reintegration project participates in the meetings of the directing teams.

This model of employment of all these hierarchy levels, may be visualized with the following scheme:



### CONCRETE PROJECTS:

#### 1. *Employment*

In collaboration with one of the NGOs specialized in this field, has commenced the implementation of a national program to prepare for employment and immediate entry of women into the labor market. The NGO engaged in this initiative provides a national program and a period after the release of one year, for each followed up case.

This cooperation includes the following activities:

- The individual follow up of the women.
- Development of a methodology for monitoring, including a procedure for the follow up of the case of the woman after release. Tracking and co-management of various programs components outside the penal

institution, as well as their coordination during different phases of sentencing.

- Facilitating employment for women or, if necessary, placing her in a training course, suitable for the specific needs of the individual women.
- Support during the period when the woman starts work. The employee of the NGO that supports the individual woman, can act as case manager for women in other areas of the project regarding the required services that are facilitated and supported by two other NGOs.
- Disclosure and retention of public relations for the project.
- Designing a project plan and reports on followed up cases.
- The administration of all cases of the project related to employment of women and their vocational training.

## *2. Care for women*

A pilot program for former convicts implemented by an NGO specialized in this field is that of providing special care for women. Under this initiative, women with minor children are supervised and supported by volunteers for a predetermined period. Professionals advise women and their families prompted by the specific needs of the case in question.

More specifically, this cooperation makes possible:

- The appointment of a coordinator to perform three tasks: initiating cooperation with local coordinators; selection and training of volunteers along with local coordinators and ensuring proper compliance of volunteers and families who attend and supervise their cases.
- Ensuring the necessary resources in the short and long term perspective.
- Ensuring the quality of support services needed case by case for women.
- Supervision of formerly convicted women.
- Creation and maintenance of a suitable network for this project.
- Contribute to the preparation, development and implementation of long-term policies to support women in their management of practical problems in their families.
- Full management of all cases of this initiative.

## *3. The support for sheltering the women*

In the framework of this initiative is set up a dormitory for formerly convicted women, including those women with minor children who were not able to find a shelter after their release from prison or when returning to the original setting was deemed risky for her and/or her children.

This initiative includes the following activities:

- Opening a dormitory for women after release from prison, that is professionally managed.
- Development of a methodology for guidance of the former convicted woman, in order to encourage independent living.
- Disclosure of information and retention of public relations for the initiative.
- Developing the expertise and skills of managers of the dormitory and supervisors involved in individual work with women.
- Establishing a stable financial base to ensure long-term sustainability of the project, taking into account institutional cooperation with local government and community residential centers.
- The provision of a broad political and public support.

This support, given individually and continuously while the woman is in the prison system and then, after she returns to society, by all stakeholders that help women manage and provide solutions to many problems of her life, is a good model of specialized and integrated services which cannot be guaranteed by the prison service alone, without the cooperation of probation service, civil society actors and the services of local government bodies. It should be highlighted that in the pilot phase of Dutch best practices, there were three specialized NGOs which realized services and support for employment, care and housing. This initiative has included already in the national program of reintegration of women platform, also different stakeholders of local government bodies and/or local services in the community to which the formerly convicted women return. The Probation Service is also involved in the implementation of programs of preparation for release and post-release care for formerly convicted women.

Priority in selection of women supported through this initiative, is given to women of age 20-50 years, who come from a difficult family background, who are responsible for their minor children and no family support or from their relatives. These are women who have been victims of domestic violence or from groups of society who have experienced discrimination and/or social exclusion prior to their incarceration. Also, women who are helped, have a low self-esteem and for them it is difficult to find or benefit from the services that exist in society outside the prison.

The results of this initiative have been very promising. Thus, about 50-70 women are helped and supported each year. Researches have been made with the purpose of measuring the reduction of recidivism and it was found that only 7% of women supported through this initiative are recidivists, while the average rate of recidivism in the Netherlands is about 35%.

This initiative has proven to be a good practice to be followed also by the Albanian prison system and other key stakeholders of the criminal justice and social systems, therefore it is needed a feasibility study of existing integrated services and taking on of similar initiatives to the practice outlined above that will really help and will enable the successful return of women in society after their release from closed criminal institutions.

#### **6.4 Research, planning, assessment and awareness raising**

In the contemporary literature of the field, there is a considerable amount of research on the causes of crime, the characteristics of offenders, the impact of imprisonment and alternative measures and the impact of specific programs on the level of recidivism. While only recently in the mainly western literature it is started to be performed scientific researches and studies that focus on gender politics in the criminal justice system, as well as the differences that exist between women and men in conflict with the law and, therefore, also pertaining the different needs of their social reintegration. In our country, scientific research of this type unfortunately are lacking, therefore it is important to promote research in the field of criminal justice, from a gender perspective.

Bangkok Rules, just as the rules of Tokyo and Beijing include a special section on research, planning, policy formulation and evaluation, recognizing that the effectiveness of policies and programs developed for the treatment and social reintegration of prisoners, depends on assessment of the reality on the ground in each country and by evaluating the impact of interventions and different approaches.

More specifically, the rules 67-68 of the Rules of Bangkok, place a great importance on the need for research in a number of important issues related to women facing the criminal justice system. The purpose of these rules is to ensure that strategies and policies respond to the appropriate level of problems that exist in this regard and, therefore, to help in the social reintegration of women, based on facts and in a better understanding of the reasons, often very complex, that lead women to committing a criminal offense. Another purpose of these rules is to increase the feeling and awareness of policy makers to the specific needs of women offenders

and, consequently increase the effectiveness of the policies pursued. The Rules also draw attention to the need to undertake such research on the situation of children whose mothers are sentenced to imprisonment, which is an area even less researched, and which therefore needs more attention.

Rule 69 of the Rules of Bangkok is based on the understanding that the periodic assessment of the effectiveness of interventions, programs and approaches, is also essential for the development, adoption and improvement of policies and rehabilitation and reintegration programs for women offenders. This is a neglected area for all offenders, but particularly with regard to women and, more specifically, regarding to children of convicted mothers.

Rule 70 of the Rules of Bangkok is a reflection of the growing awareness of the vital role played by the media and public opinion in policy formulation in the field of criminal justice. The higher the level of ignorance of the crime and its keeping in check, the higher is the fear of crime and, consequently, there are increased demands of society for tougher penalties.

Training of criminal justice employees and raising awareness and their sensitivity, are also an essential requirement for the implementation of international standards and the requirements of local legislation, particularly when they relate to sentencing policies and alternatives to imprisonment.

Given the importance of research in this field, followed by appropriate policy planning, periodic evaluation of their effectiveness, training of employees of criminal justice authorities and awareness raising of the media and public opinion in our country on issues associated with women offenders, the current situation needs to be examined and appropriate measures be taken in these directions.

## **6.5 Summary of the most important recommendations for a penal policy that is sensitive to the specific characteristics of women offenders**

The paper recalls the data coming from our country, Europe and the world, which indicate an increasing number of women in prison. Profile analysis of social, educational, cultural and criminal of women offenders clearly shows that most of them come from one social group of individuals who have experienced a certain degree of social exclusion prior to being placed in closed penal institutions. The arguments presented in the paper indicate clearly that women's detention/imprisonment only deepens their social exclusion and excludes those women

who have not experienced social exclusion before their incarceration. Moreover, in the paper was analyzed the fact that the imprisonment of women makes it very difficult to maintain strong links with children, family, their return to normal life after release and reinstatement of the same social status after release from prison. The fact that a significant percentage of women sentenced to imprisonment in Albania, are held from 10 to 25 years in prison, is a very disturbing phenomenon, which hinders the successful re-entry of these women into society after release.

In the most part, women who break the law, do not commit violent offenses and, therefore, do not constitute a danger to society. The paper highlights that the offenses that are often committed by women, are those that otherwise are known as poverty offenses, such as fraud, forgeries, offenses against morality and dignity etc. Even in criminal cases of homicides, in a significant number of them, women have committed them under the circumstances of systematic violence in the family, being threatened with their lives and/or their children's, perpetrated mainly by their spouses.

Oftentimes, the criminal punitive policies associated with poor economic status of women, have made it impossible to guarantee quality legal services in criminal proceedings and have resulted in an increase in the number of women held in pretrial institutions awaiting a final decision of the court. From the data obtained for the purpose of this paper, it is highlighted the fact that the average stay of women in detention is too long and, without doubt, the effects of these long stays there, are of an adverse effect for this category of prisoners. Moreover, this fact is an indication of the speed and effectiveness in the rendering of justice by the competent authorities when the defendants are women.

While the imprisonment itself is a punitive measure, programs and services offered in prison are of utmost importance to ensure effective intervention in the lives of women in the short-term perspective, but especially their long-term that is their successful return into the society. Based on the analysis presented in the paper, it is shown clearly the need for further improvement of these programs and services to women in prison in order for them to better address their specific needs.

Given the problems pointed out above, it is necessary to review the policies and practices followed for women who violate the law in our country in order to prevent the escalation of criminal policy trends that are more punitive than rehabilitative and reductionist<sup>322</sup>.

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322 Rutherford, A.: Prisons and the Process of Justice: The Reductionist Challenge, London: Heinemann, 1984.



The reductionist penal policy is based on skepticism that policymakers and law enforcement have regarding the potential positive effects of detention of prisoners and on the conviction that overcrowding in prisons should be kept in check and that there should not be an inclination toward a policy of building more prisons or increase their overall capacity. Rather, the field researchers suggest using 'the front door strategies' or 'back door strategies' or a combination of both<sup>323</sup>.

Strategies of the front door, attempting to restrict the incoming flow in prisons through the decriminalization of certain offenses, restricting the use and length of stay in the institutions, the restriction of the use of prison sentences, as well as through effective implementation of alternative measures sanctions. The basis of these strategies is the use as the last resort of the jail arrest and jail sentences. While the back door strategies aim for the sentence's length to be as short as possible by encouraging the use of more frequent and extensive of early release of prisoners<sup>324</sup>.

Both kinds of reductionist penal policy strategies, have found full support in a significant number of recommendations of the Council of Europe<sup>325</sup>, of recommendations of the Committee for the Prevention of Torture<sup>326</sup> and on a considerable number of issues addressed by the European Court of Human Rights for the length of sentences and early release opportunities and the use of alternative measures and sanctions in accordance with Article 5, 8-11 of HRC<sup>327</sup> as well as by a number of conventions and rules of the United Nations<sup>328</sup>.

Both types of strategies for a reductionist penal policy should be considered

323 Van Zyl Smit, D. and Snacken, S.: Principles of European prison law and policy: penology and human rights Oxford University Press, 2009, p. 87.

324 Ibid.

325 Recommendation no. (99)22 *Prison overcrowding and prison population inflation*; recommendation no. (80) 11 *Detention while awaiting trial*; recommendation no. (87) 3 *European Prison Rules*; recommendation no. (92) 16 *European rules on community measures and sanctions*; recommendation no. (92) 17 *Consistency in sentencing*; recommendation no. (2003) 22 *Bail*; recommendation no. (2003) 23 *Management by prison administrations of life imprisonment sentences and other prisoners with long sentences*; recommendation no. (2006) 13 *The use of detention, conditions in which it is realized and safeguards against abuse*; recommendation no. (2006) 2 *European Prison Rules*.

326 11th general report of CPT [CPT/inf(2001)16].

327 Van Zyl Smit, D. and Snacken, S.: Principles of European prison law and policy: penology and human rights Oxford University Press, 2009, p. 91-99.

328 For more details please read the second chapter of this paper.

when issues of women offenders are being administered by all relevant criminal justice stakeholders.

In the following paragraphs are briefly summarized the main recommendations of the paper:

➤ *Development of a gender sensitive legislation*

- Improving national legislation to reflect a sensitive approach to gender issues has been the focus of reform of the past 22 years. Recent amendments to the Criminal Code in 2012, and the improvements of the law on the rights and treatment of pre-trial-detainees and convicts done during 2014, as were shown in chapter three of this paper, are positive steps to protect primarily the women and children who are victims of domestic violence. However, further improvements are yet to be made towards the decriminalization of the practice of prostitution, further improvement of provisions for conditional release, etc.
- The internal regulation in institution where sentenced women are kept should be reformed in line with the latest developments of the rules of Bangkok, in order to not end up with a legislation written in neutral language, but rather a legislation that would reflect the gender approach and sensitivity. More provisions should be reformulated in these regulations with the focus on improving the assessment instruments to the specific needs of women in prison, classification instruments specific to convicted women as well as their special treatment, in particular the categories such as pregnant women, breastfeeding mothers and those who have children in prisons; women who have minor children outside closed penal institutions; women detainees, female minor prisoners and rehabilitation & reintegration programs for them and especially maintaining relationships with the family in the first moments of detention; foreign women and women belonging to minorities.

➤ *Prosecution and trial of women who violate the law - sensitive to gender issues*

- The imprisonment of women should not be used as a first, but as the last measure and only in necessary cases when they pose a real threat to society. Furthermore, by keeping women out of prison, in those cases when their imprisonment is not a necessary measure, children do not experience the negative effects of their mothers' imprisonment, including their own institutionalization.

- The specialist of criminal justice administration, such as the judicial police, prosecutors, judges are encouraged to enable deviation from the process of prosecution of women offenders by using other legal means such as mediation between the defendant and the victim, order of community service labor and other restorative justice measures.
- Judges are encouraged to apply as many alternatives to imprisonment as provided in the Criminal Code, to women who do not constitute a danger to society and who have parental or family responsibilities etc. since a good part of women offenders suffer from the trauma of systematic domestic violence and/or from various mental disorders, it is recommended that women are directed on appropriate treatment programs that would address their specific needs. It would be more effective than placing them in closed penal institutions environments.
- The judicial system is encouraged to analyze and take concrete measures to increase the speed and efficiency of bringing justice to the women defendants.
- The relevant state authorities (free legal aid commission, the governing council of chamber of lawyers etc.) are recommended to take effective measures not only to guarantee free legal service from the first moments of detention and arrest, but also to ensure a more professional legal service for women offenders.
- Rule 61 of the Rules of Bangkok *'When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds'*<sup>329</sup>, is of particular importance as there are a significant number of women in prison who have committed violent offenses against their spouses as a result of long-term and systematic violence perpetrated by the later. There is also a growing number of women who are forced or decide to be collaborators to a considerable number of violent offenses or offenses related to drugs, or offenses committed because of their poverty and the need that they have to respond to children under their care.
- Given the above rule, lawyers, prosecutors and judges are encouraged to show more sensitivity to cases of battered women, those threatened etc., recognizing the legitimacy of the battered woman syndrome to understand their lethal actions against their abusers. Therefore, the authorities are encouraged to create opportunities for the presentation

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329 In full accordance with Rule 3.3 and 7.1 of the Rules of Tokyo.

of evidence, based on the specialized expertise of domestic violence, as well as the use, where appropriate, of the legal spaces that the Criminal Code provides for the use of mitigating circumstances, based on the fact that these women have been for a long time victims of domestic violence, besides other mitigating circumstances that may present any criminal case of a woman defendant.

- Following the positive steps taken toward reforming criminal legislation from a gender perspective, especially with the amendments of 2012 of the Criminal Code, it is necessary to draft and implement a proactive policy of arrests and prosecution of abusers of women and children in the context of domestic violence.

➤ *Sensitive strategies and policies from a gender perspective in the prison system and cross-institutional cooperation*

- Offering rehabilitation programs and those assisting reintegration of persons sentenced to imprisonment remains part of the mission of the prison system and special attention should be paid to specific groups in prisons, such as detained and convicted women and children. These programs should include therapeutic, medical, psychosocial activities as well as continual support to women who have experienced domestic violence, for those who suffer from various mental health problems, concrete support in the period of their preparation for release, etc.
- Maintaining and strengthening the relationship of women with their children outside the prison are some of the directions that receive attention and priority in treatment programs and support to be provided to women from penal institutions and other institutions that care for the growth and wellbeing of their children. Cross institutional cooperation between all stakeholders is essential to achieve this goal.
- The prison authorities are encouraged to calculate sufficient financial resources for penal institutions that have women in their care in order to facilitate the implementation of various programs for rehabilitation and reintegration of them.
- Institutional reform of prison regimes ensuring the opening of prison with semi open or open regimes, is still very important in terms of the rehabilitation and concrete assistance to women for successful return to society after release. These regimes provide women with great opportunities to restore ties with their children and enable their active participation in the life of children. These women, through their occasional return to the free society have the opportunity to work for

the settlement of many of their problems, such as housing, employment and vocational training needed after their return to society.

- Lately there is talk of further reformation of the prison system aiming to privatize these public institutions. Given that the Albanian prison system is not yet consolidated on the basis of an effective management and in accordance with the standards and norms of human rights, a full review is required of the issue of privatization of the Albanian prisons, albeit those of low security. An in depth analysis and discussion among professionals should consider: aspects that directly affect the well-being of persons deprived of liberty, especially that of vulnerable groups, such as women, minors, etc.; the impact it has on the staff; actual costs versus the effectiveness of these services, considered not only from the financial perspective, but also from the human rights; the impact that these institutions have on reducing recidivism and the impact they have on the wider society.
- One of the aspects that should get special attention to gender sensitive policies against women in the prison system, is preparation for release of women from the first moment when they are placed into a closed penal institution, based on an individual plan of needs. In this context, a concrete practical cooperation ought to be established between the GDP, penal institutions where women are kept, Probation Service, local employment offices, offices under the relevant communes and municipalities that provide social services for vulnerable groups, specialized NGOs in employment services, vocational training, caring for women and access to housing for women after their release.
- To have strategies and policies that are in accordance with the specific needs of women in the prison system, in order to institutionalize and the cross-institutional cooperation with all relevant stakeholders, I recommend that in the Directorate General of Prisons a working group is established which will focus on women in prison, consisting of the institution directors that have in their care convicted women and specialists of various fields. This working group will enable the formulation of policies and gender sensitive strategies and will build synergies in the initiatives and contributions made by many actors involved in this field.

➤ *Increasing the gender sensitivity of different stakeholder of criminal and social justice as well as all public awareness*

- In order to assist the ever increasing number of women who find themselves victims of domestic violence and, in many cases, even in

conflict with the law, emerges the need for training and continuing education of all medical staff in order to prevent, diagnose and treat cases of domestic violence and gathering medical evidence that have legal value in a trial for battered women who murder their abusers. This topic should be part of the compulsory curriculum of educational institutions where future doctors and nurses graduate.

- Lawyers, prosecutors and judges need to be further trained to increase gender sensitivity in cases where the defendant of their case is a woman, to implement the legal provisions and to take the necessary measures towards a criminal policy that focuses on rehabilitation and that is reductionist in accordance with the specifics of the case, the profile and the needs of women offenders.
- In order to prevent the escalation of cases of domestic violence and spouses homicide cases committed by battered women, the referral mechanisms set up in the scope of fight against domestic violence must play a proactive role in disseminating information and providing various services for the battered women and their children. Women need to have more information on alternative resources, therefore their awareness raising remains a priority. Services of referral mechanisms should ensure physical, legal, psychological and alternatives to restart a new life away from the abuser, such as vocational training, finding a job and an apartment where abused mothers and children can live.
- The continuous training of staff in closed penal institutions that work directly with detained/convicted women, remains extremely important in the acquisition and consolidation of effective management of women by adjusting treatment programs according to specifications of the women in their care. It is recommended also the increase of the number of female staff in institutions where women are held.
- Research and periodic evaluations of the types of strategies pursued in the context of a criminal policy sensitive to gender issues of women offenders, remains one of the areas of energy investment of stakeholders responsible for the drafting of criminal policy in our country.
- The authorities of criminal justice administration should understand the key role played by the media and public opinion in policy formulation in the field of criminal justice, therefore more attention ought to be given to information sharing and awareness raising of media and the public in general regarding crime, retention of public safety and criminal policies that are rehabilitative and reductionist. The higher the level of ignorance of the crime and its holding in check,

the higher is the fear of crime and, consequently, there is an increase on the demands of society for longer sentences.

## **6.6 Concluding remarks**

In conclusion, I would like to emphasize that what the detainees and convicted women have shared with me for the purpose of this paper, clearly show a tough criminal justice and unfortunately still insensitive to the specific situations of women offenders in Albania.

Another indication of the ineffectiveness of social institutions to put an end to violence against women, are the stories of women, victims of domestic violence who killed their abusers and today are serving sentences in Albanian prison system.

All of us need to learn from our own experiences in order to save more lives, reduce the level of domestic violence and the fear that this phenomenon of Albanian society spreads all around.

Women offenders, whose stories are examined in this study, point out their real concern that the social and criminal justice institutions ought to find the effective ways to implement gender politics and show higher sensitivity towards this social category.





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- d) University
- e) Not educated
- f) N/A

**The marital status:** a) married b) single c) divorced d) widow

**Do you have children?** a) no b) yes

**Have you been employed?** a) no b) yes

**If you have been unemployed, have you benefited by the social assistance scheme?**

**How did you live prior to being convicted?**

- With the family
- Economically dependent on the husband/family/parents
- The contacts with the circle of friends of the community prior imprisonment

**Have your relationships with family/children/brothers/sisters been positive?**

**Have you been abused (physiologically/sexually) prior to your imprisonment by your spouse or others?**

**Have you had any health problems prior to imprisonment?**

**Are you addicted to ..... alcohol, drugs, gambling?**

#### **CRIMINAL RECORD**

Is this your first time of committing a felony? Yes/no

If not: when and where were you imprisoned earlier?

Type of offence/crime: brief description

**SEIZING/ARREST BY THE POLICE**

**Have you been told your rights and obligations arising from the law on the rights and treatment of prisoners and apprehended/arrested (familiarization with the rights from the first moment of detention/arrest, the right of access to counsel in first moments of detention/arrest: the right to notify family members)?**

- a) Yes (have the legal and sublegal acts been put into your disposal) \_\_\_\_\_
- b) No \_\_\_\_\_
- c) N/A

**Have you been treated with respect in terms of your human dignity and in a humane way while in police station?**

- a) Yes
- b) No (elaborate) \_\_\_\_\_
- c) N/A

**Have you been admitted/checked and served by female staff in the police station?**

- a) Yes
- b) No (elaborate) \_\_\_\_\_
- c) N/A

**Have you been placed on separated areas from men in the police station?**

- a) Yes
- b) No (elaborate) \_\_\_\_\_
- c) N/A

**Have you been interrogated in the presence of a defense lawyer from the first moment of questioning in the police station?**

- a) Yes
- b) No (elaborate) \_\_\_\_\_
- c) N/A

**Have you been offered medical service during your stay in the police station?**

- a) Yes
- b) No (elaborate) \_\_\_\_\_
- c) N/A

**If you have been a victim of domestic violence, have you reported this in the police station?**

- a) Yes
- b) No (elaborate) \_\_\_\_\_
- c) N/A

**Have you had appointments with your defense lawyer while in the police station?**

- a) Yes (has it been personal or state-appointed lawyer?) How often have you met?
- b) No (elaborate) \_\_\_\_\_
- c) N/A

**Have you been satisfied by the legal service and legal representation in the court of law?**

- a) Yes
- b) No (elaborate) \_\_\_\_\_
- c) N/A

**JUDICIAL PROCESSES:**

**Have there been procrastinations in your proceedings?**

- a) Yes (specify reasons and the length of delays) \_\_\_\_\_
- b) No
- c) N/A

**Have you been denied possession of documents related to your judicial process?**

- a) Yes (specify) \_\_\_\_\_

- b) No
- c) N/A

**How long have you been kept in the police station?**

**Has it happened to you not to participate in the judicial process due to not being notified (during your stay in the pre-trial institution)?**

- a) Yes (specify what was the cause and who is responsible) \_\_\_\_\_
- b) No
- c) N/A

#### **LIFE IN THE INSTITUTION**

**Have you been told about your rights and obligations that flow from the law on the rights and treatment of convicted and detained people, prison regulation and regulations of other relevant institutions?**

- a) Yes (have the legal and sublegal acts been put into your disposal) \_\_\_\_\_
- b) No
- c) N/A

#### **THE RIGHT TO NOT BE ABUSED**

Violence occurs in different forms such as **physical violence**, spanking, battering, arm twisting, hitting with various objects, strangling, burning, threatening with tools or weapons etc. **sexual abuse**: the commission of sexual or obscene acts through threats or exercising physical violence, **psychological violence**: behavior aimed at humiliation, the disturbance of the person through insults, threats, use of offensive words, submission, etc.

**Have you ever been violated in any of the above mentioned forms prior to your imprisonment; during your stay in the penal institution?**

- a) Yes (specify the causes of the abuse you suffered, by whom and in what form)
-

- 
- b) No
  - c) N/A

**Have you reported the violence in institutions (for cases before incarceration such as police, prosecution, medical services) and/or the staff of the institution where you stay (in cases where a woman is violated while in the penal institution)?**

- a) Yes (in those cases to who have you reported the violation, what measures have been taken [if any] against the violators)  

---
- b) No (specify the reasons why)  

---
- c) N/A

**Have you been examined and treated by a doctor after suffering physical abuse?**

- a) Yes
- b) No
- c) N/A

**Has a medical examination been carried out of listening and viewing of non-medical staff (for cases when the woman is in the penal institution)?**

- a) Yes
- b) No (specify the reasons why)  

---
- c) N/A

**Have the examinations been registered and have the results of them been disclosed (including statements of the violated person or doctor's conclusions)?**

- a) Yes
- b) No (specify the reasons why)  

---

c) N/A

**Are there in the rooms objects or personal belongings that may favor violence against others or oneself in the police station, the penal institution and/or prison?**

- a) Yes (specify) \_\_\_\_\_
- b) No
- c) No answer

### **THE DISCIPLINARY MEASURES**

**Have disciplinary measures been taken against you this year?**

- a) Yes (specify the offences for which they were taken, and whether you have been given the necessary time and facilities to defend yourself) \_\_\_\_\_  
\_\_\_\_\_
- b) No
- c) N/A

**Are you allowed to defend yourself on your own or with a defense lawyer during the examination of disciplinary infringements?**

- a) Yes (specify if you defended yourself on your own or by means of a defense lawyer) \_\_\_\_\_
- b) No (specify the reason why) \_\_\_\_\_
- c) N/A

**Have there been cases during this year, that the following disciplinary measure are taken against you:**

- a) Physical punishments or collective punishments;
- b) Placement in dark cells
- c) Other inhumane and degrading forms of punishment (specify) \_\_\_\_\_  
\_\_\_\_\_

**Have there been cases when you have been sanctioned twice for the same disciplinary infringement?**

- a) Yes (specify for what offence or disciplinary measure, and for how long)

\_\_\_\_\_

- b) No

- c) N/A

**MEANS OF RESTRAINT:**

**Have cuffs or iron roads been used against you as a means of physical restraint?**

- a) Yes (specify) \_\_\_\_\_

- b) No

- c) No answer;

**In which of the cases below have cuffs or the straightjacket been used on you?**

- a) During transfers in those cases when you need to appear before judicial bodies;

- b) In cases of your own protection from self-harm (with the order of the prison director)

- c) In cases of harming others (with the order of the prison director)

- d) To prevent serious harm (with the order of the prison director)

- e) To prevent serious damage to property (with the order of the prison director)

- f) Other cases (specify) \_\_\_\_\_

- g) In no case at all

**REQUESTS – COMPLAINTS:**

**Are you given the opportunity to daily submit through institution's staff requests and complaints or seek appointments with the head of the institution or relevant staff?**

- a) Yes (I have had meetings with institution's authorities \_\_ times a month/year)

- b) No (specify why) \_\_\_\_\_

- c) N/A



**Have you received a reply for your request/complaints within 15 days?**

- a) Yes
- b) No (specify if there was a reply given and after what time) \_\_\_\_\_
- c) N/A

**Are your complaints kept confidential?**

- a) Yes
- b) No (specify the reason why) \_\_\_\_\_
- c) N/A

**Have there been cases when you have been discriminated against, prejudices or punished by the staff due to a request or complaint of yours?**

- a) Yes (specify for what reason) \_\_\_\_\_
- b) No
- c) N/A

**Have you filed a request/complaint with the state institutions or organizations outside the prison?**

- a) Yes (specify for what reason) \_\_\_\_\_
- b) No
- c) N/A

**THE RELATIONSHIP WITH THE STAFF:**

**Do you consider the treatment of the prison staff as humane and in respect to the human dignity of the person?**

- a) Yes
- b) No (specify for what reason) \_\_\_\_\_
- c) N/A

**Is the conduct of the staff a good example for you and does the staff enjoy your respect?**

- a) Yes

- b) No (specify for what reason) \_\_\_\_\_
- c) N/A

**Have you been treated unequally by institution's staff compared to other inmates?**

- a) Yes (look at the question below)
- b) No
- c) N/A

**If yes, on what bases are you being discriminated against?**

- a) religion adherence
- b) gender
- c) the crime for which you were convicted (specify the crime) \_\_\_\_\_
- d) bribes
- e) earlier conflicts with the staff
- f) other reasons (specify) \_\_\_\_\_

**During the physical checkup of yourself and your room, is your personality respected and your personal items in your possession not damaged?**

- a) Yes
- b) No (specify) \_\_\_\_\_
- c) N/A

**Have there been cases of checkups also in the intimate parts of your body?**

- a) Yes (has this checkup been performed by the medical staff if you were suspected reasonably of possessing forbidden items) \_\_\_\_\_
- b) No
- c) N/A

**MEDICAL SERVICE:**

**Do you regularly get a visit from a medical staff according to a certain plan?**

- a) Yes (specify how many times a week or month, and who shows up for the visit) \_\_\_\_\_

- b) No
- c) N/A

**Does the medical service address your needs?**

- a) Yes
- b) No (specify) \_\_\_\_\_
- c) N/A

**Have you been allowed to make visits on your own and with your own expenses?**

- a) Yes
- b) No (specify) \_\_\_\_\_
- c) N/A

**Does the doctor maintain the confidentiality during your medical examination?**

- a) Yes
- b) No (specify) \_\_\_\_\_
- c) N/A

**Do you suffer from any disease?**

- a) Yes (specify the kind of disease and if you get extra airing upon doctor's recommendation) \_\_\_\_\_
- b) No
- c) N/A

**Are you treated with the appropriate medicaments for the disease you have?**

- a) Yes
- b) No (specify) \_\_\_\_\_
- c) N/A

**Who provides your medicaments?**

- a) The institution
- b) Family

- c) Other (specify) \_\_\_\_\_
- d) No one

**Has the doctor recommended for you a certain special diet in terms of the disease or in case of pregnancy?**

- a) Yes (is this diet being provided by the institution) \_\_\_\_\_
- b) No
- c) N/A

**Have you had a checkup by the doctor when you submitted a request?**

- a) Yes (specify how much time passed from the moment of filing the request until the arrival of the doctor) \_\_\_\_\_
- b) No (explain why) \_\_\_\_\_  
\_\_\_\_\_
- c) N/A

**Has the medical treatment that was offered to you been not equal to that of other persons?**

- a) Yes
- b) No (specify) \_\_\_\_\_
- c) N/A

**In case of yes, what do you think was the reason of this discrimination?**

- a) religious adherence
- b) gender
- c) the offence for which you are apprehended by police/convicted/charged (specify the criminal offence) \_\_\_\_\_
- d) bribery
- e) earlier conflicts with the staff
- f) other reasons (specify) \_\_\_\_\_

**Have you been taken to the hospital in case that you needed it?**

- a) Yes
- b) No (specify) \_\_\_\_\_

c) N/A

**Have you have been refused the medical, surgical or psychiatric care in a civilian hospital because of your status of a convicted person?**

a) Yes (specify)

b) No

c) N/A

**Are you provided with dentist service in the institution?**

a) Yes (specify)

b) No

c) N/A

**Are you allowed to be treated in dental clinics outside the institution with your own financial means?**

a) Yes

b) No (specify)

c) N/A

**Are you offered gynecological service in the institution?**

a) Yes (specify how often)

b) No (specify)

c) N/A

**Do you have mental health problems?**

a) Yes (what medical assistance is offered to you? What about any special programs?)

b) No (specify)

c) N/A

**APPOINTMENTS WITH THE LAWYER AND FAMILY MEMBERS, CORRESPONDENCE:**

**Have the meeting, the correspondence, conversations over the phone with the lawyers been made possible for you?**

- a) Yes (is the confidentiality retained) \_\_\_\_\_
- b) No \_\_\_\_\_
- c) N/A \_\_\_\_\_

**Have you been offered the opportunity to meet your relatives, children or friends 4 times a month?**

- a) Yes (are you allowed to receive clothes and food from them during this time) \_\_\_\_\_
- b) No \_\_\_\_\_
- c) N/A \_\_\_\_\_

**Has the staff of the penal institution made sufficient efforts for you to meet regularly with the children?**

- a) Yes (specify) \_\_\_\_\_
- b) No \_\_\_\_\_
- c) N/A \_\_\_\_\_

**Has your right to having correspondence been infringed?**

- a) Yes (specify) \_\_\_\_\_
- b) No (is its confidentiality been infringed) \_\_\_\_\_
- c) N/A \_\_\_\_\_

**Are you allowed to communicate over the phone 8 (eight) times a month with your family, relatives and friends?**

- a) Yes \_\_\_\_\_
- b) No (specify how many times have you or have not you been allowed) \_\_\_\_\_
- c) N/A \_\_\_\_\_

**Are the telephone conversations allowed under the ocular observation of surveillance staff?**

a) Yes (are the conversations heard from the staff)

b) No

c) N/A

**In case you do not have the financial resources to carry out telephone conversations with family, are you provided the telephone correspondence 1 time a month up to 5 minutes at the expenses of the institution?**

a) Yes

b) No

c) N/A

**Has your telephone correspondence been limited?**

a) Yes (has the restriction been ordered by the director of the prison, at the request of the prosecutor or of the court) \_\_\_\_\_

b) No

c) N/A

**PERSONAL HYGIENE:**

**Is the institution's staff guiding you on how to keep your personal hygiene?**

\_\_\_\_\_

**Does the institution have the sanitation equipment that addresses your needs?**

a) Yes

b) No

c) N/A

**Is there running water in the institution?**

a) Yes

b) No (specify how many times a day is the water running)

c) N/A

**Do you have access in the services and sanitary equipment?**

- a) Yes
- b) No (specify the equipment to which you don't have access) \_\_\_\_\_
- c) N/A

**The use of the hydro-sanitary equipment is within the respect of your privacy?**

- a) Yes
- b) No (specify) \_\_\_\_\_
- c) N/A

**How many times a week do you bathe?**

\_\_\_\_\_

**FRESH AIR:**

**Do you go out in the fresh air?**

- a) Yes (is the minimum of 2 hours respected) \_\_\_\_\_
- b) No (reasons) \_\_\_\_\_
- c) N/A

**DAILY PROGRAM:**

**Does the institution have a program of activities?**

- a) Yes (are you familiar with this program?) \_\_\_\_\_
- b) No
- c) N/A

**EDUCATION, VOCATIONAL COURSES AND SPORTS ACTIVITIES:**

**Do you know how to read and write?**

- a) Yes
- b) No (specify if the institution offers literacy programs) \_\_\_\_\_
- c) No comment



**Are you allowed to study in the library?**

- a) Yes
- b) No (specify why) \_\_\_\_\_
- c) N/A

**Do you attend vocational courses in the institution?**

- a) Yes (what vocation course do you attend) \_\_\_\_\_
- b) No (specify why) \_\_\_\_\_
- c) N/A

**Do you attend sports activities?**

- a) Yes (What activities and how often) \_\_\_\_\_
- b) No (why) \_\_\_\_\_
- c) N/A

**EMPLOYMENT**

**Are you employed?**

- a) Yes (what do you do and what is the monthly pay/incentive) \_\_\_\_\_
- b) No (specify why) \_\_\_\_\_
- c) N/A

**Have you been provided with protective gear for ensuring your health and safety at work?**

- a) Yes (specify) \_\_\_\_\_
- b) No
- c) I don't know

**Do you enjoy a minimum of one day off per week?**

- a) Yes
- b) No (specify)
- c) N/A

**Do you take part (the employed) in educational, social or cultural activities?**

- a) Yes (specify) \_\_\_\_\_
- b) No (why) \_\_\_\_\_
- c) N/A

**SOCIAL ASSISTANCE – PSYCHOLOGICAL AND JUDICIAL ASSISTANCE:**

**Do you have regular appointments with the psychologist and/or the social worker?**

- a) Yes (specify how many times a week) \_\_\_\_\_
- b) No
- c) N/A

**Are you provided with social and psychological assistance from the social workers and psychologists?**

- a) Yes (how many times a month and in what does it consist) \_\_\_\_\_
- b) No (specify) \_\_\_\_\_
- c) N/A

**Are you offered judicial consultancy by the jurist of the institution?**

- a) Yes (how often a month) \_\_\_\_\_
- b) No (specify) \_\_\_\_\_
- c) N/A

**Is your behavior assessed by an evaluation committee every 6 months?  
Is the form of behavior assessment of the prisoner administrated in his/  
her psycho-social file?**

- a) Yes
- b) No (how many times a month) \_\_\_\_\_
- c) N/A

**LEISURE:**

**How do you spend your free time?**

---

**Have you been provided the opportunity to listen to the radio, watch TV, read magazines, newspapers or books?**

- a) Yes (specify which of these are more accessible) \_\_\_\_\_
- b) No  
\_\_\_\_\_
- c) N/A

**If yes, in which of these informative channels have you had access to?**

- a) To all of them
- b) Only to \_\_\_\_\_
- c) To none

**Have you been given the opportunity to do physical exercises?**

- a) Yes (how often a week and how many hours each day) \_\_\_\_\_
- b) No
- c) N/A

**Do you participate in educational programs?**

- a) Yes (specify the programs and how they suit your need) \_\_\_\_\_
- b) No (specify the reasons)
- c) N/A

**Do you participate in recreational activities?**

- a) Yes (specify the activities and how often you participate in them) \_\_\_\_\_
- b) No
- c) No answer

**CONDITION OF THE ROOMS:**

**Are you placed in:**

- a) Individual rooms;
- b) Collective rooms, (specify with how many inmates do you share the

- room) \_\_\_\_\_  
c) Other (specify) \_\_\_\_\_

**Are you provided a single bed for separate sleeping and with appropriate beddings in accordance to the climate conditions?**

- a) Yes  
b) No (specify) \_\_\_\_\_  
c) N/A

**THE FOOD:**

**Is institution's food good?**

- a) Yes  
b) No (specify) \_\_\_\_\_  
c) N/A

**Are you provided 3 meals a day in reasonable intervals between them?**

- a) Yes  
b) No (specify) \_\_\_\_\_  
c) N/A

**Are you provided with clean drinkable water all the time?**

- a) Yes  
b) No (specify) \_\_\_\_\_  
c) N/A

**For the case of pregnant women, nursing mothers and those suffering from diabetes etc., are you provided with a food diet as prescribed by the doctor?**

- a) Yes  
b) No (specify) \_\_\_\_\_  
c) N/A

**For the cases of women that have children in the institution, what kind of food are children provided with?**

- a) Yes
- b) No (specify) \_\_\_\_\_
- c) N/A

**THE RELIGIOUS ADHERENCE:**

**Do you practice freely your religious beliefs without being discriminated against by others?**

- a) Yes
- b) No (who discriminates you) \_\_\_\_\_
- c) N/A

**Does the regime of the institution offer you the opportunity to perform your religious rituals?**

- a) Yes
- b) No (what obstacles have you encountered in this regard) \_\_\_\_\_
- c) N/A

**Other notes (here may be included other topics that are not included in the questioner or/and for special cases of battered women in their families and treatment of pregnant women and of those with children in the institution)**



## APPENDIX

# 2

## HALF STRUCTURED INTERVIEWS FOR THE REMAND/PRISON INSTITUTION'S ADMINISTRATION

### GENERAL INFORMATION

1. The actual number of detained/convicted women.
2. What is the capacity of both institutions?
3. What are the infrastructural problems of both institutions where women are placed?
4. The age of detained/convicted women.
5. The marital status of detained/convicted women.
6. From what parts of the country do detained/convicted women come from?
7. How many women have minor children? How many women have children in the penal institution?
8. How many of the women are head of their households?
9. What is the educational profile of the women?
10. Which are the positive/policies and special strategies for women taken by the directors and staff of the institution?
11. What are the planned budgets for the implementation of specific programs for women in both institutions?
12. Should there be a special approach for detained and convicted women? If so, please elaborate.
13. How many male and female staff respectfully work in the penal institution where women are placed?
14. What kinds of special treatment that must be offered to women deprived of liberty are provided through the staff of all services offered in the penal institution?

**LEGAL CARE:**

The kinds of the penal acts committed by women (consultation with legal files of women).

Are the women in institution provided legal aid? If so, specify the services.

The benefits from the special and rewarding permissions for the women, how are they realized in practice?

How many women have benefited from the pardoning in the last three years?

How many women have benefited by the alternative sentences in these last three years?

How and to what extent are the alternative sentences such as early release are applied for women? What are the challenges/difficulties that women face in this regard?

**PSYCHOLOGICAL AND SOCIAL CARE:**

Is there a preliminary assessment of all women from the moment of admission into the institution?

If so, specify the instruments of individual assessment.

How is an individual psychosocial plan carried out for women?

What is the weekly program of activities for women in the institution? Are they involved in the individual therapeutic programs (including the occupational therapies for the mentally ill), sports activities, counseling, library services, employment etc.? If so, please specify.

Are the victims of domestic violence provided a psychological treatment? If so, please specify.

Are the women with mental health problems offered a special treatment program? If so, please specify.

What programs/initiatives exist to strengthen the connections with children outside institution and with the family?



How is accomplished the preparation for release of the convicted women? What challenges can be stated in terms of application of these programs?

**HEALTH CARE:**

How many sick women are there in the institution?

- a) Chronically ill (specify the no.) \_\_\_\_\_
- b) Mentally ill (specify the no) \_\_\_\_\_
- c) Sick with contagious diseases (specify the no.) \_\_\_\_\_
- d) Alcohol addicts \_\_\_\_\_
- e) Drug addicts \_\_\_\_\_
- f) With other diseases (specify the no.) \_\_\_\_\_
- g) Not applicable

Does the institution have a medical staff trained for the health problems and for a more specific training of the women?

---

Are there specialized sections in institution for the treatment of women with mental health problems?

---

Are there special programs for women with mental health problems?\_

- a) Yes (specify) \_\_\_\_\_
- b) No
- c) N/A

How does the dentist service work? \_\_\_\_\_

Are all dentistry services provided in the institution?

- a) Yes (specify) \_\_\_\_\_
- b) No
- c) N/A

What is done in cases of emergency?

Comment \_\_\_\_\_

Is the post-traumatic stress identified by the doctor that has resulted from the restriction of freedom and/or that caused by domestic violence? Is so, what has been done in these cases?

---

Are there regular gynecologic diagnostifications and treatment for women?

- a) Yes (specify how often) \_\_\_\_\_
- b) No
- c) N/A

How are pregnant women treated in the institution?

How are the children of detained women and/or those convicted treated in the institution?

If there have been self-claims by the women in terms of their health conditions or in terms of mistreatment in the institution, what steps are taken in these cases?

---

If the woman has stated that she has been a victim of the domestic violence, what care is taken for her, are there programs of trauma recovery?

#### **SECURITY CARE:**

What is the profile of women from the security perspective?

How many disciplinary measures were given to women during this year, and of what type were they?

How are women with post-traumatic stress disorders/mentally ill etc. managed by the uniformed staff?

Is the uniformed staff trained for the specific problems that women have? Is so, specify the sorts of treatment and needs of staff in this direction.

## APPENDIX

# 3 HALF STRUCTURED INTERVIEWS FOR DETAINED AND CONVICTED WOMEN

1. Women's life experience in their family of origin;
2. Their family composition;
3. Their education and forms of employment;
4. Their family life during marriage (for married women) including their economic situation, employment, involvement and family responsibilities of the woman.
5. For women that claimed they had been victims of domestic violence in family, are questioned in terms of:
  - a) The first moments they experienced for the first time the domestic violence;
  - b) Her relationship to the abuser, including reactions of other family members;
  - c) Strategies pursued by the women to confront, keep under check, put an end, or finding the way of escape from this violence;
  - d) Violence perpetrated by the abuser on other members of the family;
  - e) Potential interventions by persons/institutions outside the inner family circle;
  - f) The way of conducting the penal act;
6. Reaction and treatment of the women during the penal process, starting from:
  - a) Fetching/arrest by the police;
  - b) Interrogation by the police officers;

- c) Court hearings;
  - d) Legal protection service;
  - e) Reaction of judges toward the crime committed;
  - f) Experiences of women during the legal process;
  - g) Women's experiences during the detention period while awaiting trial;
7. Their life in the closed institutions of pretrial and prisons:
- a) The life dynamics with activities in the institution;
  - b) Their treatment by institution's staff;
  - c) Family contacts and family/relatives;
  - d) The efforts in the closed institution for the preparation of the women for her release.