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Prison Minorities in the Western Balkans

Sergio Bianchi

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I N D E X

SUMMARY

This report was compiled after visiting several prisons in the Western Balkans region between 2011 and 2012. The visits followed a precise methodology, including meetings with the Ministries and relevant authorities which we defined EUG – Expert User Groups – visits to the prisons and meetings, often in a public setting with NGOs and the families of prisoners as well as minority group representatives.

The activities took place in the following order.

1) Organization of EUG meeting in Tirana and visit to the local female and male prisons in collaboration with the Albanian Institute for International Studies AIIS (July 8-10).

2) Organisation of the EUG in Beograd (21-24 November 2011) in collaboration with the Forum for Ethnic Relations (FER) and visit to the high security prison of Belgrade and the Novi Pazar facility

3) Organisation of the EUG in Ankara on February 27-29, 2012, organized by our local partner Sosder, and visit to the prison compound of Central Ankara.

4) Organisation of the EUG in Sarajevo on April 18-19, with a correlated visit to the Zenica prison.

5) Organisation of the EUG in Pristina, Kosovo, on April 20th, 2012 and correlated visit to the Lipjian prison facilities.

8) Organization of the final EUG in Rome on November 26-27, 2012 with the participation of all partners and visit to the Rebibbia prison.

This report therefore represents a comprehensive tool designed to identify and understand the current situation regarding international, European, regional and national regulations specifically looking at the theme of minorities within the prison system within which is also present the hidden and more complex question of the European acquis process.

If we skip to the final outcomes of the report we cannot ignore that fact that at the present time both trans-national institutions and national institutions have fallen dramatically short in addressing this particular subject of minority rights within the prison system. The picture that emerges from the work carried out is rather discomforting for several reasons: in the Balkans, whilst great progress is being made in the application of regulations for the protection of minorities at a general level, both nationally and regionally, this progress does not translate to the penitentiary system. Prisons seem to have been entirely isolated from this process of growth. What is even more serious in our opinion is the total absence of awareness of this subject of minorities within the prison system which can also be perceived in the international reports and in the progress reports by the EU concerning individual countries. Institutions such as the Council of Europe or the European Commission or large international groups such as OSCE and the United Nations in its various departments to not seem concerned about applying the Conventions or associated protocols when considering the rights of incarcerated minorities. Therefore one shouldn't be surprised when institutions in the Balkans and Turkey, as well as local NGOs, tend not to have any interest in a subject that in fact could play a strategic role in penitentiary politics. The most striking element during the external observational analysis of the prison system in the region was the total absence of any subsidiary strategy on the part of the prison system directed at creating a link between alternative measures and the local community. The absence of subsidiary strategies regarding prison minorities does not only create discrimination but aboveall undermines the policies of rehabilitation and recovery as our report will demonstrate. Not only that, the institution itself becomes isolated from the rest of society and does not leverage civil society or the integration of public-private partnerships. This is a general failing of the prison system in the Balkans and Turkey which requires urgent new protocols and legislative integration in order to push through alternative measures and social rehabilitation programmes. Today measures such as these in the face of a complex economic crisis are only possible to instigate if we appeal to our sense of identity and belonging to local communities and to civil society. At the same time we need to build coordination between institutions and other local institutions including hospitals, training centres and schools.

The first part of the report will therefore analyse the relationship between individual rights and collective rights in order to then create a technical and legislative grid on which to found the collective rights for minorities in the region in this area of interest. At the heart of this analysis sits the importance of national sovereignty of the nation states regarding their definition of the concept of minorities, which also has serious implications for human rights and also impacts on the European Acquis. This part of the report was carried out largely by Dott. Paolo Quercia and Professors Romanelli and Galantini, and aimed at defining a specific list which includes vulnerable groups and ethnic and religious minorities in line with the doctrine of the European Court and the United Nations and which is formed by two schools of thought that until now have always been kept separate. The outcome is a list of minorities made up of ethnic groups, religious groups, linguistic groups and vulnerable groups.

On this list of 7 well defined user groups, we went on to construct the second part of the report which consists of an innovative technique employed to monitor the application of the protection of human rights for prison minorities with a specific working method, a questionnaire and a technical evaluation strategy. This is the first time a methodology of this kind has been used, as far as we know, asses this group of prisoners based on work already carried out by some European institutions, in particular in Italy. This part of the report was carried out in cooperation with Mr. Marco Capitani, Italian Ministry of Justice, Department for Penitentiary Administration.

The third part of the report is focussed on country by country analysis which combines prison visits with the work that emerged through the EUGs and from on-going relationships with NGOs. During this phase we gathered individual accounts which we have chosen to attach to the report as we consider them to be of relevance to the report as a whole though we have refrained from adding any comment or analysis. The interpretation of these documents is left to the reader.

Finally, the last part of the report which in our opinion is the most important includes the recommendations and the operational proposals.

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Our organisation's activities in the Balkans and in Turkey began with the Prisnet project financed by the EU and continue to expand beyond the original project. A new Agenfor regional office has been opened in Novi Sad, Serbia and the partner network has been widened to include the entire Balkan region. In the course of 2013, the report will be sent to new stakeholders and constantly updated as we continue to carry out visits to the region's prisons, meetings with institutional stakeholders and roundtable events with local and regional NGOs. The report will be updated and available in it's updated version on the observatory website www.futureprisnet.eu.

1. DEFINITION OF MINORITY AND CONCEPT OF PENITENTIARY MINORITY

1.1- The International Debate on Minority Rights

The legal framework for this research is represented by the Framework Convention for the Protection of National Minorities, drawn up within the Council of Europe by the Ad Hoc Committee for the Protection of National Minorities (CAHMIN) under the authority of the Committee of Ministers, that was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member States of the Council of Europe on 1 February 1995. In 1994 the CAHMIN foresaw that non-member States may also be invited by the Committee of Ministers to become Party to this instrument and therefore Western Balkans member states became eligible for multi-bilateral agreements.

Despite this, twenty years after its adoption, whilst human rights in general terms have seen important results as a result of the FCNM, we must sadly admit that in the specific sector of penitentiary system politics it has had little effect. It almost appears that there is some sort of double standards in terms of state politics and NGO and international organisation activities whereby the principles and praxi of the FCNM are applied in the penitentiary sector considerably later than in the rest of society. This is certainly due to several different reasons though there is one major reason of a general nature which we will discuss in the first part of our research and which helps us to understand the difficulties of applying the FCNM.

This specific fact to be used as a starting point for the scope of this research, is that today there is no consensus, either academically or in international law, about how to define a minority, an activity that is thus left to national authorities. Because the concept is too broad and the implications of the definitions often collide with political interests and/or are politically sensitive, national authorities tend to consider primarily those groups who have a voice. Prisoners and detainees are usually the smallest voice in society.

Indeed the issue of achieving an internationally accepted definition of "minority" is and remains a long debated question among States, lawyers, scholars, groups representing minorities, human right groups and multilateral organisations. This longstanding debate has proved to be particularly difficult within Europe which has historically been the cradle of Empires, Nation States and communities, hosting wars and conflicts on its territories that originated from the unsolved issue of the relation between States, Nations and minorities. These conflicts often have a transnational dimension and therefore may be exploited by Empires as a proxy for expansive foreign policies or by those who have aspirations of independence that threaten the national unity.

Human Rights and Minority Rights

The political and juridical debate on minority protection has developed in parallel with the debate on the evolution of the concept of human rights and usually the doctrine is divided between three different generations of human rights[1]. The first generation refers to the fundamental rights of freedom of the individual as opposed to the power of the State; the second generation includes the so-called social rights, that is the right to receive from the State some fundamental services and these rights attain to both single individuals and social groups (women, vulnerable groups, etc.); the third generation of rights are the so- called special collective rights, that are granted not to a single person but collectively to organised groups[2], such as national minorities. This last concept introduces the issue of "national minorities" into the debate, a definition that is highly politically sensitive. Although, in democratic States, minorities usually enjoy all three generations of rights, the third, that of so-called collective rights, refers mostly only to collective identities clearly distinct from other groups (other minorities and/or majorities) and for this reason its acceptance is still very controversial in the international system due to the fact that it can often be connected to a minority's

[1] See Ulrike Haider Quercia, *Il processo di integrazione europea e la tutela delle minoranze*, in L'Europa allo specchio, a cura di Pietro Barcellona e Riccardo Cavallo, Bonanno Editore, pp. 173 – 195.

[2] See R. Hofman, *Minority rights, individual or group rights? A comparative view on European legal systems*, in German yearbook of international law, vol. 40, 1997, pp. 356 ss.

aspirations to self-determination and independence that could lead to internal or international conflicts. This important distinction between collective and individual rights regarding minority issues has tangible effects on jurisprudence and legislation. It impacts directly on penitentiary policies because in a number of judicial cases the respect for human dignity criteria didn't allow the European Parliament's Petitions Committee to declare admissible a petition for the protection of a minority group because the subject exceeded the European Union competences with reference to the lack of the "universal definition of minority" and non-existence of a uniform definition at European level.[3]

One of the most prominent, quoted and widely used definition of minority is the one proposed by the Italian jurist Francesco Capotorti in his study on minorities commissioned by the United Nations in 1979. Minority is defined as "*a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion, or language*"[4].

According to Capotorti, we can identify a minority by numerical inferiority, non-dominance and solidarity. Capotorti's definition seems to include the idea that the minority in question must be in a specific relationship with the State of residence[5] represented by the binding commitment to guarantee citizenship to its members. In some regions, such as the Western Balkans, this connection has important implications

[3] European Parliament, Committee on Petitions N° 75 7/2004 concerning the protection of ethnic minority languages in the new EU Member States N° 1000/2004, on discrimination on the grounds of ethnic origin in Latvia N° L-11/2004, concerning the situation of the Russian minority in Latvia and N° 21/2005, on discrimination on the grounds of ethnic origin in Latvia. OJEU n. C 27/88; As remarked with an Opinion of the European Economic and Social Committee on the "Integration of minorities — Roma" (2009/C 27/20)"Integration of minorities requires a legal basis for action that builds on the acquis as well as on the pertinent areas of the open method of coordination (education, employment, social protection and social inclusion)"OJUE n. C 27/88, 3/2/2009

[4] Francesco Capotorti, *Study on the rights of persons belonging to ethnic, religious, and linguistic minorities*(UN Doc. E/CN.4/Sub.2/384/Rev.1, 1979).

[5] The definition given by the International Permanent Court of Justice differ from Capotorti's one because it doesn't make an explicit connection between the minority and citizenship, just leaving the accent on the existence of the minority group .

because citizenship can be a process that runs parallel to the formation of the new States or the disaggregation of old national entities, like the former Yugoslavia.

The recognition of those effects enter the domain of national competences that impose conditions for naturalisation. Thus, hypothetically, these could be endorsed with the intention to exclude (or include) a certain minority group from the social and democratic life of the nation.

In order to have a more inclusive definition of minority at their disposal, United Nations agencies such as UNODOC, introduced the sociological definition of minority, described as "*a minority group that does not constitute a dominant plurality of the total population of a given society. A sociological minority is not necessarily a numerical minority and it may include any group that is disadvantaged, vulnerable with respect to a dominant group in terms of social status, education, employment, wealth and political power. Minority groups usually differ from the majority for the perception of its own identity in terms of their ethnicity, race, religious and cultural practices or languages spoken*"[6].

The sociological definition adds important elements to our field of analysis because it extends the action to vulnerable groups in the prison systems that may benefit from collective rights.

Religious Minorities

Moreover, connected to the issues of individual and collective rights, national minorities and vulnerable groups, we should consider the international debate around religious minorities, that stemmed from the rights granted by Article 18 of the Universal Declaration of Human Rights: " *Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.".*

[6] United Nations Office on Drugs and Crime, Handbook on prisoners with special needs, United Nations 2009

Religious minorities are the most ancient known minority in history and they precede by several centuries the creation of national and ethnic identities and therefore minorities. Nevertheless for a long time religious minorities have suffered from a double discrimination because their rights have been long neglected in consideration of the supposed individual nature of religious beliefs. Prejudices regarding the public role of religions in the establishment and development of collective identities is the main reason for this problem, that has a primary impact within the penitentiary systems. During the complex history of Europe in the 20th century religious minorities and national minorities followed two different patterns in the field of human rights protection. Religious rights become more and more a personal right of the individual and its deprivation become an issue of personal discrimination; on the other hand national and ethnic rights followed the journey of collective rights thus claiming special specific status for entire linguistic and ethnic communities. The diversion of religious minorities away from the international monitory rights regime is well expressed in the words of Nazila Ghanea when he affirms that "*although historically religious minorities were the primary trigger for the institutionalisation of the international framework of minority rights, they have long since been sidelined from its protections. This sidelining is evident in a variety of international human rights norms and mechanisms, the focus below being on the jurisprudence of the UN Human rights Committee*"[7].

Furthermore the difficulties to clearly define this area are further complicated by the fact that a "religious minority" could include among its members individuals belonging to an ethnic or national majority, as in the case of Muslims and Albanians, or it may contain various national minorities. In addition to this, religious minorities can be ethnic majorities in specific areas. Nevertheless, it shouldn't be forgotten that these categories of religious identities are operational in European societies, both in open society and in the prison system and they should be taken into account when analysing the processes of inclusion/discrimination that can take place between majority and

[7] Nazila Ghinea, *Are religious minorities really minorities?* Oxford Journal of Law and Religion, 2012, p.1-23 and also Richard Etienne, Pascal Tozzi, Hugo Verkst, *EPASI Thematic report on Religious minorities*, Jannuary 2009

minority groups within prisons. As a matter of fact religious identities imply the capacity to provide collective rights based on tangible services, such as space for rituals, special dietary requirements, ceremonies, legal status, etc.

The differences between national / religious minorities as well as the difficulties in defining minorities as a whole and religious minorities specifically should be taken into account in this research, especially considering the fact that the target countries are located in South Eastern Europe, a part of Europe where ethnic and religious identities have been indissolubly merged for the forced creation of different national identities.

For all these legitimate reasons, since 2011 the US State Department, Bureau of Democracy, Human Rights and Labor, publishes a yearly report called "International Religious Freedom Report"[8], that may be considered a valuable instrument for the protection of religious minorities and is part of our research in terms of methodology as well as other European instruments borrowed from the welfare policies that clearly address religious rights[9]. It is again noticeable that while the national legislations widely consider these elements in their dynamics, prison systems seem to overlook the importance of these problematic issues.

In conclusion, the issue of an objective definition of what a minority is, represents a very important starting point in order to assess who should be the subject of minority protection in society and in the prison system, that is a segregated part of society with its own majority/minority dynamics. Religion, ethnicity, languages and

[8] Last version is "International Religious Freedom Report for 2011", Washington, 2012: " *With these reports, we bear witness and speak out. We speak against authoritarian governments that repressed forms of expression, including religious freedom. Governments restricted religious freedom in a variety of ways, including registration laws that favored state-sanctioned groups, blasphemy laws, and treatment of religious groups as security threats".*

[9] The legal basis for this topic is Article 19 of the Treaty that enables the Union to take appropriate action to combat discriminate ion on the ground of religion or belief, among other grounds, and Article 10 of the Treaty that requires the European Union to 'aim to combat discrimination' on the ground of religion or belief, among other grounds, 'in defining and implementing its policies and activities'. Discrimination on the ground of religion or belief is prohibited in employment, occupation and vocational training under the Framework Employment Directive (2000/78/EC) and the European Commission has proposed a further Directive (COM(2008) 426 final) prohibiting discrimination on the ground of religion or belief, among other grounds, in fields beyond the labour market.

social status are elements that need to be combined within historical and political dynamics in the framework of very specific geographic contexts to outline a proper picture of 'minority'.

Member State Competences and Universal Rights between Foreign Policies and Home Affairs

The political implications of the definition, the overlapping of individual and collective rights and finally the lack of an established consensus on what a minority is doesn't facilitate the process of determining who is eligible for specific rights and who is not to benefit from minority rights and minority protection. As Stefan Wolff puts it "*as there is no internationally legally binding clarification of the term 'minority' and hence no obligation for states to accept that they have minorities among their citizens, states wield a significant degree of power to decide which minorities they recognise, a power that they predominantly exercise through predefining census categories, which in turn shape the framework of policies directed at minorities*"[10].

As we can see from this statement, the issue of minority rights impact on the general policy of a State and touch on the issue of sovereignty questioning the central relation State/Nation.

The discretionary power and subjectivity of the Nation States in deciding whether or not to recognise the existence of minorities in its territory and which sociological minority should be recognised or not (therefore protected as a general group provided with collective rights and not through the individual human rights[11] alone) is an integral part of the problem of minority protection in prisons, since only a legally recognised minority could be granted specific collective protection and

[10] Stefan Wolff, Pieter van Houten, Ana-Maria Anghelea, Ivana Djuric. *Minority Rights in Western Balkans*, Report commissioned by the Subcommittee on Human Rights of Foreign Affairs Committee of the European Parliament, June 2008

[11] The collective human rights vs individual human rights approach is one of the most prominent debate in human rights affairs and it can't be addressed in this study. Synthetically collective rights protect a group of people recognised as such with extra collective rights while individual rights protect the individual in its own personal freedom and rights. The concept of collective individual rights is not universally accepted by several countries – United States, Japan, New Zeeland, United Kingdom among others) that claim that it is conflicting with the concept of individual human rights. See Austin Badger, *Collective vs. Individual human rights in membership governance for indigenous people*, The American University Law Review, Vol. 26 No. 2, 2011, p. 485 – 505.

treatment in the prison system in a form different from the standard human rights concerning individuals. Naturally, it is not enough that a State doesn't recognise the existence of a specific minority in order to cancel its sociological and factual existence nor to solve the problems that the majority / minority relations pose to the life of democratic States. Still, as an example of the complexity of the field of this research, States like France, Greece and Turkey officially don't recognise the existence of specific minorities inside their own territories.

A similar problem of definition of national minority also exists in the Council of Europe Framework Convention on National Minorities, one of the most comprehensive multilateral treaties devoted to minority rights. In fact the Convention does not define "national minority", so you must first determine to whom the Convention applies. Several parties, including Austria, Denmark, Estonia, Germany, Poland, Slovenia, Sweden, Switzerland, and The Former Yugoslav Republic of Macedonia, set out their own definition of "national minority" when they ratified the Convention. Many of these declarations exclude non-citizens and migrants from protection under the Convention, and some identify the specific groups to whom the Convention will apply. Liechtenstein, Luxembourg, and Malta are parties to the Convention, but each declared that there are no national minorities within their respective territories.

The mentioned problems of difficulty in defining minority and the discretionary powers of the States increases the need to constructively engage State institutions – and their bodies devoted to justice and home affairs administration – into projects aimed at analysing the state of majority/minority relations inside the prison systems with the aim of contributing to reduce the possible causes of discrimination that could lead to radicalisation of minority groups or individuals.

The issue of juridical competence on minority issues is a direct consequence of this international debate. In addition to the difficulties related to definition, this question is related to the historical consolidation of the political union, the on-going process of gradual sovereignty transfer from MS to the EC and the related compromises in terms of agreements among States. For this reason the matter of

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minority protection gained more importance within civil society complementary policies and the EU foreign policies, than in the domain of Home Affairs.

It is probably for this reason that the European Court of Justice case law refers to the principle of non-discrimination and equal treatment of all European citizens regarding minorities in Europe rather than addressing national legislations and recommendations as direct instruments for their protection, in order to avoid any interference in matters which are the object of national competencies.

Nevertheless, part of the doctrine didn't forget to highlight the expanding attention on minority issues within the EU, pointing out the fact that some European Court of Justice sentences come to the conclusion that " *Community law may no longer be considered as having a "blind spot" concerning minority rights*"[12]. As a matter of fact, from the juridical point of view, regarding minority protection the case law reveals that the lack of competences, the juridical concurrence of competences as well as the political sensitivity of the issue doesn't allow the EU to directly tackle the problem at a national level.

The minority groups issue has few sources in the main EU documents. On example where it is mentioned is in the introduction of the Treaty of Amsterdam at art.13 (now art.19 of the TFEU) that recognized the power of the Council to adopt, although acting unanimously, appropriate measures in order to face the discrimination based on certain differences, including the religious one.[13] From a technical point of view, the Lisbon Treaty provides no changes regarding the overall minority position. Art. 2 of the TFEU enshrines the fundamental EU values, specifying that the respect of fundamental rights also embraces "*the minority members rights*". The purpose of these guidelines is the enforcement of the Charter of Fundamental Rights of the European Union art.21 provisions that explicitly prohibit "*any discrimination based on membership of a national minority*". Art. 10 of the TFEU is therefore clarifying that " *in*

[12] R. Hoffmann, *National Minorities and European Community Law*, in Baltic Yearbook of International law, 2002, p. 172. Case C-274/96. European Court reports 1998 Page I-07637 24 November 1998, Bickel v Franz, ;, ECJ, Robert Heinrich Maria Mutsch, Case C-137/84, judgment of 11 July 1985, ECR I-2681, Para 18; PRESS RELEASE No 41/20006 June 2000Judgment of the Court of Justice in Case C-281/98 Mutsch, in Racc., p. 2681; 6 June 2000, case C-281/98, Angonese Racc., p. I- 4139

[13] The Council has exercised these powers when adopting Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

defining and implementing common policies and activities the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation". This kind of provision establishes that all EU policy areas must make an active contribution towards eliminating discrimination.

However, this idealistic approach becomes more clear cut and defined, without compromises, within the EU foreign policy. In this area, where the European Weltanschauung can be applied in full without the burdens of historical mediations, the EC seems to be firmly committed towards the juridical and political promotion of collective and individual minority rights within the framework of its grassroots initiatives, bilateral negotiations and political strategy.

The decision to focus on minority problems, as an issue for foreign affairs policy, came out in the process of setting rules and criteria for the preconditions for the accession of new countries.

At its Copenhagen meeting[14] in 1993 the Council of Europe established "*that the candidate country must have achieved stability of institutions guaranteeing democracy, rule of law, human rights, respect for and protection of minorities*" without any distinction based on national origin. However even in that Treaty the protection of minorities was not granted binding force and a clear internal dimension and it remained an accession criteria and, therefore, relevant in external EU policy.[15] The Commission adopted as reference for its standards, documents of international and regional protection such as: European Convention on Human Rights (ECHR), Parliamentary Assembly of the Council or Europe Recommendation n. 1021 from 1993, Framework Convention for the Protection of National Minorities, European Charter for

[14] The " Copenhagen criteria " require a candidate country to have:- stable institutions that guarantee democracy, the rule of law, human rights and respect for and protection of minorities;- a functioning market economy, as well as the ability to cope with the pressure of competition and the market forces at work inside the Union;- the ability to assume the obligations of membership, in particular adherence to the objectives of political, economic and monetary union.

[15] See the response given on 8 March 2001 on the question E – 3348/00 from 25 October 2000to Council,in subject: "Potenziamento degli istituti democratici e promozione del rispetto delle minoranze nazionali in Albania", in GUCE C 174 E del 19 giugno 2001, p. 37-38; Risposta data il 23 dicembre 2002 dal sig. Patten a nome della Commissione all'interrogazione scritta E-2721/02 del 30 settembre 2002, in GUUE C 192 E del 14 agosto 2003, p. 73.

Regional or Minority Languages and sometimes even bilateral treaties. The respect for the minorities rights protection standards, imposed on potential member states can, therefore, be achieved by the ratification of international conventions and treaties and subsequent harmonization of national law with the principles proclaimed in those documents. This process is supported by the European Commission progress reports on candidate countries or on those countries who have signed association or stabilisation agreements. However, we shouldn't forget the role of the Commission[16] and European Parliament, who have approved a number of resolutions in minority rights protection matters within their limited decision-making powers regarding EU and Third-countries minority residents[17].

European Parliament resolutions on the protection of minorities and antidiscrimination policies, in particular, condemned the persistence of various levels of discrimination based on religion and ethnicity in an enlarged Europe[18]and draw particular attention in this respect to discrimination by the judiciary of people belonging to national minorities. This Resolution reiterates the fact that discrimination on grounds of religion is prohibited, calls on the Member States and the accession and candidate countries to ensure full religious freedom and equal rights for all religions.

Moreover we can also find some useful references about the protection of minority rights within the EU/CE policy framework. The European Parliament adopted the Resolution which calls on the Commission and the Council to make maximum use of the programmes within the European Territorial Cooperation objectives, such as cross-border cooperation programmes, transnational cooperation programmes and interregional cooperation programmes, and to exploit the possibilities provided by the European Grouping for Territorial Cooperation[19].

[16] See Green Paper on equality and non-discrimination in an enlarged European Union (COM(2004)0379)

[17] See the Resolution on Political Rights of the Minorities in Albania, OJEU C 67, 16 March 1992, p. 146; Resolution on the Protection of minority and human rights in Romania, OJEU C 249, 25 September 1995, p.157; Resolution on abuses against Roma and other minorities in the new Kosovo, 7 October 1999; European Parliament resolution on the situation of the Serb and other national minorities in Kosovo, OJEU C 189, 7 July 2000, p. 235 ss

[18]OJEU C 124 E , 25 May 2006, p. 405 ss

[19] European Parliament resolution of 9 March 2011 on the EU strategy on Roma inclusion (2010/2276(INI))

In the Area of Freedom, Security and Justice (AFSJ) framework The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.(Art. 67.3 TFEU). The European area of freedom, security and justice must be an area where all people, including third country nationals, benefit from the effective respect of the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union

As is well known, the European Union refutes violence and hate, condemns racism and xenophobia of any kind against any religion or ethnic group.

At regional level a number of agreements and programmes have been implemented to support penitentiary reforms, within the framework of the European Partnerships, SAA and MIPDs of the candidate countries and the 4 potential candidate countries (Albania, Bosnia and Herzegovina, Serbia as well as Kosovo under UNSCR 1244/99). Technical and financial assistance for these numerous grassroots and institutional initiatives to the enlargement countries is currently provided through the Instrument for Pre-accession Assistance (IPAI and now IPAII) and transversal thematic programmes such as the European Instrument for Democracy and Human Rights (EIDHR) which contributes to the development and consolidation of human rights and fundamental freedoms, democracy and the rule of law in the region and worldwide.

1.2- *Defining the concept of "prison minorities"*

Prison is a social system that sees its detainees enter from open society but that has its own norms, practices and social structure.

Minority groups in society can become (but are not necessarily) minority groups in prison. Majorities in open society can become minorities in specific prisons where the open/closed social system is complex or fragmented. This process depends on the peculiar process of identity building in prison, a process that is built on the minority

identity represented by the status of prisoner/detainee but that can change it into a sub-minority, again, or into a sub-majority group.

Sociologists don't all agree on *identity building models in prison* and two main differing models can be identified. The debate about the extent of social and psychological changes that might take place in a minority group individual (here described as "new identity building") whilst within the prison system is still in its early days**.** According to the "indigenous model" (Sykes 1958) the prison experience tends to reduce the divide between social and ethnic groups in prison and works towards producing a common identity. Following this approach, the "totalitarian" prison experience produces a shared identity and increases group cohesion and solidarity among prisoners, especially in confronting the prison staff. The polarity majority/minority is transformed into the dynamic 'internal/external' societies, 'us and them'. The pain of imprisonment, the deprivation of liberty and sometimes the mortification and degrading rituals that are part of prison life contribute to creating the mechanism of prison socialisation. The inmates create their own "nation" that substitutes the outside social roles, recoding their existence to the new prison reality. According to this sociological approach the prisoner identity becomes the strongest identity available to the inmates and it prevails over other linguistic or religious or ethnic identities.

However the idea of the prevalence of a common inmate identity is a divisive one among prison sociologists. Another school of sociologists refuse the indigenous model and affirm that the prisoner community reflects and sometimes exasperates the external dividing lines and identities, importing them into the prison social system. It is the so-called "importation model" that states that the categories of race and ethnicity that exist in the outside society are imported into the prison system, reproducing ethnic, racial or religious divides in the new social hierarchies built during detention.

Regardless of whether we hold onto the theories that prison shaped minority identities prevail over the individual identity or we attach ourselves to the assumption that the prison minority is only a projection in jail of the social minorities existing in

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open society, the question of minorities in prison appears to be, to a large extent, a submerged topic. The issue of protection of minorities in prison – intended not as vulnerable groups but as different social communities – rarely emerges in the agenda of Governments and NGOs, even those involved in prison affairs. The topic is rarely dealt with in criminal sociology studing and in the monitoring of the prison system regularly done by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment[20], or in the activities carried out by CPT and other international agencies, public or private.

This absence of any reference to minority groups (ethnic, linguistic, national, religious or other) is also evident when we take into consideration the significant and essential annual penal statistics survey elaborated by the Council of Europe[21] that analyses the situation of the prison of the 49 countries of the Council of Europe member States according to almost 30 different parameters. The only data reference to minority population in prison can be found in the structure of the prison populations when the number of "foreign nationals prisoners" are mentioned[22]. The special case of protection of minorities in prisons seems to be absent from the majority of the numerous international documents dedicated to the protection of human rights. Also the documents specifically drafted for the protection of human rights in prison, such as the United Nations *Standard minimum rules for the treatment of prisoners* (1955) does not include the issue of minority groups in prison. It seems that the prison system remained isolated from the great profusion of attempts that were introduced in the human rights protection system after 1989, when the issues of ethnic and national conflicts broke out violently in a number of European countries and at its borders. This outbreak led to the development of "special collective protection" that has been

[20] See for example the CPT Reports to the Council of Europe on Kosovo (6 October 2011), on Turkey (9 July 2011), on Bulgaria (30 September 2010), on Bosnia Herzegovina (31 March 2010).

[21] Marcello F. Aebi and Natalia Del grande, *Council of Europe Penal Statistics 2009*, Institute de criminologie et de droit pénal, Università de Lausanne.

[22] See Marcello F. Aebi and Natalia Del grande, *Council of Europe Penal Statistics 2009*, Institute de criminologie et de droit pénal, Université de Lausanne, p. 55. For the purpose of our research it could be useful to report that the average percentage of foreign nationals in the Council of Europe area is 11% and that the countries of our research are all significantly below such average (Albania 1%, BiH Federation 3,8%, Bih Rep. Srpska 3,2%, Bulgaria 2,2%, Serbia 1,7%, Turkey 1,6%).

mentioned previously, in order to reduce (by increasing minority protection standards) the risks of new national and etno-conflicts.

It seems that the European prison system remained untouched by the changes that were introduced after 1989 in the fields of human rights. The protection of human rights in prison today remains restricted to an approach based on universal individual human rights. It appears that the European prison population is understood by State administrations (but also by the private NGOs who deal with prison affairs) as a homogeneous community of individuals and not as a breakdown of different social groups who could generate conflicting majority/minority relations. A certain interest in community dynamics of ethnic-religious minorities inside the prison system happened after 9/11 due to the enormous attention that was put on the terrorist threat and to the radicalization paths that could lead to jihadist radicalization[23]. Paths that, as the curriculum vitae of more than one terrorist indicates, could also originate from the prison system. Although the link between eventual minority discrimination in prison and the radicalization process has not been proved, a lot of attention has been put on the issue of the treatment of Islamic minority groups in European prisons[24].

The study of race and ethnic relations among prisoners have been extensively developed in the US but very limited and few studies are available for European countries, with the important exception of the United Kingdom. Race and ethnic prison studies seems to be a peculiarity of established multicultural societies, especially the Anglo-Saxon ones and this perhaps has its explanation in the colonial history of these countries. But the phenomenon of multi-culturalism of the societies of western Europe and the experience of different immigration processes with the creation of more diversified societies has progressively focused the attention of the scholars of prison studies on the consequences of a segmentation of ethnic identity in prison both in terms of the relation between prisoners and between prisoners and the security staff.

[23] Please see Sergio Bianchi, *Jihadist Radicalisation in European Prisons*, Rimini, 2011, Report for the EU, project CRYME JLS/2007/ISEC/551, now in http://www.agenformedia.com/radicalisation-in-european-prisons.html.
[24] As far as the practice of minority religion concerns, the art. 41 of the UN standard minimum rules for the treatment of prisoners contain specific provisions

The globalization process is increasing the ethnic diversity of the prisons , the growth rate of the community of foreign prisoners of foreign is significantly higher than the growth rate of the native population. The growing proliferation of ethnic identities inside prison has been defined by some sociologists as leading to the "balkanisation of prisoner society" (CARROL 1974)

The sociological need to build a prison community identity

The fact that the prison environment tends to be hostile to the individual prisoner is a widely studied phenomenon. The individual's reaction is to become part of a specific identifiable group that can guarantee access to some "benefits" like security, solidarity, privileges, work allocation, food, religious provisions and so on.

In the history of every militant movement the prison experience has played an enormous role in constructing group identity. The group's narrative and often its radicalization process begins with imprisonment and the ways its prisoners are treated can be a traumatic turning point in the histories of every radical movement, being it Islamists, Marxists or Irish nationalists. This process is often explained by citing the peculiarity of the prison environment that is highly unsettling and in which "*individuals are more likely than elsewhere to explore new beliefs and associations*"[25]. Confronted with existential questions and deprived of their existing social networks, prisoners are vulnerable to processes of radicalisation[26]. In other words, radicalisation is a process that can happen – and in fact happens – in very different environments such as universities, religious institutions, Internet and prisons. In each of these environments the pattern of radicalisation is different due to the specific social condition and the peculiarity of the location. Therefore, radicalisation in prison

[25] Peter R. Neuman, *Prison and terrorism, Radicalisation and de-radicalisation in 15 countries*. Report published by the International Center for the Study of Radicalisation and political violence, 2010 (ICSR – King's College London)

[26] Peter R. Neuman (2010), op. cit. This definition of the characteristic of the prison environment is also shared in the UK Prevent strategy (HM Government, Prevent Strategy, June 2011, para 10.155) See also Home Affairs Committee Nineteenth Report, Roots of violent radicalisation, published 6th February 2012 and Peter Neuman and Brooke Rogers, *Recruitment and mobilisation for the Islamist militant movement in Europe*, European Commission, Directorate General for Justice, October 2007.

is driven by behaviours and conditions that are typical of the prison environment. Among others, two specific needs have been identified as prison-peculiar possible causes of radicalisation: the need for physical protection from other inmates and prison staff; and the need for rediscovering religious sentiment and religious practices. Physical protection and spiritual needs appear to be two of the main peculiar drivers of radicalisation in prison, especially when conditions of overcrowding and understaffing are also present as amplifiers of the radicalisation process.

Physical protection is one of the main causes that drives the formation of communities inside prisons. The phenomenon of prison gangs is well known and widely studied in the United States since the 1950's. The formation of inmate prison gangs originates as a means to protect themselves from other inmates and it is widely demonstrated that through the years it tends to evolve from self – protection groups to criminal entities who engage in a wide range of criminal activities outside of prison. The phenomenon seems to be an unavoidable and constituent part of the complex sociological and power dynamics that take place in contemporary prison systems[27].

The religious driver in forming prison gangs appears to be almost as important as the "protection motivation". This phenomenon needs to be seen in the context of the growth of religion in prisons in general[28]. It is widely known that the prison environment is conducive to re- awakening the spiritual and religious feelings of individuals. In addition, however, there are specific reasons why the atmosphere in many prisons is conducive to fostering political and eventually religious radicalisation. Going to prison is often a psychological and emotional shock; individuals are confronted with concrete evidence that their life is 'not working out'. The boredom,

[27] In the United States prisons there are recorded at least 75 larger prison gangs, with thousands of members and with established criminal activities inside and outside prison. Prisons gangs are gangs specifically formed and born in prison and they are different from the street gangs. This distinction of Prison Gangs vs Gangs in Prison is a relevant argument in explaining the sociological need of creating gangs with a specific prison agenda and character. See George W. Knox, *The problem of Gangs and Security Threat Groups in American prisons today: recent research findings from the 2004 prison gang survey, National Gang Crime Research Center, 2005*. The report mentions, among the reason for the proliferation of the prison gangs in the US and the difficulty in fighting this phenomena, the fact that many members are already serving life sentences

[28] James Brandon, *Unlocking al-Qaeda - Islamist extremism in British prisons* , Quilliam Foundation, november 2009

isolation and purposelessness of much of prison life additionally leads many people to question their life, their values and their purpose on earth. This may lead many to begin practicing religion for the first time. For many inmates, adopting strict religious beliefs can also seem a solution to previous failings and a spiritual vacuum as well as offering a chance to start afresh.

Entering a prison – particularly for the first time – is typically an unnerving experience. New inmates are not sure how prisons function, or which gangs, groups and individuals are potentially friendly and which are hostile. Prisoners (even those who are religiously unobservant) may gravitate towards specific groups and individuals for friendship, emotional support and protection against other inmates or rival ethno-religious groups – consciously becoming more religiously observant as result.

The quest for religion in prison is both an individual psychological path and a community building phenomena. The individual in prison often goes through a process of reinterpretation of its own life in order to find an explanation for the mistakes that brought him to jail. Through religious practice this explanation can bring about the rediscovery of religious concepts of sinning and forgiveness. The collective dimension of the religious phenomena has more to do with collective identity building, since religion – with its symbols, rituals, community prayers is (especially in a multicultural environment) one of the first available identity frameworks that inmates can utilise for the reconstruction of their new identity in prison.

An analysis of US prison gangs demonstrates that a great number of them have an identity that stresses racial, religious or geographical diversity and indicates that affiliation is often based on the basic identity markers: language, religion, race.

The process of creating prison communities and gangs based on race, religion, language shouldn't be read only as self-protection and identity-building mechanisms but also as powerful tools of ethnic, religious and racial politics inside the prison system. An tool that is thus exposed to the risk of

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radicalisation and to criminalisation typical of the artificial social construction that take place in captivity.

Vulnerable groups in prison

The creation of groups and gangs characterised by racial, religious or linguistic similarities inside prisons is a process that has often transformed potentially vulnerable groups into organised gangs capable of contributing to shaping the social and power relationships inside prisons, both towards other inmates and towards the security staff. In many cases the driver for the creation of prison identity within prison gangs can be traced to the vulnerable condition that individuals belonging to minority groups find themselves in when entering prisons. It is normally admitted that "*ethnic and racial minorities as well as indigenous peoples comprise a vulnerable group in the criminal justice system and have special needs based on culture, traditions, religion, language, ethnicity*"[29] and that the prison system fails to address these needs or that the other prisoners won't allow them to develop freely. When individuals belonging to minority groups who are discriminated against in society experience further discrimination in prison, their marginalisation becomes exacerbated activating a cycle of discrimination – incarceration – marginalisation, that may lead entire communities to perpetuate to develop many examples of exclusion and social anger. This exclusion could lead to radicalisation along linguistic (that is national) or religious lines.

It is a fact that vulnerable groups, and especially racial and ethnic minorities, are often overrepresented in the prison system. The concept of overrepresentation in the criminal justice system refers to "*a situation where the proportion of a certain group of people within the control of the criminal justice system is greater than the proportion of that group in the general population*"[30].

[29] United Nations Office on Drugs and Crime, Handbook on prisoners with special needs, United Nations 2009, p. 59.
[30] United Nations Office on Drugs and Crime, Handbook on prisoners with special needs, United Nations 2009, p. 57.

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The US is a historical case of this. African Americans are imprisoned for offences 7 times more than white Americans. At the end of 2005, there were 1,525,924 people incarcerated in state and federal prisons; 40 percent of these inmates were black, 35 percent were white, and 20 percent were Hispanic (Harrison & Beck 2006). Blacks, in other words, comprise about 12 percent of the U.S. population but two-fifths of the prison population. The disparities are even more dramatic for males, and particularly for males in their twenties and thirties. In 2005, 8.1 percent of all black males aged 25 to 29 were in prison, compared to 2.6 percent of Hispanic males and 1.1 percent of white males. Although the numbers are much smaller, the pattern for females is similar[31]. Similarly, in Australia, the rate of imprisonment of indigenous people was 12 times higher than non indigenous. A similar situation happens in Canada, where 18% of the prison population is made up of indigenous people, while they account only for 3% of the Canadian population. In South Eastern Europe a similar situation can be seen where Roma and traveller populations in a number of countries are overrepresented in the criminal justice system. The issue of overrepresentation of third country immigrants within the European prisons is well known.

Open questions and the problem of definition of "prison minorities"

But what is a minority group in prison? Is it a minority group that exists in society and happens to be in the prison system or is there a different process of minority creation inside the prison systems? And when a minority group in society is overrepresented in the prison to a point that it becomes a "prison majority", should we still regard it as a minority in prison?

It is important to remember that the issue of defining a minority group in prison is not a formal or academic question but has important consequences on the capacity

[31] See Brett E. Garland, Cassia Spoh, Erich J. Wodahl, *Racial Disproportionality in the American Prison Population: Using the Blumstein method to address the critical race and justice issue of the 21st century*, Justice Police Journal Volume 5 No. 2 Fall 2008

of the State administration and prison administration to detect and address the needs of minority groups in prison. The lack of a consolidated definition of prison minority is certainly a problem in this regard. Without the adoption, at European level, of a definition of "prison minorities" and "minorities in prison" that will be legally unambiguous, sociologically sustainable, academically accepted and consistent with international human rights standards, the issue of protection of minority rights in prison (and the prevention of the phenomena of radicalisation in prison) will continue to be built on a case by case basis and will be subject to the risk of overemphasis or neglect according to incidental and transitory circumstances.

There are two main reasons why States should further develop such a capacity of dealing with prison minorities in a more structured ways. The first is the need to comply, not only formally but also substantially, with international standards of protection of human rights, including the specific rights of minority groups and including the protection of human rights under the special conditions and circumstances represented by the prison system. The second reason is related to the need of preventing radicalisation (and from forming gangs) of individuals belonging to minorities when in prison, with the prospect of their succesful re-insertion into the communities where they come from.

In the context of this lack of a consolidated and accepted general definition of minority and in a further vacuum of scientific studies about "prison minorities" and "minorities in prison" (including the problems of their definition, the study of the modalities of their creation and transformation, the possible patterns of prison minorities radicalisation and the monitoring of the process of re-joining society) *two main tendencies* appear to have been consolidated in prison studies. One general and t one specific tendency emerges: the general approach is represented by the consolidated utilisation of the broader category of *vulnerable groups or individual* imported from social welfare system techniques as a surrogate for the missing concept of *prison minority*; the second, a more specific approach, is the growing focus on

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religious radicalisation in prison, especially connected to so-called "Islamic radicalisation".

The first tendency uses the more general concept of *vulnerability* to substitute that of *minority*, focusing not on the difference in identities and in majority/minority relations but on the different resilience of the individual or groups to prison regulations and prison social rules and practices.

The second approach is an effect-oriented approach and aims at countering the possible risk of individual or groups escalating into asymmetric forms of terrorism by focusing on the risk of the religious – jihadist/ethnic process of radicalisation in prison; this approach concentrates its research and analysis activities in the prison domains as well as other social meeting grounds potentially exposed to radicalisation such as universities, religious schools etc. which can be defined as 'opportunity factors'. This approach focuses on prison as an instrument in so far as it potentially harbours a risk of creating violent religious radicalisation leading to political extremism. This approach has emerged in Europe since the terrorist outbreak of 9/11 and it has been widely studied and researched[32] most recently in analysis carried out in Great Britain[33], Italy[34] and in France[35], which identified with more precision and efficacy the issue of religiosity in prisons, from a perspective that did not neglect the collective dimension.

In this applied research focusing on South Eastern Europe and specifically on Bosnia Herzegovina, Serbia, Kosovo, Albania, Bulgaria and Turkey, a research method based on the *vulnerability approach,* will be applied although restricted only to specific relevant categories and expanded to the issue of the crossover of nationality and

[32] Among others, see Sergio Bianchi *Jihadist Radicalisation in European prisons*, Rimini, Agenfor 2010. A selected literature of the literature of radicalisation and de-radicalisation is available in the Journal of the Terrorism Research Initiative, *Perspective on terrorism*, Vol. 4, No. 2 (2010).

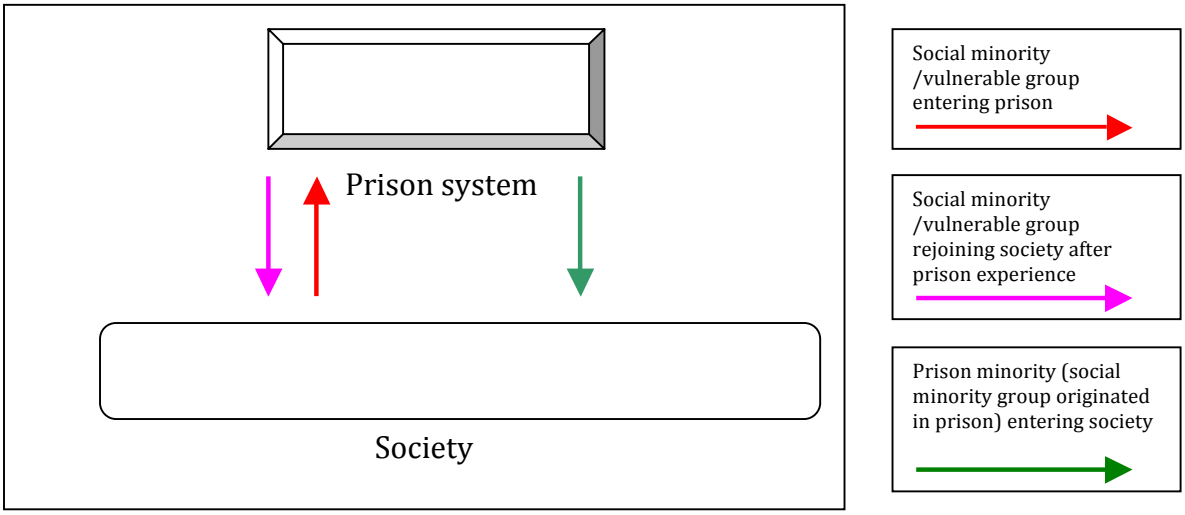
[33] Beckford J. A., Gilliat S., *Religion in prison*, Cambridge University press, Cambridge, 1998

[34] M. K. RHAZZALI, *L'islam in carcere. L'esperienza religiosa dei giovani musulmani nelle prigioni italiane*, FrancoAngeli, Milano, 2010

[35] Khosrokhavar F., *L'islam dans les Prisons*, Balland, Paris, 2004

religion in the potential prison identity building (therefore including the religious radicalisation approach) in the Balkans. The categories that will be studied are those of national, ethnic and religious minorities and foreign nationals in prison.

Nevertheless, this research also highlights the need and to more carefully study and define the concept of "prison minority", There are sufficient reasons to sustain that the categories of *vulnerable minorities* and *religious radicalised minorities* are research categories imported into the prison system from other social environments and not a direct product of the prison environment itself. The study of minorities produced by the prison system should be taken forward in order to then be compared with the study of social minorities imported into the prison system from open society. This will provide a more balanced analysis of the phenomena of minorities in European prisons.



In fact, both the categories of *social minority* entering the prison system and *prison minorities* re-entering open society, experience a process of radical change to their identity and social attitudes due to the shifting of the prescribed social behaviour in the different contexts. Both such minorities are exposed to a potential process of radicalisation each time they cross the society/prison boundary. This minority transformation process could affect the security of societies and the State/minority relations for a long period of time. This is, therefore, one of the main reasons why

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prison studies relating to minority groups should be promoted and encouraged, especially on a European trans-national basis.

Social vulnerability: a broad but useful approach to the issue of minorities in prison.

The definition of vulnerable groups varies between countries, and the most important defining characteristics change according to cultural approaches and depending on the specific environments studied. In this research we will define *vulnerable individuals* as those who are likely to have additional needs compared to the average population and if these needs are not met they are likely to suffer discrimination and marginalisation in society.

Vulnerability is usually a concept that is used in welfare protection systems in the context of employment, social housing, health care policies etc. It aims at identifying social groups and individuals that are more disadvantaged than average and that have therefore additional needs and, if those needs are not met, they are likely to suffer discrimination and marginalisation. In society vulnerable groups include a huge variety of categories including drug or other substance users, elderly, homeless people, refugees and migrants, persons with chronic illness, persons with disabilities, ethnic, religious and racial minorities, juveniles, LGBT, pregnant women and many others. From this category of vulnerable social groups the United Nations Office on Drug and Crime have extracted eight categories of prison vulnerable groups, that is categories of prisoners whose vulnerable status is exacerbated in an incarceration context. They are:

- prisoners with mental health care needs;
- prisoners with disabilities
- ethnic, racial minority and indigenous people
- foreign national prisoners
- homosexual, bisexual and transgender prisoners
- older prisoners

- prisoners with terminal illness
- prisoners under sentence of death

It is interesting to note that in the UNODOC concept of religious minorities they are not listed or mentioned as a vulnerable category of prisoners with special needs, and neither are women even though they are clearly a numerical minority within the prison system in Europe and in the Western Balkans. Women, specifically because of their social roles in relation to children, have very specific needs within the prisons and therefore need to be granted a very specific protection that is not part of the UNODOC provisions. It is not in the scope of this research to dispute such a decision, but the fact that the eventual inclusion or exclusion of a potential minority is not even debated in the UN handbook on prisoners with special needs appears to demonstrate that the issue has been – voluntarily or involuntarily – neglected.

We should also highlight another important element in order to arrive at a more complete definition of prison minorities: whilst still being part of the range of human rights and the legal evolution of these rights, there remains a subjective dimension to those rights that are derived from the vast gamut of inalienable individual human rights, which must be differentiated from those rights that have a collective character, which are recognised by their general condition, historic recognition, and which are not subjective or individual.

It is within this very specific framework that this study will expand the category of ethnic and racial minorities to include religious minorities as well, because they are considered part of the collective identities of groups with an historical dimension and religion is considered in its nature a collective phenomenon. Some debate still exists over whether LGBT should be considered within the collective or individual rights category but the debate is largely mute as they are in any case clearly a vulnerable group within a prison setting.

Therefore we will consider as minorities for the purpose of our research the following seven groups of prisoners :

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National, ethnic, and religious minorities

Foreign nationals

Juveniles and elderly Prisoners

Women

Prisoners with mental health care needs

LGBT

Prisoners with disabilities

Prisoners with terminal illness

These groups are vulnerable groups in the criminal justice system and have special needs that, according to our research, the prison system often fails to address or that are not respected by other inmates belonging to majority groups. These needs could be: linguistic barriers in accessing justice; discrimination, physical and verbal abuses from prison staff and from inmates; access to minority religious services and other practices concerning special diet and hygiene requirements, proximity with the community or family of origin or psycho-sociological specificity towards rehabilitation and social reintegration.

2. A NEW APPROACH TO PRISON MINORITY MONITORING

As part of the evolution of legislation and penitentiary regulations in the Balkans region it is extremely important to set up new standards for 'Watch Dog Activities' within prisons particularly in relation to minority groups, as defined in the previous chapter.

There are at least three levels of legal instruments where protecting minorities in prisons are concerned: international, national and European. Therefore a study of

the treatment of minorities in South Eastern Europe should take into consideration at least three separate but interconnected legal levels: the international law level, the constitutional/national level and the European integration level. These three levels are strictly interconnected because the countries of South Eastern Europe are for the most part participants in the international treaties and conventions regarding human rights and minorities and are also involved in the European integration process that implies the convergence of their justice and home affairs with the *acquis communitaire.*

As fare as minority rights within prisons are concerned, the European Parliament has for several years urged the Commission to take action on various issues in the area of detention through a strong cooperation between institutions and civil society. Legislative reformism in line with the *European acquis* and mobilization of civil society are the two pillars of the European strategy in prison reforms.

In its Resolution on the Stockholm Programme[36] the European Parliament calls for the construction of an EU criminal justice area to be developed through minimum standards for prison and detention conditions and a common set of prisoners' rights in the EU. This is reiterated in the European Parliament's February 2011 Written Declaration on infringement of the fundamental rights of detainees in the European Union[37]. Considering the legislative approach adopted by the EC on this specific issue, (which privileges national more than international competences for minority issues), it's clear that the urgency to define new standards needs a grassroots approach, where subsidiary policies play a fundamental role in conjunction with national legislation that is the result of an improved awareness on the problem at national level.

For this reason, in the resolution Stockholm Programme of 25 November 2009, the European Parliament calls for action to be taken to inform EU citizens and

[36] European Parliament resolution of 25 November 2009 on the Communication from the Commission –An area of freedom, security and justice serving the citizen – Stockholm programme, P7_TA(2009)0090

[37] Written Declaration on infringement of the fundamental rights of detainees, from MEPs - 06/2011, 14.02.2011

residents of their fundamental rights, including awareness-raising campaigns targeting both the general public and vulnerable groups, non-formal education initiatives and non-discrimination and equality mainstreaming in formal education curricula, as well as to make EU and Member States' institutions active in the AFSJ more aware of the core importance of fundamental rights, and to identify ways of seeking redress, either at national or European level, in cases where those rights are violated. The Commission stresses that the growing intolerance within the EU needs to be tackled not only through full implementation of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, but also through further European-level legislation on hate crime and the participation of civil society. It considers that diversity enriches the Union and that the Union must be a safe environment where differences and national sensitivities are respected and the most vulnerable, such as the Roma, are protected; therefore it insists that a priority in the Stockholm Programme should be actively to increase awareness of anti-discrimination legislation and gender equality and to fight poverty, discrimination on grounds of gender, sexual orientation, age, disability, religious affiliation or belief, colour, descent, national or ethnic origin, racism, anti-Semitism, xenophobia and homophobia and to protect children and minorities. It also states that the full use of the existing instruments and measures to tackle violence against women should be vigorously pursued and applied.

To promote mutual trust, the Commission's priorities in the area of criminal justice are to strengthen procedural rights by way of minimum rules for suspects or accused persons in criminal proceedings. A minimum standard of protection for individual rights will not only benefit individuals across the Union but also promote the mutual trust that is the necessary counterbalance to judicial co-operation measures thenhance the powers of prosecutors, courts and investigating officers.

The Commission has already highlighted that respect for fundamental rights within the EU is vital to help build mutual trust between the Member States. A lack of confidence in the effectiveness of fundamental rights in the Member States when they

implement Union law would hinder the operation and strengthening of cooperation instruments in the area of freedom, security and justice[38].

The 'Green Paper' covers the interplay between detention conditions and mutual recognition instruments such as the European Arrest Warrant as well as pre-trial detention, and opens up a wide public consultation based on ten questions set out in the Paper. The 'Green Paper' reiterates that detention issues, whether they relate to pre-trial detainees or convicted persons, are the responsibility of Member States. There are, however, reasons for the European Union to look into these issues, notwithstanding the principle of subsidiary, that is the domain of civil society. Detention issues come within the purview of the European Union as firstly they are a relevant aspect of the rights that must be safeguarded in order to promote mutual trust and ensure the smooth functioning of mutual recognition instruments, and second, the European Union has certain values to uphold.

A number of mutual recognition instruments are potentially affected by the issue of detention conditions: The instruments in question are the Council Framework Decisions on the European Arrest Warrant[39], the transfer of prisoners[40], mutual recognition of alternative sanctions and probation[41] and the European Supervision Order[42].

Regarding the current activities related to detention at EU level, the Commission supports a number of prison related thematic activities via different financial programmes within CSF and EIDHR instruments. Activities range from studies on prison conditions to practical projects on education and training and social inclusion, as well as on the re-integration of ex-offenders.

[38]The GREEN PAPER ("*Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention*" (COM/2011/0327 final, Bruxelles, 14.6.2011)

[39] Council Framework Decision of 13 June 2002 OJ L 190, 18.7.2002, p. 1

[40] Council Framework Decision 2008/909/JHA of 27 November 2008 (OJ L 327, 5.12.2008, p. 27

[41] Council Framework Decision 2008/947/JHA of 27 November 2008 (OJ L 337, 16.12.2008, p. 102

[42] Council Framework Decision 2009/829/JHA of 23 October 2009 (OJ L 294, 11.11.2009 p. 20

Several reports on the detention conditions in EU prisons reveal that some fall below international standards, and Council of Europe European Prison Rules and the UN Standard Minimum Rules for the Treatment of Prisoners[43].

Prison standards in Europe are mainly developed by the Council of Europe, including the ECHR, the CPT and the Committee of Ministers. The standards contained in the European Prison Rules, whilst non-binding, have largely been endorsed and the results are a number of MS Prison Acts where the respect of minorities is granted de facto, depending on the sensitivity of the prison management and the conditions available for the application of the rules.

All these provisions now require an independent assessment instrument to oversee the compliance of State legislation and prison policies with the regulations concerning minority issues, as defined in the previous chapter.

The Assessment Methodology

PRISNET defines a new methodology framed within the two pillars discussed in the previous chapters: the International, European and National evolution of the legal standards and a clear-cut definition of minorities within the prisons. The methodology also considers the necessity of this being implemented by public-private partnership through a grassroots approach, in line with the legislative and technical provisions concerning minority rights within the prisons.

The benchmarking of this new methodology is represented by the Italian Penitentiary Act[44] and the related Regulations and Enforcements, approved by Decree 230/2000, art. 11, c. 4 (food prescription for religious minorities), art. 35 (third Country Nationals) and art. 58 (rights of religious minorities), which may be considered a model for this kind of activities.

[43] Recommendation of the Council of Europe 2006 on the European Prison Rules and the United Nations Standards Minimum Rules for the Treatment of Prisoners (1995).
[44] Law 354 dated 26th July 1975, art.1 and 26, and following modifications

In order to structure this assessment methodology we have designed a matrix based on three different charts:

1- The MAP OF LEGISLATIVE REGULATIONS applicable to penitentiary institutions and the penitentiary assessment areas
2- The CHECKLIST FOR THE CUSTODIAL CONDITIONS BASED ON EUROPEAN STANDARDS (or Assessment Questionnaires) to be used during prison monitoring activities
1- An EVALUATION CHART, in the form of a cross-checked matrix, to combine different information and assess the level of compliance.

The following legislative map represents a comparative map of international standards to be respected for the treatment of prisoners. For each monitoring area specific criteria have been established to identify potential vulnerabilities regarding the minority groups identified in the previous paragraph. For this purpose a very specific Inspection Questionnaire has been designed. This questionnaire is the instrument we used during the prison inspections. The combination of the chart and questionnaires provide a clear matrix to identify potential vulnerabilities in regard to the minority groups identified in the previous paragraph. This matrix is then codified in the Inspection Questionnaire (see below).

MAP OF LEGISLATIVE REGULATIONS

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MAP OF LEGISLATIVE REGULATIONS

MAIN REGULATION OF THE CHARTER OF FUNDAMENTAL RIGHTSOF THE EUROPEAN UNION	INTERNATIONAL AND EU BENCHMARKING	HORIZONTAL EFFECTS	DESCRIPTION OF THE REQUIREMENTS	IDENTIFICATION OF THE PROBLEMATIC AREAS
Art.1: HUMAN DIGNITY: *HUMAN DIGNITY IS INVIOLABLE,IT MUST BE RESPECTED AND PROTECTED*	Art.1, 22, 23 of the UDHR · Art.10 CCPR · Art,28 ICRC · The Stockolm Programme · The Green Paper("Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention")	·competent national and civil society institutions are obliged 'to protect' human dignity, in their sphere of influence they are ordered and obliged to protect people from interferences with human dignity by third parties. · human dignity cannot be taken away from any human being. It can be neither forfeited nor renounced. · Tolerance and respect for human dignity are the basis of every democratic programme for the EU's integration.	The term 'human dignity' means that the human being has a right to 'social value and respect'. Everyone possesses dignity as a human creature 'regardless of his/her innate characteristics, achievements and social status'. Even through unworthy behaviour, such a detention or legal punishment, it cannot be lost. It cannot be taken away from any human being. The human being is a moral subject who, in freedom, can show responsibility for him/herself and develop independently.	· In prisons 'the basic dignity of individual and social existence of the human being' must be respected. · Human dignity demands that a person convicted to a prison sentence will have the chance to regain freedom some time. · The execution of the prison sentence has to be orientated towards this goal, therefore rehabilitation programmes must be part of the penitentiary system · The convicted is entitled to social adjustment. · The legislator, is obliged to rule expressly under which conditions the execution of a lifelong prison-sentence should be suspended and which procedure has to be applied
Art.3: RIGHT OF THE		· Protection and respect whether in domestic laws	· As a link between the inviolability of human dignity in article 1 and the	· Right to equitable access to health care of appropriate quality for

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INTEGRITY OF THE PERSON: *EVERYONE HAS THE RIGHT TO RESPECT FOR HIS OR HER PHYSICAL AND MENTAL INTEGRITY*	· Art.3 of the ECHR · Art.7 of the CCPR · Art.5 of the ACHR	and prison systems of the right of personal, mental and physical integrity from a range of serious forms of interference with a person's body and mind which have traditionally been covered by the right to privacy.	prohibition of torture in article 4, the right to personal physical and mental integrity in art.3 gives a fairly broad right, which includes the prohibition of interference with a person's body and mind which have traditionally been covered by the right to privacy. · Particularly important is the respect and protection against treatment with psychoactive drugs and other forced psychiatric interventions, 'brain washing', excessive body searches, strong noise and similar environmental risks, compulsory vaccinations, or any form of medical treatment absent or administered against the will of the patient.	minorities within the prison system · Right to know any information collected about health for every aims · Principle of free and informed consent in the health and medical field
Art.4: PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT NO ONE SHALL BE SUBJECTED TO TORTURE OR TO INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	Art 3 of the ECHR art.5 of the UDHR Art.7 of the ICCPR art.75 of theGeneva Convention of 1949 – Protocol 1 of 1977	· Protection from the risk of torture or inhuman or degrading treatment · Obligation to investigate · Securing evidence	· Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or other person information or a confession, punishing that person for an act that either person or a third person has committed or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or	· Interrogation techniques · solitary confinement · prison conditions · vulnerable prisoners · physical or corporal punishment · medical or psychiatric treatment · physical or mental violence to children · impunity

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			other person acting in an official capacity. It does not includes however pain or suffering arising only from what is inherent or incidental to lawful penalties · Other cruel inhuman or degrading treatment or punishment means any act by which significant pain or suffering, whether physical or mental is inflicted on a person when such pain or suffering is inflicted either by or at the instigation of, or with the consent or · acquiescence of a public official or other person acting in an official capacity. It does not however include pain or suffering arising only form inherent in or incidental to, lawful penalties.	
Art.5: PROHIBITION OF SLAVERY AND FORCED LABOUR "NO ONE SHALL BE REQUIRED TO PERFORM FORCED OR COMPULSORY LABOUR"	Art. 4-1 and 4-2 of the ECHR Art. 2-1 of the ILO Convention Nr. 29 on Forced or Compulsory Labour1 Art.1-2 of the ESC	· Protection from the risk of prison labour that cannot be apply without a sentence has been pronounced against a prisoner. · Monitoring against every abuse of compulsory labour as mean of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; As a means of labour discipline;	All work or service which is executed from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. The work must be carried out involuntarily and the demand to do the work must be unjust or oppressive or the work itself must involve avoidable hardship. The work must be paid.	· Prison labour does not apply until a sentence has been pronounced against a prisoner. · Only able-prisoners who are of an age of not less than 18 years and not more than 45 years may be called upon for forced or compulsory labour'. · Compulsory labour as a means of racial, social, national or religious discrimination. · Payment of the work carried out within the prison system

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		As system of racial, social, national or religious discrimination		
ART.6: RIGHT TO LIBERTY AND SECURITY. "EVERYONE HAS THE RIGHT TO LIBERTY AND SECURITY OF PERSON"	Art 9 of the UDHR Arti.9-1 of the CCPR Art. 7-3 of the ACHR Art. 6 of the African Charter on Human and Peoples' Rights. Art. 5 of the ECHR	· Prevention measures to support Right to be informed of the reasons for one's arrest · Guarantees in case of detention on remand-preventive · Right to habeas corpus proceedings and judicial investigation · Right to compensation incase of miscarriage ofjustice Right to his own security within the prison environment	· Personal liberty, including behind bars, is the oldest human right to be found and thus all human rights serve the realisation of human freedom. Individual liberty of everyone in EU also contains other human rights based on liberal and democratic ideals, such as privacy, property, the right to marry and found a family, as well as freedoms of thought, conscience, religion, expression, information, and education. These rights have specific constraints within the penitentiary system but their aspiration remains untouched. Although the right to personal liberty relates to arbitrary arrest and detention it needs preventive measures of protection. The right to humane prison conditions must derive from special human rights provisions, and corresponding international soft law standards,	Special detention of aliens Detention of juveniles Detention on remand Exhaustive list of cases of lawful arrest and detention Personal security of individuals behind bars
Art. 7. RESPECT FOR PRIVATE AND FAMILY LIFE EVERYONE HAS THE RIGHT TO RESPECT FOR HIS OR HER PRIVATE FAMILY LIFE, HOME AND COMMUNICATIONS	Art. 8 of the ECHR	·Protection for the right to respect for communications, guaranteed regardless of the means of the communications employed, in line with security regulations.	· States are obliged to take all necessary measures to restrict unlawful obtaining of information by public authorities as well as by other private parties. Advances in modern technology have rendered certain forms of communication, such as cellular telephones and electronic mail,	Violation of one's communication Violation of written correspondence Abuses in tapping or surveillance

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		· Protection from the risk that measures adopted on the domestic level in the course of the ongoing global struggle against terrorism and organized crime may increasingly threaten the right to privacy	particularly susceptible to improper surveillance by state authorities.	
Art. 8. Protection of personal data Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority.	· Art. 8 of the ECHR · Art.10 of the Convention on Human Rights and Biomedicine · Art. 17 of the ICCPR, · Art. 12 of the UDHR · Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data · Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding Supervisory Authorities and	Protection personal data against arbitrary interference by institutions and bodies of the Union, as well as by the Member States when they are implementing Union law.	· Abuse and/or improper use of any information relating to an identified or identifiable natural person. An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.	National independent authority for the promotion of EU data protection provisions Investigative powers of the authority Power to engage legal proceeding to refuse the violated rights of citizens and bodies through personal data systems

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	Transborder Dataflow			
Art. 10. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION · EVEYONE HAS THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION.THE RIGHT INCLUDES FREEDOM TO CHANGE RELIGION OR BELIEF AND FREEDOM EITHER ALONE OR IN COMMUNITY WITH OTHERS AND IN PUBLIC OR IN PRIVATE TO MANIFEST RELIGION OR BELIEF, TEACHING PRACTICE AND OBSERVANCE · THE RIGHT TO CONSCIENTIOUS OBJECTION IS RECOGNISED IN ACCORDANCE WITH THE NATIONAL LAWS GOVERNING THIS RIGHT	Art.9-1 of the ECHR. Art.18 of the UDHR Art. 18 of the ICCPR, 1966 Art. 14 of the Convention on the Rights of the Child	Implementation of a "State free zone" where the individual may expect, in principle, to be left alone by the authorities to practice its own religion. · Positive obligations on the part of the authorities too through the State's responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs and doctrines.	The right has three dimensions: an internal dimension as the freedom to have certain ideas, to adhere to a religion or thought, et cetera; An external dimension as the freedom to manifest one's religion or beliefs, for instance by wearing certain clothes or performing rites and a collective dimension which includes the formation of religious entities such as churches or communities	· Neutrality and impartiality of the State legislation about the rights of freedom · Positive obligations for the State legislation to support the rights of freedom · Freedom to proselytise · Requirements for any restriction on the freedom to manifest one's religion or belief · Religious intolerance and 'fundamentalism' · Principle of autonomy of religious and political bodies · freedom for religious minorities · Registration of religious entities and access to spiritual support in prison · Ombudsman service · NGO cooperation service with national independent agencies to protection the rights
Art.11. FREEDOM OF EXPRESSION AND INFORMATION Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and	Article 10 of the ECHR Article 19 of the UDHR Article 19 of the ICCPR	Freedom of expression limitations must be strictly interpreted and not as principles to be balanced against the freedom of expression. · The respondent EU State must establish that any	Everyone's right to freedom of opinion and expression, which includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers. includes these fundamental expressions	· Limitation on freedom of expression concerning prison system and minorities bodies (media information's, personal and public opinions, cultural and religious policies)

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impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media shall be respected.		restriction: is 'prescribed by law', has a legitimate aim and it's 'necessary they to promote that aim.472	categories: information and ideas concerning matters of public interest,' information and ideas on political issues; and artistic expression. Freedom of expression applies both to the traditional printed press and electronic media as radio and television, as well as the new media. Freedom of artistic expression consists of freedom not only to create works of art but also to disseminate them through exhibitions.	
· Article 12. Freedom of assembly and of association · Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and join trade unions for the protection of his or her interests. · Political parties at Union level contribute to expressing the political will of the citizens of the EU	Art.11 of the ECHR; Art. 20 of the UDHR Art.. 21 and 22 of the ICCPR Art. 5 of the ECS	· To protect the individual against arbitrary interference by public authorities with the exercise of the rights protected	· Right of the art.12 covers both peacefully private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals and those organising the assembly. The freedom to take part in a peaceful assembly includes the right to a demonstration that had not been prohibited. · Associations covers cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness .In this connection the pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural	· Restriction, prohibition of freedom of association within the prison system (eg.: religious rites, specific spaces etc.) · Punitive measures taken against freedom of association · Comparative evaluation on States rights to satisfy themselves that association's aim and activities are in conformity with the rules laid down in legislation, but · Ombudsman service · Independent national institutions and agencies and NGO cooperation to protection of the rights

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			identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The freedom of association is particularly important for persons belonging to minorities	
• Art. 21 Non-discrimination Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. • Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.	Art.14 of the ECHR Art..1 of the UDHR Artt.1-2-3 etcetera of the UN Declaration on eliminitation of all form of racial discrimination Artt.1-2-3- etcetera of the CEDAW	Protection from the risk of introduction of clause of discrimination Obligation of investigation on direct and indirect forms of domestic practices of discrimination (positive actions)	Double requirements of description of the principle. The principle of non-discrimination finds to apply when it is pled a treatment differentiated from similar juridical situations or comparable. An identical or similar treatment of different juridical situations, if it misses objective and reasonable justification, would constitute a violation of the principle of non-discrimination. In other words, it is not enough to treat in an equal way similar cases; still is necessary not to carry out a simplifying levelling of situations which are actually different. Discriminatory treatments between nationals of Member States are prohibited. However, a differentiated treatment enters nationals of Member States - or amenable to Non-member states which fall exceptionally under the blow from application from the Community legislation - and nationals to country non-members is not considered discriminatory if it results from the application of the above-mentioned treaties and the derived right.	· Discrimination practices based on sex, race, colour, ethnic or social origin, genetic features, language, religion or political belief within the prison system 21 · Discrimination practices based on sex, race, colour, ethnic or social origin, genetic features, language, religion or political belief within minorities bodies · Ombudsman service to guarantee questions for the exercise of fundamental rights against discrimination · National independent agency for promotion protection monitoring and training on human rights against discrimination · Personal data protection system provisions for minorities bodies, ethnic, religious social groups under risk of discrimination

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• Article 22 Cultural, religious and linguistic diversity The Union shall respect cultural, religious and linguistic diversity.	Art.14 of the ECHR Art.6 of the TUE Art.151 of the TCE	· Protection of the rights of the diversities · Obligation to respect diversity rights pursuant to the Charter and competence to promote the national identities pursuant to EU treaties in a multicultural framework	· Compromise EU law solution between to take support on the existing right for minorities and the respect of the art.6 TUE that support the protection for the national identity of the State members · Realize multiculturalism standards within civil society	· Discrimination practices based on religious, cultural linguistic diversities within the prison system · Discrimination practices based on religious cultural linguistic diversities within the civil society · Ombudsman service to guarantee the exercise of fundamental rights of the cultural religious linguistic divers and identities · National independent agency for promotion protection monitoring and training on human rights of cultural identities within the domestic law · Personal data protection system provisions for, ethnic, linguistic religious social groups different from the national identity under risk to discrimination
• Art.24. The rights of the child Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions,	· Art.1 of the UN Convention on the Rights of the Child · Art.2 of the European Convention on contact concerning children · Art.6 of the European Convention on contact concerning children	· Promotion of the children rights thought protective measures in domestic laws(negative provisions) · Principle of the best interests of the child in public proceeding · Promotion of the children rights thought empowerment of the participation of children in actions affecting themselves (positive provisions)	· Child means a person up to 18 years of age in respect of whom a contact order may be made or enforced in a State Party'. Everyone under eighteen is a child 'unless, under the law applicable to the child, majority is attained earlier'.	· Risk of harmed, abused and exploited children in juvenile detention field · Lower degrees of protection of children in criminal domestic laws · Constraint, pressure, influence or coercion in the field of education for religious and cultural reasons · Defect of measures for representation of the viewpoints of the child ito the authority during judicial and administrative proceeding · Asylum-seeking and refugee

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the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and directcontact with both his or her parents, unless that is contrary to his or her interests.				procedures · Ombudsman for juvenile legislation
Art. 41 Right to good administration Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. This right includes: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; c) the obligation of the administration to give reasons for its decisions. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to	· Art.6 of the ECHR · Art.5 of the European Code of Good Administration	· Right of any person to a treatment of his business by the institutions and bodies of the Union to an impartial, equitable way and within a reasonable delay. · Monitoring independent bodies to ensure the good administration	Impartiality, equity and celerity within the answer of the Community administration and respect of the guarantees conferred by the Community legal order in the administrative procedures	· Ombudsman services for relationship with national and local government · right of any person to be heard · right of access to the personal data base file · right to the motivation of the decisions taken by the administration · right to repair in case of maladministration events · right to linguistic diversity

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the laws of the Member States. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.				
Art.42. Right of access to documents Any citizen of the Union, and any natural or legal person residing or having its registered office in aMember State, has a right of access to European Parliament, Council and Commission documents.	· Art.255 of the TCE · Art.11 of the Charter · Art.41 of the Charter · Regulation Nr. 1049/2001 on public access to Parliament, Council and Commission documents	· By virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, Member States should take care not to hamper the proper application of the relevant EU measures. Member States should also respect the security rules of the EU institutions.	· The term "documents" covers any content whatever its medium, written on paper or stored in electronic form or as a sound, visual or audiovisual recording, concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility. Furthermore, right of access to documents must be understood so as to cover access to the information contained in the EU documents.	· Limitation of the rights owing to public security, prison police and prison staff within the relation inmate-authority · Monitoring of correct application of data processing provisions between EU bodies and domestic government in the field of minorities rights, prison system thought Ombudsman institutions and the participation of third subjects (NGOs, CSOs, etc.)
• Article 47. Right to an effective remedy and to a fair trial Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.	· Art.6 of the ECHR · Art.13 of the ECHR · Art.95 of the TCE · Art.230 of the TCE · Art.241 of the TCE · Art.234 of the TUE	· The basic principles of the domestic judicial system, such as protection of the rights of defence, the principle of legal certainty and the proper conduct of procedure, can be scrutinised by the ECJ in the context of the application of the principle of effectiveness.	· Individuals are entitled to effective judicial protection of the rights they derive from the Community legal order, · The right is guaranteed for everyone within the jurisdiction of a Member State of the European Union, in accordance with the right to equality. · The right to 'access to court' guaranteed by Article 47 is applicable in relation to the 'rights and freedoms guaranteed by the law of the Union' · Basic principles of the domestic judicial system, such as the protection of the	· Feed back of domestic jurisdiction about application of the principle of effectiveness · event of unjustified interference by domestic jurisdiction · Extreme discretion of a Member State, on whose territory an exercise is to be carried out, forms part of a procedure which leads to the adoption of a Community decision · Co-operation in criminal matters between embers States to ensure the adoption of principle of effectiveness within the EU Court of Justice

Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.			rights of defence, the principle of legal certainty and the proper conduct of procedure, can be scrutinised by the ECJ in the context of the application of the principle of effectiveness. 1477	· Right to access to legal advice and provides for the availability for legal aid as a prerequisite to effective access to justice. · Training staffing for candidate members States to provide the EU Acquis promotion in justice institution system
• Article 48. Presumption of innocence and right of defence Everyone who has been charged shall be presumed innocent until proved guilty according to law. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.	· Art.11 of the UCHR · Art.14 of the ICCPR · Art.55 of the Rome International Criminal Court Statute · Art.6 of the ECHR	· Everyone has the right · (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; · (b) to have adequate time and facilities for the preparation of his defence; · c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ; · d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him · (e) to have the free	· Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.	· Presumption of innocence · burden of proof · mandatory detention. · right of defence · equipment of co-operation to improvement independent agencies of monitoring

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		assistance of an interpreter if he cannot understand or speak the language used in court.		
Article 49. Principles of legality and proportionality of criminal offences and penalties • No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable. • This Article shall not prejudice the trial and punishment of any person for any act or omiss which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations. • The severity of penalties must not be disproportionate to the criminal offence.	· Art.11 of the UDHR · Art.15 of the ICCPR · Art.7 of the ECHR	· Protection of everyone from the risk to be heled guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.	· no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time at which the offence was committed.	· Principle of legality of the offence · principle of proportionality of the guilty · retroactive application · judicial co-operation in in staffing, internal and external monitoring between EU and local and national governments.

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CHECKLIST FOR THE CUSTODIAL CONDITIONS BASED ON EUROPEAN STANDARDS

(according to the Recommendation R(2006) 2 of the Committee of Ministries of the Member States on penitentiary European rules adopted by the Council of Ministries on January 11th 2006)

AREA	YES	NO	REMARKS
ADMISSION			
1. In entering, do you take note of the possible visible injuries and/or complains of previous mistreatments? Does every detainee have a medical check?			
ALLOCATION AND PLACES OF DETENTION			
2. In allocating a detainee to his/her place of detention, do you take into consideration the proximity with his/her family?			
3. Are there standards regarding the surface, air availability, lighting, heating, ventilation?			
4. Do the places of detention have windows big enough to facilitate natural light and ventilation?			
5. Is there an alert system for the detainees to be able to immediately contact the personnel in case of necessity?			
6. Is there the possibility of being allocated to an individual cell, in particular for the night ?			
7. In case of allocation of more than one subject in the same cell, do you take into consideration the necessity of keep separated: defendants and convicted people, males and females, young, adults and aged people?			
HYGIENE			
8. Do detainees have immediate access to a privacy-oriented, healthy sanitation?			
AREA	**YES**	**NO**	**REMARKS**
HYGIENE			
9. Daily or at least twice a week, can detainees use toilets and showers that have a temperature suitable to the weather?			
10. Do you provide the detainees with items for personal hygiene and items for general cleaning?			

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CLOTHING AND BEDDING			
11. Do you provide the needed detainees with pieces of clothing suitable for the weather? Are these pieces of clothing not humiliating and degrading?			
12. Do you provide every detainee with personal and suitable bedding, with the possibility of changing it often to ensure the cleanliness?			
ALIMENTARY REGIME			
13. Do you give to the detainees three meals a day, in a sufficient amount, suitable to weather, age, gender, health condition, religion, culture, nature of work he/she may be involved in?			
14. Is the food made in places that respect the appropriate hygiene standards?			
15. Is drinkable water always available for detainees?			
16. It is possible for medical and para-medical qualified staff to modify the alimentary regime of a detainee according to his/her health conditions?			
LEGAL CONSULTANCY			
17. Can the detainees who required it have access to legal consultancy if they cover the expenses by themselves?			
LEGAL CONSULTANCY			
18. Is there also a free legal service for detainees with no means? If yes, are the detainees informed about it?			
19. Beside from waivers authorized by the judicial authority, are the correspondence between detainees and their lawyers private?			
20. Can the detainees have documents concerning their judicial procedure? Can they have access to them?			
CONTACT WITH THE OUTSIDE			
21. Can detainees be allowed to communicate with their family and third party people? If yes, how often and in which way?			
22. Are detainees informed immediately about possible deaths of close relatives? Are relatives informed promptly about the death of the detainee?			
23. Are detainees allowed to have access to press, radio and television?			
24. Do detainees with no restriction in participating in elections have access to vote?			
WORK			

25. Are the detainees forced to work for disciplinary reasons?			
26. Can a detainee be involved in a paid job, in the case that he/she requests it?			
27. Are work schedules and conditions the same as the ones applied for the rest of the society or are they very different?			
SPORT AND LEISURE ACTIVITIES			
28. Are the detainees allowed to spend at least one hour a day outside to practice sports?			
29. Inside the prison, are there any planned activities to allow detainees to take care of their physical condition?			
EDUCATION			
30. Are there educational courses for detainees, especially for primary education and addressed to the youngest? Who teaches these?			
31. Is there a library inside the institute?			
FREEDOM OF RELIGION			
32. Do detainees have the possibility to practice individually their religion, to participate in rituals and meet the ministries of their faith?			
33. Can they have religious books and material irrespectively of language or religion?			
34. Do they have pray halls?			
35. Are there procedures in place for religious calendars			
INFORMAZION			
36. Are detainees always informed about their rights and duties inside the prison in a language they can understand?			
TRANSFERT			
37. Are transfers of detainees done respecting their privacy and reducing public contact as much as possible?			
LIBERATION			
38. During their liberation, do you provide detainees with identity documents, clothes and means indispensable for their immediate survival?			
WOMEN AND MINORS			
39. Are women authorized to give birth outside of the prison? If not, is the Prison Authority able to give her all the assistance she needs?			
40. If a minor is detained in a prison for adults, is the			

minor kept separated from them? Does he/she have access to the social, physiological and educational services?			
41. In case of very young children staying with their parents, is there any kindergarten facility with a qualified personnel and a specific place where the children can stay?			
FOREIGNERS			
42. Can foreign detainees be informed about the right of contacting their diplomatic or consular representatives?			
43. Are foreign detainees informed about legal assistance? Are they informed about the possibility to ask to move to another country?			
ETHNIC AND LINGUISTIC MINORITIES?			
44. Are there any special procedures for ethnic and linguistic minorities?			
45. Are these groups able to follow their cultural practices?			
46. In this case, are all the information available for detainees (through a translator? Through specific brochures?)			
HEALTH			
47. Inside the prison, is there a medical facility all the detainees can have access to without any kind of discriminations?			
HEALTH			
48. Can detainees have access also the external medical facilities and treatments in case of necessity?			
49. How often are detainee's health conditions checked? In which way (request coming from the detainee, request coming from the doctor, time schedules…)			
50. Is there special department providing treatment for detainees with mental problems?			
51. If necessary, can psychiatric treatment be delivered? Are there any preventive measure against suicides?			
52. Can detainees be subject to medical experiments without having agreed to it?			
SEARCH AND BODY SEARCH			
53. Must body searches/search be performed by personnel of the same gender as the detainees?			
54. In case of a very personal body search, is a medical doctor the person who is going to perform that?			

55. Can detainees assist in the search among their personal belongings?			
56. Are there procedures in place to respect religious prescriptions of minorities concerning body or personal search ?			
DISCIPLINE AND SANCTIONS			
57. Does the domestic law provide with a definition of actions and omissions that are classified as disciplinary violations? What about procedures to be followed in disciplinary matter (e.g type, duration of the sanctions, authority that can decide about them).			
58. Are collective sanctions and corporal punishment allowed?			
59. Among sanctions, are the ban of family contacts and isolation in the dark allowed?			
60. If the isolations is allowed among sanctions, for how long it can last and in which way does it have to be enforced?			
61. In case of violation of the disciplinary code, can a detainee explain his/her reasons? If yes, in which way?			
62. Can the detainee have witness and time to prepare his/her defense? Can the detainee have a translator if necessary?			
USE OF FORCE			
63. The use of force by the personnel is regulated in a detailed way by the law?			
64. Are irons and chains also used?			
65. Are constraint measures used also as punishment instruments?			
REQUESTS AND COMPLAINS			
66. Are detainees allowed to make requests and complaints to the director of the prison?			

EVALUATION CHART

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	Law's compliance		Registration	Proximity/ separation	Language	Logistics		Alimentary regime	Outside contacts		Privileges	Inspection /interrogations	Prison staff
	General	Specific				Barriers	Access		Information	People			
Women													
Juveniles/ Old													
Disabilities													
National/ Ethnic													
Religious													
Mental health													
Foreign nationals													
Terminal ill													

3- OVERVIEW OF THE CONDITION OF PRISON MINORITIES IN SOUTH EASTERN EUROPE

On the basis of this matrix system, in July 2011 we began a series of technical meetings and visits to prisons in Albania (male and female prison in Tirana, 10 July 2011), Serbia (Belgrade, 22 November 2011 and Novi Pazar prison 24 November 2011), Turky (Ankara, 27 February 2012) Bosnia Herzegovina (Zenica 19 April 2012) and Kosovo (Lipjan 20 April 2012.

During the visits we compiled the evaluation questionnaires through interviews with the prison staff, the prison director where possible, the inmates and the staff in the different prison departments. Particular attention was given to minority inmates.

Meetings in all of the partner countries in the form of Expert User Groups (EUG) gave the oportunity to exchange ideas and confront the data gathered by NGOs, Ministry of Justice representatives and prison staff, lawyers, prisoner's families and volunteers. This allowed us to discuss the information learned whilst in the field with our institutional equivalents and at the same time gave them the chance to integrate our observations into their data.

Moreover, the EUGs gave us the chance to meet with the NGOs that are active in this area in the various countries in order to better understand their activities from close range. During the meetings many participants and some stakeholders brought their written experiences within the prison system to our attention. We do not believe that the arguments addressed in these documents regarding the prisons in Nis (Serbia) and Istanbul (Turkey) enter into the remit of this project but we attach them here in order to present a full picture of the project outcomes and we have left them in the form that they were presented.

What emerges from our research is therefore a general picture of the minority situation (as defined in the previous paragraphs) within the varied prison systems across the Western Balkans.

Below we have gathered the various data that was extracted from each country. At the end of the country-by-country examination we will note a series of

problems which emerge across the region considered here and which demand particular attention because they represent clear breaches and violations of basic human rights regarding minorities. We will then discuss more general themes regarding the prison treatment of detainees and the right to social rehabilitation in addition to the right of equal treatment.

ALBANIA

Albania signed the Council of Europe Framework Convention for the Protection of National Minorities on 29.06.1995. It was ratified by the Assembly of the Republic of Albania with the Law 8496, dated 03.06.1999 and, after the instruments of ratification were deposited on 28.09.2000, it came into effect on 01.01.2000.

The total number of minority population in the country is considered to be around 2% (64.816) and there are three national minorities officially recognised in Albania and two linguistic minorities and registered registered at the State Committee for Minorities www.kshm.gov.al

The policy of Albania as far as the recognition of national minorities is concerned has followed the way of recognizing officially only those minorities which have in common characteristics such as the language, culture, customs and traditions, religious belief of their native countries . Such minorities are considered the Greek, Macedonian and Montenegrin national minorities. The third of these has almost disappeared in the last two decades. The main minority in Albania is represented by the Greek national minority with a population of almost 60,000 inhabitants[45]. The second largest minority is made of Macedonians, around 5.000 people. As far as the

[45] A census took place in Albania in October 2011. Last minute amendments to the legislation governing the population census introduced fines for incorrect responses to the questionnaire and stipulated that a reply would be considered incorrect if it did not correspond with the data contained in the civil registry. The registry is in itself an unreliable source of information. These amendments are therefore not compatible with the principles of free self- identification of persons belonging to national minorities, as provided for by Article 3 of the Framework amendments are therefore not compatible with the principles of free self- identification of persons belonging to national minorities, as provided for by Article 3 of the Framework

Montenegrin, considered the third official minority of the country, they probably amount to a few hundred people after the size of the community that numbered almost 2.000 was reduced due to emigration after the fall of the Albanian communist regime. The Roma and the Aromanians are considered to be linguistic and not national minorities and they are not officially registered in the country's statistical data. Five religious denominations are officially recognized: Muslim, Bektashi, Orthodox Christian, Catholic Christian and recently Protestant. The authority responsible for the religious minorities is the State Committee on Cults.

However, reliable statistical data concerning national minorities in Albania is still lacking. Collection of data on ethnic affiliation in the 2011 census was needed but there was a reluctance to do so by the authorities. Conversely, data on ethnicity is collected when issuing birth certificates for persons belonging to some minorities without full respect for the principle of free self-identification. The distinction between persons belonging to national minorities and persons belonging to "ethno-linguistic minorities" needs to be clarified in order to avoid differentiated treatment concerning access to certain rights of persons belonging to the latter category. This also affects the prison admission practice.

Albania has made efforts to develop its legislative provisions with a view to improving the implementation of the different regulations concerning minority issues, as duly noted by the Council of Europe[46]. The Criminal Code was amended in 2007 in order to make racial motivation of criminal offences an aggravating factor. Agreements were signed between central and local authorities in order to find solutions regarding names and topographical indications in minority languages. A Law on Personal Data Protection was adopted. Albania introduced a simplified procedure enabling persons belonging to national minorities to revert to the traditional form of their name. The

[46] Resolution CM/ResCMN(2009)5 on the implementation of the Framework Convention for the Protection of National Minorities by Albania, adopted by the Committee of Ministers on 8 July 2009 at the 1063rd meeting of the Ministers' Deputies

State Committee on Minorities was set up as a new specialised body with the task to make recommendations to the government in order to improve the situation of persons belonging to minorities in Albania. In 2004, Albania adopted a comprehensive National Strategy on Roma following consultations with representatives of the Roma minority. The strategy covers a range of fields such as education, economy, employment, social protection, health care, justice and public administration. Efforts have been made to raise the awareness of the media on the need for fair minority portrayal and there have been occasional broadcasts on minority issues. The distribution of racist or xenophobic materials through computer systems and insults with racist or xenophobic motives were criminalized. Efforts have been made to recruit persons belonging to minorities, in particular Roma into the police force.

b) Situation of minorities in Prison

In Albania there are 21 penal institutions, 1 closed psychiatric institution, 1 juvenile and 1 special detention centre in Kruja.. The prison capacity in 2011 was 4417 individuals with 4659 prisoners actually detained divided into 5 high security, 5 medium and 8 pre-trial institutions. The police staff/prisoner ratio is 1/1.6. The Albanian Government made substantial progress in improving the quality of the penitentiary infrastructure and the penitentiary regulations. 3 new modern and advanced prison centres are in construction (Elbasan, 120 detainees, Berat, 100 detainees and Fier, 780 detainees) with a serious investment made jointly by the EU and the State budget. Advancements are also recorded at legislative level: the old Albanian penal norms and prison regulations contained in the Law no. 8328, dated 16.4.1998 "On the rights and treatment of prisoners and pre-detainees" (as amended) are now integrated with the Decision Nr. 303, dated 25.03.2009 "On the approval of the General Regulation of Prisons" (as amended); the Order of the Minister of Justice no. 3705/1, dated 11.05.2006 "Regulation of Pre-Trial Detention"; "Internal Regulation of the General Directorate of Prisons"; Order of the Minister of Justice no. 3052/1, dated 25.05.2005 "The code of ethics for prison staff.". In 2007 psychological support service was introduced for the first time with the Decision of the Council of Ministers

No. 252 dated 23.3.2011 the Durres Hospital entered under DGP administration through the newly established Special Care Section.

Despite the incredibly challenging economic situation and the large technical and organisational obstacles which often mean essential prison services are not guaranteed to prisoners and working conditions of staff are at the same very low level as the prisoners themselves, it must be recognised that the Ministry of Justice and its personnel have made great attempts to improve the situation of prisoners in Albania. We must also note that the progress achieved at an institutional level has not always found support from the NGO and volunteer sector which is ever ready to carry out monitoring activities by much less so to commit to volunteering work to improve standards and services.

However we cannot ignore the fact that specific legislative or regulative indications concerning minorities are still missing and this needs additional effort from the Ministry of Justice. In recent times the Advisory Committee invited the authorities to continue monitoring the behavior and attitudes of the police and prison personnel through the existing supervisory mechanisms, in order to ensure respect for European standards and to enforce the appropriate sanctions in established cases of human rights violations (ACFC/OP/III(2011)009, pg. 19). Undoubtedly the Albanian legislative framework pertaining to minority protection for detainees still needs to be developed. Non-discrimination provisions do not cover all relevant fields and the legal provisions providing for the recording of free self-declaration need to be designed and developed as well as a clear definition of minorities within the prison system, including the rights of vulnerable minorities, such as women, juveniles and mental illness, in line with national and International legislation. Unfortunately the issue doesn't seem to be perceived as important by prison authorities and the work of the State Committee on Minorities has not been given adequate attention.

We collected the following data concerning numbers of official minorities in prison: 645, Practising Muslims (in reality Muslims are the religious majority of the prison population), 556 practising orthodox and catholic Christians, 324 Roma cultural

minority and 5 Ethnic minorities. The concept expressed with 'practicing' covers the substantial inability to provide meaningful data on prison admission statements at the moment of the prison registration/admission. Moreover, official prison statistics highlight that 1% of the prison population is composed of disabled people (47 detainees) and 37 convicted offenders with mental health problems are accommodated between Durres, Ali Demi and Peqin.

c) Facts Finding from the Field Assessments: Weaknesses and non compliances of the Albanian prison system.

During the field assessment in the 2 Albanian prisons in Tirana, male and female, classified as low security, the following critical elements emerged from interviews and direct observations:

C1) Usually at the moment of the admission and registration prison classification specialists develop an individual profile of each inmate that includes the offender's crime, social background, education, job skills and work history, health, and criminal record, including prior prison sentences. Based on this information, the offender is assigned to the most appropriate custody classification and prison treatment which relates to the granting of the prison privileges. It is a serious concern that in the admission phase, the prisoner/detainee statements concerning their cultural, religious, ethnic or linguistic identities is not recorded and properly evaluated. This alters all statistics and makes it impossible to organize the appropriate services for the specific needs of these prison groups.

Translation services or documents in a language different from Albanian are not available at the prison admission stage and therefore for non-speaking Albanian minorities or third country nationals it is extremely difficult to communicate their situation or understand prison regulations.

During the interviews in German language (not understandable for prison guards who were present at the meetings for supposed security reasons) of 2 German prisoners, we were informed that prisoners belonging to minorities are usually

considered lower class citizens inside the prison social system. This amounts to serious discrimination and should be seriously considered by prison authorities and monitoring bodies, because this discrimination has a negative impact on the entire prison life of the people serving their sentences in terms of visits, day releases, access to alternative measures, accommodation conditions, etc.) The non-compliance with minimum standards for minority protection at this entry level compromises the willingness of prisoners to reveal their minority status.

Detainees have a preliminary medical check but no special attention is paid to prisoners with terminal illness.

The condition of the 84 females detained is of a particular concern. They cannot be transferred to prisons close to their families because in Albania there is only 1 female prison and therefore women are discriminated against and disadvantaged when compared to the other prisoners. They are exposed to the risk of losing contact with their relatives and friends. Also their children are dramatically affected by this poor treatment.

In addition to women, another vulnerable group needs to be addressed as soon as problem: detainees with mental problems. Despite the legislative regulations, the political efforts and special sections for prisoners with mental illnesses or drug dependency that were recently opened in six prisons, detention conditions for these prisoners are very poor. In the female section of the Tirana prison we saw a prisoner with obvious psychiatric problems restricted in a separate area in very poor conditions at the entrance of the prison. The prison staff were prevented from having closer contact with this prisoner who had dedicated surveillance. Examples like this indicate that a big gap exists between legal provisions and tangible practices for this minority group that need very specific and specialized attention.

C.2) Because of the lack of penitentiary infrastructures, it's not possible to allocate women and juveniles to his/her local place of detention or to consider proximity criteria regarding his/her family. This issue of the lack of adequate infrastructure concerns the prison population at-large and not only minority groups.

This has a serious impact on rehabilitation policies: women, juveniles and prisoners belonging to minority groups, who are detained in prisons far from their area of origin, cannot benefit fully from social integration policies such as training courses, or alternative measures that may re-integrate them into their communities of origin or/and involve them in paid jobs or socially beneficial work.

However the recent introduction of electronic bracelets for prisoners in semi-detention is a very important advancement to tackle this general problem and needs further testing.

C.3) The criteria concerning dietary regimes are not respected. Because of the very poor food supplies, detainees are forced to buy and cook food for themselves and third country nationals detained who lost connections with their families and don't have sufficient financial resources to buy outside are clearly discriminated against. This is also true for medical supplies and health care support. In two specific cases audited during the field assessment in Tirana, two prisoners with EU passports and serious illnesses were unable to buy special food and medicines necessary for their dietary regime and their health care as prescribed by the medical staff.

As a matter of fact, the poor infrastructure inside the old Albanian prisons impacts on the prison population at large and not only on minorities. For example: in the two prisons we visited alarm systems for detainees to immediately contact the personnel in case of necessity were not available. There was no possibility of being allocated to individual cells in specific cases where it might be necessary or the possibility to separate juveniles, adults and elderly people.

C.4) Regarding religious practices, the prisons we visited offered small but decent multi-denominational prayer halls with Christian and Islamic religious literature. However the lack of on-going religious services from an Imam or Priests- as admitted by Mr. Iljaz Labi, vice general director- was recorded during the interviews with detainees. Moreover, rituals are not organized and ministries of the different faiths are rarely accessible. Nevertheless, prison directors showed openness toward

religious practices, without any kind of discrimination, but they complained about the lack of availability on the part of religious charities and NGOs to support this process.

C.5) In the area of communication (points 21-24 and 36 of the questionnaires) and Legal Consultancy (points 17-20) and education (point 30) we noticed serious non-compliance with the International standards and the Albanian legal provisions. The main issue relates to language: all Albanian prison regulations, laws and access to information was available only in Albanian. Different languages are not available and the prison staff (including psychologists, doctors and social workers) generally don't speak foreign languages or languages spoken by minority groups or third country nationals. This is a very serious issue, that has very tangible negative effects for some prisoners, who are clearly discriminated against because they are not in the position to access services (such as education or health care), or to petition and express themselves at even a basic level. In some cases the basic rights of non-Albanian speaking prisoners are effected and they become the subject of discrimination, because this problem is all-encompassing and covers the entire prison system (from books to signage, labels, orders, prescriptions and communication with the prison staff at all levels).

C.6) Another issue emerges which is due to the poor infrastructure of the institution. In both Albanian prisons we didn't see any disabled access of any kind. One of our project partners, Ms. Apuk (LPK, Kosovo), uses a wheel chair and was unable to carry out the visit. This very specific vulnerable minority is exposed to a double discrimination because of the architectural barriers that impede access to all basic services, including kitchens, toilets and showers, clinics, etc. The treatment of people with disabilities within the prison is inhumane and degrading when they are prisoners or detainees. Those prisoners shouldn't be behind bars and for them specific alternative measures must be foreseen.

C.7) The European legislation, as we have seen in the previous chapters, privilege a grassroots and subsidiary approach in dealing with minority issues, where legal competences are more at national than at International level. For this reason

NGOs and civil society may play a very important role in improving conditions of minority groups in prisons through advocacy campaigns and service-oriented volunteering initiatives. Therefore during the EUG meeting we specifically monitored the level of cooperation between prisons and NGOs in the very specific field of minority issues.

A number of organisations active in the protection of different minority groups have been identified and profiled. **CSOs:** Romët për Integrim, Amaro-Drom, Romani Batx, Shanci Rom, Amaro-Dives, Disutni, (for Roma), MoracaRozafa (for Serbian minority), Drushtvo prespa, Mir, Prespa e Vogel (for Macedonian minority), Omonia (for Greek minority) **Political parties:** PBDNJ- Partia ' Bashkimi per te Drejtat e Njeriut) – known in popular jargon as the political party of the Greek minority, MEGA political party of Greek minority. Alliance of Macedonians for European Integration- for Macedonian minority **Official religious institutions:** National Committee of Muslims, Autocephalous Orthodox Church, National Catholic Church, Church of Albanian Protestants, Kryegjyshata Boterore e Bektashinjve (the highest authority for the Bektashi religious group/ world level, that we have interviewed). All these groups and organizations, active in the field and involved in the protection of minorities, have very limited activities within the prison system and this is one of the reason why minority issues are not perceived as really critical also at institutional level.

Why the role of civil society is so weak? According to the TACSO Report 2012 on Civil Society, Albanian Civil Society is facing three major problems in order to be more effective and participative in the decision making process: 1) lack of cooperation with Institutional actors; 2) lack of funds; 3) need of training.

Lack of cooperation with Institutional actors is one complaint we heard many times from prison directors during our inspections. Very few government ministries and departments have established mechanisms for engaging with civil society and their administrative capacity to do so is inadequate. Where mechanisms designed to enhance CSO participation in policy decisions do exist, they remain weak. Consequently, CSO participation in the policy-making process is low and non-

influential. However, it should also be noted that recent times have seen a substantial decrease of CSO-led advocacy activities, largely owing to the difficulties CSOs face with securing adequate financial resources as foreign donors scale down their support to Albania, which has reduced the civil society's ability to influence government policy. A further factor in a general weakening of civil society's effectiveness in the policy arena is the open affiliation of many think tank leaders to political parties, which has clearly compromised their ability to enhance public representation and participation. Lack of funds. In general, the current funding opportunities for civil society in Albania are insufficient to meet its financial needs. Thus, CSOs in Albania remain largely dependent on international donor assistance. In common with most countries in the region, bilateral donors have reduced their support to the country, including civil society, and some have even left. Denmark, previously an important supporter of civil society strengthening and the media, ceased its support to CSOs in 2008, after the completion of an eight-year regional Neighbourhood Programme. A number of major programmes supporting CSO activities, such as the World Bank's Social Service Delivery Project have ended, while other donors, such as USAID are delivering support for areas of concern to civil society, such as the promotion of democracy, strengthening governance and the fight against corruption, directly to the Albanian government and public institutions. Need of training for Local Ngos in conjunction with penitentiary staff. Prison environment requires specialized competences and know-how, understanding the need of the institutions, from one side, and the need of detainees on the other side, balancing security and social policies, punishment and rehabilitation. For this, local NGOs require training to adapt to present conditions, to strengthen their capacities, to participate in the European integration process and to strengthen their knowledge in the prison administration and its procedures and problems . It is also necessary to encourage the freedom of association, to put in place regulatory frameworks and public incentives for the development of civil society organisations, and to guarantee a supportive legal environment for civil society activities. The public profile of CSOs still remains low; there is only limited public awareness of CSO activities, and an incomplete understanding of civil society's role in representing public interests and advancing good governance. Many members of the general public have

the impression that CSOs exist only to benefit the interests of their leaders and staff and that they do not represent grassroots opinions of the interests of target groups or the general public. CSOs are often poorly connected with the communities in which they work and, accordingly, often have weak memberships and are poorly supported by their constituencies. The lack of a tradition of voluntary associational behaviour in Albania, whether for social, political, religious or other purposes, militates against stronger and more enthusiastic public participation in CSO activities.

C.8) Awareness of the prison staff concerning the issue of minority rights is extremely low. In general terms the prison managerial staff need to the recruit staff coming from minority groups, address the need of additional training on issues such as languages, training and education, health care and public-private partnership for subsidiary services towards minority groups. Because of the poor condition of the logistic of the majority of prisons, minority groups within the Albanian prison system are subject to a double discrimination. They don't have a real access to justice due to the voluntary or involuntary barriers and constraints set by prison administration. Experts in social work and alternative measures capable of connecting the prison environment with minority communities are also seriously needed to support rehabilitation policies and pave the way to the ongoing important reform of the prison administration.

BOSNIA HERZEGOVINA

From the point of view of international human rights instruments , Bosnia and Herzegovina has ratified all major UN and international human rights conventions. The principles of the European Convention on Human Rights (ECHR) are entrenched in the Constitution of Bosnia Herzegovina, which also guarantees the supremacy of this Convention over national legislation.

By ratifying the Council of Europe Framework Convention for the Protection of National Minorities (2000), Bosnia and Herzegovina assumed significant responsibilities to protect the rights of national minorities living there.

The Framework Convention was the basis for the enactment of the Law on the Protection of National Minorities (2003). The Republika Srpska (2005) and the Federation of Bosnia Herzegovina (2008) then enacted their own laws on the protection of national minorities. In 2009 the Law of Bosnia Herzegovina Against Discrimination ("BiH Official Gazette" No. /09.), which was founded on and designed according to European standards, was adopted.

According to these Laws, a national minority that is part of the population/citizens of BiH does not belong to any of the three constituent peoples (Bosniak, Serb, Croat) shall include people of the same or similar ethnic origin, same or similar tradition, customs, religion, language, culture, and spirituality and close or related history and other characteristics. Their basic rights are secured as national minorities. In line with this law, members of the following groups are considered minorities in BiH: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenes, Turks, Ukrainians and others who meet the conditions specified in Article 1 of the law.

However, we cannot overlook the fact that this definition of minorities has been strongly criticized by the European Court of Justice because it favors and gives special privileges and benefits to the constituent peoples (Bosniaks, Serbs and Croats) in relation to the other 17 ethnic groups in Bosnia and Herzegovina, which were established in the Law on the Protection of National Minorities adopted in 2003, as

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defined by the Court of Strasbourg in the judgment "*Sejdic and Finci vs. Bosnia and Herzegovina*".

A second problem that stems from the concept of constituent minorities rooted in the Constitution and reaffirmed with the Law 09/2009 is the segregation of single constituent minorities within cantons where the majority is constituted by other groups, like Bosniaks in the Srpska Republic (and vice versa) or Croats in the BiH Federation. The establishment of ethnic enclaves within the Federation is not a guarantee for equality for those belonging to numerical minorities within the majority constituency of the enclave. The laws seem to overlook and overshadow that fact that even constituent people not classified as minorities following the current law may be subject to discrimination when they are settled in cantons where they are a minority. This situation creates substantial discriminations within the prison systems, which are located in the different cantons **but host prisoners from different nationalities** and in other relevant contexts like schools. For the BiH this issue seems to be very sensitive because it touches on the roots of the civil war and has a number of political implications.

Nevertheless, since 2003 there have been some clear advancements in terms of legislation for the protection of the rights of national minorities- as defined by the law- and as proved by the incorporation of the additions to the International Convention on the Elimination of All Forms of Racial Discrimination into the Criminal Code, prescribing penalties for crimes against humanity, genocide, war crimes against civilians, war crimes against the wounded and the sick, war crimes against prisoners, organizing groups of people and encouragement to committing the crimes of genocide, crimes against humanity and war crimes, violation of the equality of man and of the citizen, devastation of cultural, historical and religious monuments and has thus established legislative mechanisms to protect human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

We should also note the importance of the establishment of the Council of national Minorities into the Parliamentary Assembly of BiH. Moreover the Ministry of Human Rights and Refugees of Bosnia and Herzegovina devoted particular attention to the Roma as the largest national minority. So, in collaboration with the Roma

Council, in 2008, the MHRR continued further elaboration and implementation of "The Roma Strategy of Bosnia and Herzegovina " and on 3 July 2008 the Council of Ministers of Bosnia and Herzegovina adopted the " Roma Action Plan of BiH in Housing, Employment, Health Care " and joined the Decade of Roma Inclusion 2005-2015. For the first time the Council of Ministers of Bosnia and Herzegovina allocated appropriate resources in the budget of the Ministry of Human Rights and Refugees to implement action for the adopted action plans in 2009 and 2010.

Other Important steps have been achieved with the elections of candidates representing minorities in the 2008 local elections and in 2010 parliamentary general elections. Finally, also a specific Strategy to Solve the Problems of National Minorities, supported by OSCE, is in place

Nevertheless Bosnia Herzegovina remains one of the most complex cases to analyse as far as the demographic composition of its national and ethnic minority is concerned. The only available census we can refer to is the Yugoslavian one held in 1991; no other census has been carried out in the country for 20 years. The war produced a huge loss of lives among all the ethnic groups as well as forced migration, internal displacement of population and emigration. The country failed in 2011 to adopt a law on census therefore impeding the census from taking place in 2012. The law on census was finally passed on 2nd February 2012 and the population census is supposed to take place in late 2013, there has been a continual postponing of this very necessary action. The difficulties in organizing the census operations can be interpreted as being extremely political and illustrates the importance of the relationship between minority issues and how the nation is actually populated in the public arena.

According to the 1991 census, 92% of the population belonged to the three main nationalities with a majority of Bosniaks, 43,5%, 31,2% of Serbs and 17,4% of Croats. 5,5% of the population defined themselves as Yugoslavian while the other 2,4% was divided among 17 different nationalities. The lack of official data doesn't allow the possibility of making any serious comparison on the changes of the population before and after the war. There exists only a quasi – official estimation of the demographic changes that have occurred in the country in the two entities, that

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was prepared in 2001 and that tried to take into account the changes of population, the emigration, the returning population as well as the number of casualties during the war. According to this data, published in the "Study on Human Development of Bosnia and Herzegovina" the number of the population decreased by almost 1 million people, from 4,3 millions to 3,3 millions. The Bosniaks today account for 48% of the population (1,6 million), the Serbs for 34% (1,1 million) and the Croats for 15,4% (15,4). Formally the Dayton Constitution considers all the three nationalities as constituent nationalities, so none of them should be considered a national minority. In reality, the division of the country into two entities has transformed the Serbian minority into a de facto majority inside the Republic Srbska while the Croats live a condition of de facto minority inside the BiH Federation.

b) Minority situation in Prison

Prison treatment is regulated by the Law of BiH on the Execution of Criminal Sanctions, Detention and other Measures, ("Official Gazette of Bosnia and Herzegovina" 13/05), recently amended and coordinated with State-level law, in line with the BiH Criminal Code. A draft Law on the Execution of Criminal Sanctions remains to be adopted by the Federation. In the Republika Srpska a new law on the Execution of Criminal Sanctions came into force in February 2012[47].

Article 45 of the BiH Penitentiary Law states that" (3) The treatment of detainees and prisoners shall be without any prejudice on the basis of their ethnicity, race, colour, gender, sexual orientation, language, religion or faith, political or other beliefs, national or social background, consanguinity, economic or any other status." And Art. 46 concerns religious rights of prisoners: " (1) Detainees and prisoners shall have the right to practise their religious needs pursuant to this Law and the rules of the religious communities. (2) The Establishment shall provide in cooperation with religious communities in BiH conditions to meet religious needs of the persons accommodated in the Establishment."

Another important step in penitentiary reform is represented by the Justice Sector Reform Strategy, adopted in 2008, that outlines an agreed upon framework for

[47] RS Official Gazette No. 12/10 of 19 February 2010.

reform within the justice sector over the period 2008-2012 and includes 69 specific strategies programmes with 207 activities in total. The strategy's activities are divided into five main areas and pillar 2 is focused on the execution of criminal sanctions with a specific section aimed at enhancing the application of international standards within BiH Prisons.

However, despite these efforts human rights protections and the protection of minorities remain issues of high concerns. Indeed the country is still in breach of the Interim Agreement due to non-compliance with the European Convention on Human Rights (ECHR)[48]. A recent OSCE Report has documented substantial violations of human rights in BiH[49]

There are 15 Prison Establishments in BiH, including the detention Units of the Court of BiH and 7 prisons. All together the 15 establishments can accommodate 2580 persons. The 7 prisons have a capacity of 1.795 units and 1.801 effective prisoners (April 2012). The main prison complex is Zenica with 778 prisoners and 411 staff members. Tunjice has 320 prisoners and 176 staff, with a specific juvenile area. Improvements have been reported in the implementation of infrastructures: the female wing of Istocno prison has been expanded. The construction of a high-security State prison is ready to start while a new psychiatric facility has been built in Sokolac and will be functioning soon.

During our visit BiH Ministry of Justice provided the following information: *"1100 persons of all nationalities are serving a sentence, among whom there are 885 serbs (80%), 133 Bosnians (12%) and 66% Croats (6%). Other nationalities are represented in small numbers: 7 Roma (1%), 3 Poles, 3 Ukrainians and 3 Yugoslavs, or individually below 0,4%"* However, for reasons that will be detailed below, these numbers should be considered with extreme caution.

[48] COMMISSION STAFF WORKING DOCUMENT BOSNIA AND HERZEGOVINA 2012 PROGRESS REPORT {COM(2012)600 final}

[49] OSCE, Torture, Ill-Treatment and Disciplinari Proceedings in Prisons of Bosnia and Herzegovina, Januari 2011

STATISTICAL INDICATORS, Zenica prison, Bosnia and Herzegovina (March 2012)

PRISON	CAPACITY		PRISON POPULATION																STAFF						
			ANALYSIS									Pravni status		SEX		AGE		NATIONALITY							
			DETAINEES				CONVICTED																		
			MALE		FEMALE		MALE		FEMALE		OTHER														
	Official standard capacity (4 m2 or 10 m3 per prisoner)	total number of prisoners	< 18 yrs.old	18 yrs.old and older	< 18 yrs old	18 god. starosti i više	< 18 god. starosti	18 yrs old and older	18 yrs old and older	obligatory psychiatry measures	substance abuse treatmen (drugs and alcohol)	all detainees	all convicted	all males	all females	all < 18 yrs old	all 18 yrs old and older	citizens of Bosnia and Herzegovina	foreign citizens	insurance	treatment	medical staff - doctors	medical staff - technicians	others (instructors)	administration	total number of staff
ZENICA	744	778	2	45	0	4	2	667		33	25	51	727	774	4	4	733	733	24	238	25	2	16	79	51	411
SARAJEVO	234	220	2	89	0	2	0	127		0		93	127	218	2	2	206	206	14	131	4	0	4	0	18	157
MOSTAR	186	152		26		0		126			0	26	126	151	1		149	149	3	59	7	0	2	8	18	94
TUZLA	257	293	1	64	0	3	16	167	38	1	3	68	225	252	41	17	290	290	3	102	12	1	3	9	20	147
BIHAĆ	156	122		13		1		108	0			14	108	121	1	0	121	121	1	36	5	0	2	2	10	55
ORAŠJE	116	115		19				96				19	96	115			114	114	1	48	1		2	4	5	60
BUSOVAČA	102	107		13		0		94				13	94	107	0		107	107	0	39	2		2	2	5	50
TOTAL	1795	1787	5	269		10	18	1385	38	34	28	284	1503	1738	49	23	1720	1720	46	653	56	3	31	104	127	974

figure 1- Statistical Data on March 2012)

European Commission, DG Enlargement,
Project Prisnet, funded by the EC, , IT-2010-CMF 1006997238

c) Fact Finding from the Field Assessments: Weaknesses and non compliances of the BiH prison system.

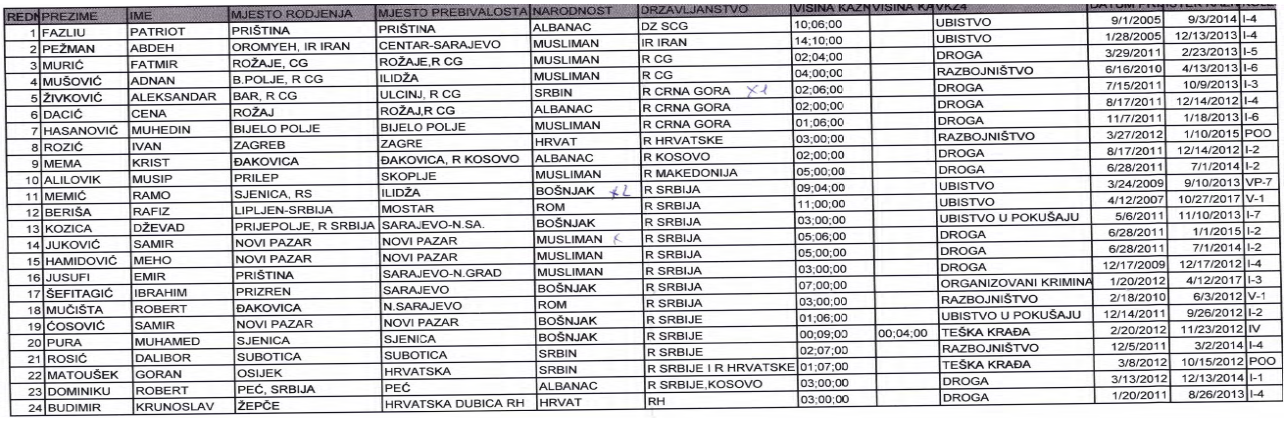
During the field assessment in Zenica prison, the following issues emerged from interviews and direct observations:

C1) In the admission phase, freely given statements from prisoners/detainees concerning their cultural, religious, ethnic or linguistic identities are not properly recorded. During the admission process translation services or documents in a language different from the BiH national languages are not available for the 46 foreign citizens and therefore for non-speaking BiH national languages, such as minorities or third country nationals, it is extremely difficult to communicate their situation or understand prison regulations. This is a serious form of discrimination contrary to BiH and International regulations.

In Zenica, prisoners from Serb cantons or minorities receive a lower classification in the prison classification system (therefore affecting their priveleges, accommodation etc). This is serious discrimination and should be considered by prison authorities and monitoring bodies, because this discrimination has a negative impact on the entire prison life of the people serving their sentences in terms of visits, day releases, access to alternative measures, accommodation, etc.). One prison guard explained that this classification is necessary to protect these prisoners in order to create homogeneous groups within the prison dynamics.

The non-compliance with minimum standards for minority protection at this entry level compromises and discourages prisoners from revealing their minority status.

(Figure 2- Classification of prisoner at the prison entrance)



REDN	PREZIME	IME	MJESTO RODJENJA	MJESTO PREBIVALOSTA	NARODNOST	DRZAVLJANSTVO	VISINA KAZN	VISINA KAZ			
1	FAZLIU	PATRIOT	PRIŠTINA	PRIŠTINA	ALBANAC	DZ SCG	10;06;00		UBISTVO	9/1/2005	9/3/2014	I-4
2	PEŽMAN	ABDEH	OROMYEH, IR IRAN	CENTAR-SARAJEVO	MUSLIMAN	IR IRAN	14;10;00		UBISTVO	1/28/2005	12/13/2013	I-4
3	MURIĆ	FATMIR	ROŽAJE, CG	ROŽAJE,R CG	MUSLIMAN	R CG	02;04;00		DROGA	3/29/2011	2/23/2013	I-5
4	MUŠOVIĆ	ADNAN	B.POLJE, R CG	ILIDŽA	MUSLIMAN	R CG	04;00;00		RAZBOJNIŠTVO	6/16/2010	4/13/2013	I-6
5	ŽIVKOVIĆ	ALEKSANDAR	BAR, R CG	ULCINJ, R CG	SRBIN	R CRNA GORA	02;06;00		DROGA	7/15/2011	10/9/2013	I-3
6	DACIĆ	CENA	ROŽAJ	ROŽAJ,R CG	ALBANAC	R CRNA GORA	02;00;00		DROGA	8/17/2011	12/14/2012	I-4
7	HASANOVIĆ	MUHEDIN	BIJELO POLJE	BIJELO POLJE	MUSLIMAN	R CRNA GORA	01;06;00		DROGA	11/7/2011	1/18/2013	I-6
8	ROZIĆ	IVAN	ZAGREB	ZAGRE	HRVAT	R HRVATSKE	03;00;00		RAZBOJNIŠTVO	3/27/2012	1/10/2015	POO
9	MEMA	KRIST	ĐAKOVICA	ĐAKOVICA, R KOSOVO	ALBANAC	R KOSOVO	02;00;00		DROGA	8/17/2011	12/14/2012	I-2
10	ALILOVIK	MUSIP	PRILEP	SKOPLJE	MUSLIMAN	R MAKEDONIJA	05;00;00		DROGA	6/28/2011	7/1/2014	I-2
11	MEMIĆ	RAMO	SJENICA, RS	ILIDŽA	BOŠNJAK	R SRBIJA	09;04;00		UBISTVO	3/24/2009	9/10/2013	VP-7
12	BERIŠA	RAFIZ	LIPLJEN-SRBIJA	MOSTAR	ROM	R SRBIJA	11;00;00		UBISTVO	4/12/2007	10/27/2017	V-1
13	KOZICA	DŽEVAD	PRIJEPOLJE, R SRBIJA	SARAJEVO-N.SA.	BOŠNJAK	R SRBIJA	03;00;00		UBISTVO U POKUŠAJU	5/6/2011	11/10/2013	I-7
14	JUKOVIĆ	SAMIR	NOVI PAZAR	NOVI PAZAR	MUSLIMAN	R SRBIJA	05;06;00		DROGA	6/28/2011	1/1/2015	I-2
15	HAMIDOVIĆ	MEHO	NOVI PAZAR	NOVI PAZAR	MUSLIMAN	R SRBIJA	05;00;00		DROGA	6/28/2011	7/1/2014	I-2
16	JUSUFI	EMIR	PRIŠTINA	SARAJEVO-N.GRAD	MUSLIMAN	R SRBIJA	03;00;00		DROGA	12/17/2009	12/17/2012	I-4
17	ŠEFITAGIĆ	IBRAHIM	PRIZREN	SARAJEVO	BOŠNJAK	R SRBIJA	07;00;00		ORGANIZOVANI KRIMINA	1/20/2012	4/12/2017	I-3
18	MUĆIŠTA	ROBERT	ĐAKOVICA	N.SARAJEVO	ROM	R SRBIJA	03;00;00		RAZBOJNIŠTVO	2/18/2010	6/3/2012	V-1
19	ĆOSOVIĆ	SAMIR	NOVI PAZAR	NOVI PAZAR	BOŠNJAK	R SRBIJE	01;06;00		UBISTVO U POKUŠAJU	12/14/2011	9/26/2012	I-2
20	PURA	MUHAMED	SJENICA	SJENICA	BOŠNJAK	R SRBIJE	00;09;00	00;04;00	TEŠKA KRAĐA	2/20/2012	11/23/2012	IV
21	ROSIĆ	DALIBOR	SUBOTICA	SUBOTICA	SRBIN	R SRBIJE	02;07;00		RAZBOJNIŠTVO	12/5/2011	3/2/2014	I-4
22	MATOUŠEK	GORAN	OSIJEK	HRVATSKA	SRBIN	R SRBIJE I R HRVATSKE	01;07;00		TEŠKA KRAĐA	3/8/2012	10/15/2012	POO
23	DOMINIKU	ROBERT	PEĆ, SRBIJA	PEĆ	ALBANAC	R SRBIJE,KOSOVO	03;00;00		DROGA	3/13/2012	12/13/2014	I-1
24	BUDIMIR	KRUNOSLAV	ŽEPČE	HRVATSKA DUBICA RH	HRVAT	RH	03;00;00		DROGA	1/20/2011	8/26/2013	I-4

We obtained from the Zenica prison director a copy of the admission register of Zenica prison, reproduced above (Figure 2). We can see that the detainees classification, under the heading '*narodnost*' has confusing classifications that mix nationality (such as '*Albanac*' or '*Hrvat'*) with the religious faith (such as '*Musliman'*) and nationality classifications (such as '*Bosnjak'*). Under the religious category of '*Musliman*' there are Iranian prisoners living in Sarajevo, Macedonian minorities, Serbs from Novi Pazar and Kosovars from Pristina with Serbian passports. Similar confusions can be noticed for the national classifications: under the heading '*drzavljanstvo*' there are States such as Iran or Montenegro but also description like this:" *Albanac, R Srbie, Kosovo*", meaning most probably a member of the Serb minority of the city of Peć , in Kosovo.

Based upon these findings we can assume that all the available statistics provided by BiH authorities concerning minorities in the prison system, should be considered with caution.

The condition of the 49 females detained is of a particular concern: they cannot be transferred to prisons close to their family because in BiH the main penitentiary institution for women is in Tuzla and therefore women are discriminated against and disadvantaged compared with the other prisoners. They are exposed to the risk of losing contacts with their relatives and friends. Their children are dramatically affected

by this poor treatment. The poor condition of the female prison is really serious and needs to be addressed as soon as possible.

In addition to women, another vulnerable group needs urgent attention: detainees that are classified under two headings, 'Obligatory psychiatry measures' and 'substance abuse treatment'. There are 62 prisoners detained in BiH with this ambiguous classification, the majority of them are segregated in Zenica. Detention conditions for these prisoners are very poor: in the cells we visited there are no minimum standards regarding furniture, lighting, heating and ventilation. Moreover also alert systems are missing or not functioning.

Finally, the condition of the 23 juveniles is below the minimum standards because they don't have separate areas, as prescribed by the Law.

C.2) Because of the lack of penitentiary infrastructures, it's not possible to allocate women and juveniles his/her place of detention in their place of origin or to consider proximity criteria with his/her family. This issue of the lack of adequate infrastructure concerns the prison population at-large and not only minority groups. This has a serious impact on rehabilitation policies: women, juveniles and prisoners belonging to minority groups, who are detained in prisons far from their area of origin, cannot benefit fully from social integration policies such as training courses, or alternative measures that may re-integrate them into their communities of origin or/and involve them in paid jobs or social works, as prescribed by the BiH law on criminal executions. Moreover the distance from home, families and original communities exposes these groups to a specific vulnerability with other prisoners and prison staff, as well noted by OSCE:"*Several inmates indicated that prison staff tend to treat prisoners differently depending on where the prisoners habitually resides; it was noted that more privileges are given to those residing in the area near the prison. Prisoners who do not have any family and friends located near the prison appear to be rarely visited and find themselves in a more vulnerable position than those who spend their sentence in a prison located in their residential area. This seem to be due to the fact that prisoners and staff know each other from the past, but also that the prison staff feel*

socially pressured by their community members to treat friends or relatives within the prison accordingly."[50]

The proximity criteria is thus one of the components for the discrimination of specific groups of prisoners and detainees.

C.3) Because of the poor infrastructure, another issue needs to be mentioned. In Zenica we meet one prisoner with physical handicaps. This specific vulnerable minority within the prison is exposed to a double discrimination because all BiH prisons there are architectural barriers that impede access to all basic services, including kitchens, toilets and showers, clinics, etc. The treatment of people with disabilities within the prison is inhumane and degrading. Those prisoners shouldn't be behind bars and specific alternative measures must be foreseen for them.

C.4) As far as communication (points 21-24 and 36 of the questionnaires) and Legal Consultancy (points 17-20) are concerned as well as education (point 30), we noticed major non-compliance with International standards. The main issue is linguistic: in all BiH prisons regulations, laws and access to information are made in the national languages. Different languages are not available and the prison staff (including psychologists, doctors and social workers) generally don't speak foreign languages or languages spoken by minority groups or third country nationals. This is a very serious issue, that has also very tangible negative effects for some prisoners, who are clearly discriminated against because they are not in a position to access services (such as education or health care) or express themselves. In some cases even the basic rights of those non-national speaking prisoners are effected and become the subject of discrimination, because this problem is very large and covers the entire prison system (from books to labelling, signage, orders, prescriptions and communication with the prison staff at all levels). Special procedures for ethnic and linguistic minorities are not available (Points 44-46 of the Questionnaire).

[50] OSCE , 2011 Report, pg. 8

C.5) Because of the particular nature of the threefold national constituency, a very specific phenomenon observed within the BiH Prison is the emergence among prisoners of gang mechanisms based on ethnicity or harassment against vulnerable groups. During the visit in Zenica one prisoner reported an incident that had occurred few weeks ago when two Serb prisoners had been mistreated by other prisoners and then by guards based on their ethnicity. Similar cases are reported from other prisoners regarding former war criminals belonging to minority factions within the prison area. After a petition and being transferred to a different prison in the Serb canton where the prison majority is Serb, he was no longer harassed.[51] The kind of harassment reported has the typical characteristics of gang predominance. The prison director confirmed this story. Other prison staff confirmed evidence of classical gang mechanisms in a video interview (http://agenformedia.com/freedom-inside.html).

In an interview with representatives of the Roma Association in Bijeljina they stated that their members are often exposed to discriminatory situations carried out by prison staff and by prison gangs made of other prisoners. The Ministry commented: "*For this reason, the lack of permanent monitoring of the conditions and status of the minorities in institutions such as prisons and correctional institutions in the RS supports the fact that the degree of minority protection is unsatisfactory and the lack of specific and more recent data on the status and position of prisoner belonging to minorities is necessary".* Acts connected to prison gangs based on ethnic or religious discrimination need to have more consistent attention from the investigative bodies.

This issue is extremely relevant because it is connected to another threat often underestimated by BiH Prison administration: the phenomenon of radicalization, that has specific roots in the BiH prison system, as proven by the Karray Kamel bin Aly case.

C.6) NGOs and Civil Society organizations were also the subject of our monitoring activity, taking into consideration the importance of grassroots initiatives for prison policies within the prison system.

[51] A very similar story happened in 2010 and is reported by OSCE in its 2011 report, pg. 7. Another story where gang mechanisms emerged is the one reported on pg. 13.

In BiH the cooperation between NGOs and governmental institutions concerning minority rights in general terms seems to be very satisfactory. Through the Councils of National Minorities organizations such as the Human Rights Office of Tuzla, Centre for Civil Initiatives of Sarajevo, Centre for the Promotion of Civil Society of Sarajevo, BiH Association of Journalists - Sarajevo, the Helsinki Committee for Human Rights in BiH, Independent Institution for the Protection of Human Rights of Zenica, Roma Board within the Council of Ministers of Bosnia and Herzegovina and the Republika Srpska Roma umbrella organization are all active in this field. They cooperate with the Councils and are involved in the protection of minorities across the territory of BiH.

But when we entered the specific sector of prisons the number of NGOs involved in voluntary work decreases dramatically. Very few associations, (to our knowledge only The Helsinki Committee and the Association of Roma in Bijelijna) are involved in tangible projects with the prisons. The participation of civil society in prison life is very limited and this is particularly true for NGOs representing minorities or vulnerable people.
Mr. Duško Šain, Ministry of Justice, RS, confirmed this lack of participation during the EUG Meeting in Sarajevo, highlighting the importance for the prison system to improve public-private participation in this very specific area.

C.7) Awareness of the prison staff concerning the issue of minority rights is relatively low. It's noticeable that even at managerial level the serious problem of discrimination against national minorities when they are enclosed within other cantonal-national majorities is extremely relevant because it becomes the structure for in which 'prison enclaves' form, a process which is conducive to then creating gang mechanisms and eventually in extreme examples, prison radicalization processes. In general terms the prison managerial staff need to the recruit staff coming from minority groups, address the need of additional training on issues such as languages and public-private partnership for subsidiary services. The profiles of cultural mediators are non-existent within the penitentiary staff. Experts in social work and alternative measures capable of connecting the prison environment with minority communities are also seriously needed to support rehabilitation policies.

SERBIA

After the war of secession of Yugoslavia (1991 – 1995) and the peaceful secession of Montenegro from the remaining Yugoslav Federation (2003) Serbia become pretty much an ethnically compact State. The 2001 census gave the Serbian majority a proportion rate of 82,8%. The main minority in the country is represented by the Hungarian minority of Vojvodina, then Bosniaks with Roma accounting for approximately 1.4 % of the population. 1.1 % still consider themselves as Yugoslavian. The rest of the population living in Serbia is divided among 18 different nationalities each of them with less than 1%. In addition to ethnic minorities An important role is also played by religious minorities, and the biggest amongst them are the Muslim minorities. These are considered politically sensitive due to their internal divisions, their International ties and their transnational nature. According to the results of the census in 2011, there are 7.186.862 citizens living in RS and the quantitative data concerning minorities are reported in the table below:

Nationality	Number
Serbs	5,988,150
Albanians	5,809
Ashkali	997
Bosniacs	145,278
Bulgarians	18,543
Bunyevtsi	16,706
Vlachs	35,330
Gorani	7,767
Greeks	725
Egyptians	1,834
Jews	787
Yugoslavs	23,303
Hungarians	253,899
Macedonians	22,755
Moslims	22,301
Germans	4,064
Roma	147,604
Romanians	29,332
Russians	3,247
Ruthenians	14,246
Slovaks	52,750
Slovenians	4,033
Turks	647
Ukrainians	4,903
Croats	57,900
Tzintzars	243
Montenegrins	38,527
Czechs	1,824
Shokci	607
Others	9,890
Did not declare themselves	160,346

Regional affiliation	30,771
Unknown	81,740
Total number of population	**7,186,862**

(Figure 1: Statistics provided by the Serb Government)

The Framework Convention for the Protection of Minorities was ratified in the Federal Assembly of the FR Yugoslavia in 1998. At the invitation of the Committee of

European Commission, DG Enlargement,
Project Prisnet, funded by the EC, , IT-2010-CMF 1006997238

Ministers of the Council of Europe, FR Yugoslavia joined the Framework Convention on 11 May 2001, which, for the purposes of FR Yugoslavia and in accordance with the provision of Article 29 paragraph 2 thereof, came into effect on 1 September 2001. The Serbian legislative framework contains important advancements regarding the protection of national minorities. This includes a detailed chapter on minority protection in the 2006 Constitution. Moreover, three years later, the basic legislative instruments for the protection of national minorities have been adopted: The Law on Protection of Rights and Freedoms of National Minorities (Official Journal of the FRY",Nos.11/02 and "Official Gazette of the RS",No. 72/09 – other law), the Law on National Councils of National Minorities ("Official Gazette of the RS",No. 72/09) and The Law on the Prohibition of Discrimination ("Official Gazette of the RS",No. 22/09). This primary legislation is part of the bylaw concerning The Conclusion on Measures for Increase of Participation of Members of National Minorities in Authorities of Public Administration ("Official Gazette of the RS", No. 40/06.

Moreover Serbia signed a number of important bilateral and international agreements for the protection of national minorities: The Agreement between Serbia and Montenegro and the Republic of Macedonia on the Protection of the Serbian and Montenegrin National Minority in the Republic of Macedonia and the Macedonian National Minority in Serbia and Montenegro ("Official Journal of Serbia and Montenegro – International Treaties", No. 6/05); The Agreement between Serbia and Montenegro and the Republic of Hungary on the Protection of the Hungarian National Minority in Serbia and Montenegro and the Serbian National Minority in the Republic of Hungary ("Official Journal of Serbia and Montenegro – International Treaties", No. 14/04); The Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of Romania on Cooperation in the Field of Protection of National Minorities ("Official Journal of Serbia and Montenegro – International Treaties", No. 14/04; The Agreement between Serbia and Montenegro and the Republic of Croatia on the Protection of the Serbian and Montenegrin National Minority in the Republic of Croatia and the Croatian National Minority in Serbia and Montenegro ("Official Journal of Serbia and Montenegro – International Treaties", No. 3/05).

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Within this framework, the state level Ombudsman has started his work and has launched new initiatives in the field of monitoring national minority protection in all regions of Serbia. However, because a clear and comprehensive definition of minorities within the framework of the complex issue of Serbian citizenship is still lacking, collective rights for vulnerable groups are not included in these actions.

Increased possibilities for persons belonging to national minorities to learn their language have been made available in the Province of Vojvodina, where other initiatives also exist to increase inter-ethnic dialogue. Measures have been taken to increase signposting in minority languages, although some practical difficulties remain, particularly in the Sandjak territory.

Positive steps have been taken to address the problems faced by Roma as foreseen by the Strategy for Improvement of the Status of Roma in the Republic of Serbia ("Official Gazette of the RS", No. 27/09) and The Action Plan for the Implementation of the Strategy for Improvement of the Status of Roma in the Republic of Serbia ("Official Gazette of the RS", No. 57/09), by activating specific actions for their access to education, health, housing and employment.

Serbian public media includes diverse programming in minority languages.

Notwithstanding the overall progress, the need remains to enlarge this positive approach to other groups, such as the Bosniaks and the Vlachs. The national minority councils which have been established so far have already contributed positively to addressing national minorities' needs, notably in the field of education and culture, notwithstanding the lack of clarity in their duties and procedural mechanisms of cooperation with the Serb institutions.

) Minority situation in Prisons

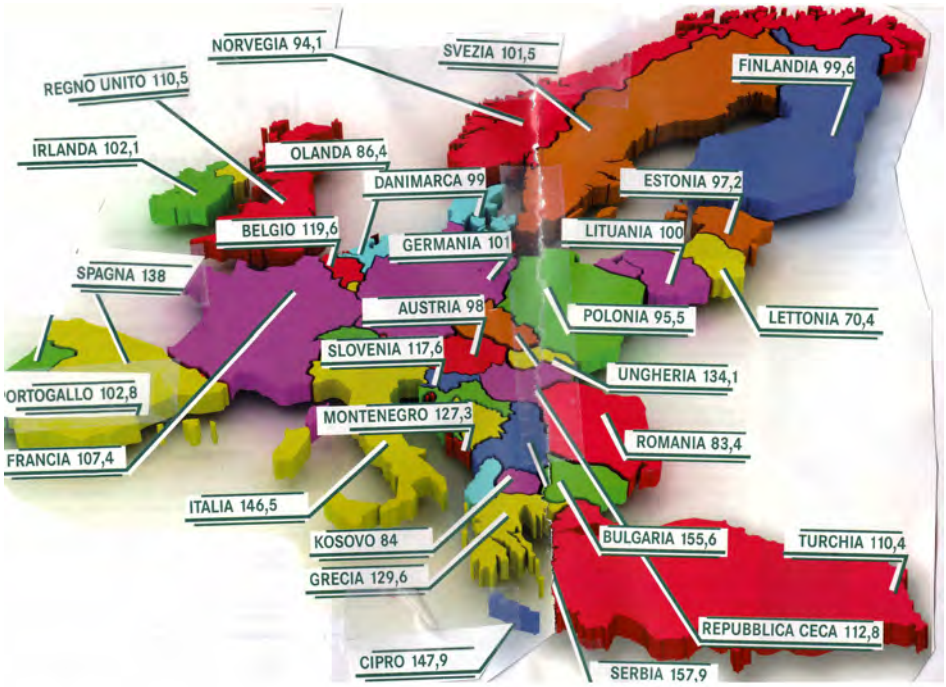
According to available data in Serbia in total there are 28 penitentiary institutions:

- ✓ 1 maximum security prison (KPZ Požarevac–Zabela);
- ✓ 2 closed-type prisons (KPZs Niš and Sremska Mitrovica);

- ✓ 4 open-type prisons (KPZs Padinska Skela, Sombor, Ćuprija and Šabac);
- ✓ 1 semi-closed type prison for women (KPZ for Women Požarevac);
- ✓ 1 closed-type penal-correctional facility for juveniles and young offenders (KPZ Valjevo);
- ✓ 1 closed-type special hospital prison (KPD Hospital Beograd);
- ✓ 1 semi-closed type educational-correctional facility (VPD Kruševac, financed by IPA in 2007);
- ✓ 17 district prisons (in Belgrade, Vranje, Zaječar, Zrenjanin, Kragujevac, –– Kraljevo, Kruševac, Leskovac, Negotin, Novi Pazar, Novi Sad, Pančevo, Prokuplje, Smederevo, Subotica, Užice and Čačak).

In February 2012 a new high security establishment was inaugurated in Belgrade and plans are underway to build 2 additional establishments.

Currently Serbia maintains the negative record of the most crowded prisons in Europe, with prison occupancy at 157,9%



(Figure 2 Maps published by the Magazine of the Italian Prison Administration -DAP-, 'Le due Città, n.10, Anno XII, October 2011)

Aiming at resolve this problem, the Government of Serbia has adopted the Strategy for Reducing Overcrowding in institutions for Enforcement of Criminal Sanctions for the period 2012-2015 (Official gazette n. Serbia's system for the execution of criminal sanctions has undergone multiple trans- formations over the past ten years. Since 1991, the prison system has recorded an increasing number of detainees and prisoners, which is the result of

more strict court policy. This occurrence was particularly pronounced from 2003. Before 2003, the number of detained persons in the Republic of Serbia remained steady between 5,000 and 6,000; whereas afterwards the growth rate of the prison population amounted to more than 10%, so that today, the total increase as compared to the mentioned year surpasses 60%.

Year	2005	2006	2007	2008	2009
No of prisoners	8 078	7 893	8970	9701	10974

Some progress has been recorded in the criminal law and prison legislation as well as in the investments dedicated to the prison facilities. The Amendments to the Law on Enforcement of Prison Sanctions was enacted in September 2009 on the basis of which the new House Rules for Penal Correctional Institutions and District Prisons were enacted in 2010. In cooperation with the OSCE Mission to Serbia the Prison Administration is preparing specific editions of the Law on Enforcement of Prison Sanctions (distributed to all prison libraries) translated into the English, Albanian, Romanian, Hungarian and Romani languages (nevertheless we didn't find one single copy of these booklets during our visits in 2012).

In 2010 a new version of the "Rulebook on the treatment, the individual treatment programmes, classification and re-classification of prisoners" was adopted.

Art. 113 of the Law on Enforcement of Prison Sanctions guarantees that every inmate has the right to practice religious rituals, to keep and read religious literature and to receive visits by a minister.

If prisons have sufficient number of convicts belonging to the same religion, the minister of relevant faith can visit them regularly or hold regular service or lecture in the educational part of the penal institution.

Religious services are supposed to be held in special and appropriate premises of the penal institution and time, duration and manner of exercising this rights are specified in more details by Act of House rules.

Law on Enforcement of Prison Sanctions guarantees by Article 70 that nutrition provided to a convict is in accordance with his religious beliefs according to the possibilities of the penal institutions. Before meals are distributed a medical doctor or

another professional will check the quality of food and enter his findings in the appropriate register. The law prescribes that convicts are entitled to food with the capacity to maintain his health and strength through 3 meals a day (plus one extra meal during working activities), the total value should not be less than 12.500 joules.

In line with the complex process to adapt Serbian legislation to International standards, the new Criminal Procedure Code has also been reformed and applied in organized crime and war crimes cases since January 2012 (and is to be applied in all criminal cases as of January 2013). It introduces a new model of criminal investigation, giving the prosecution the lead role in collecting the evidence and presenting it before the court.

Despite these efforts, concerns remain regarding the effective application of the laws and regulations at prison level. The Ombudsman, acting as of January 2012 through the National Prevention Mechanism against torture, recently held its first inspections of prisons, psychiatric hospitals, police stations and social care centers. Following his report, poor living conditions, unsatisfactory healthcare and a lack of adequate and specific treatment programmes are still a matter of concern. There are no adequate legal safeguards for the placement and treatment of people with mental disabilities involuntarily placed in psychiatric or social care institutions. The internal control system for the police needs significant strengthening in terms of staff and training and needs to improve its response to allegations of ill-treatment. Some progress has been made regarding the prison system. The Action plan implementing the Strategy for the reduction of prisons' overcrowding was adopted in November 2011. The Introduction of electronic bracelets for alternative measures, implemented in 2012, is also another important step towards tackling overcrowding. However, the prison system continued to face serious problems due to overcrowding with a number of prisoners over 11,500 for some 5 to 6,000 places. Further efforts are needed to improve living conditions, healthcare and provide adequate treatment programmes for prisoners. Alternative sanctions need to be introduced on a larger scale. There are not enough frontline prison staff. An efficient probation system remains to be introduced.

Concerning the specific field of prison minorities, the wide national legislation illustrated in the above paragraphs and the important legislative reforms adopted by the judiciary, remain largely unheard of and unapplied in the penitentiary area and are certainly

not coordinated with the prison legislation and regulations. This seems to be a constant issue of penitentiary institutions in the Western Balkans. The problem in this case involves large numbers of people because the percentage of minorities in the Serbian prisons is 12,5% of the total inmates, (without considering women, juveniles and other vulnerable categories). Of the 12,5%, 2,9% are Hungarians, 2,2% Bosniaks, 2,5% Roma, 0,95% Croats, 0.9%, Montenegran, 8,8% Albanian, 0.7%, Slovaks and others. Women prisoners vary from 220 to 350 per year. All together the prison administration shows in its system approximately 550 prisoners belonging to national minorities against 11.400 inmates and this number reaches 800-900 units if we include vulnerable groups. Moreover, even the basic prison statistics concerning minorities should be carefully considered because of the collection methodology, as we will see below.

c) Fact Finding from the Field Assessments: Weaknesses and non compliances of the Serbian prison system.

We carried out two field assessments in 2 Serbian prisons: Belgrade (new high security compound) and Novi Pazar, the latter classified as low security. In Belgrade the prison was empty, inaugurated but without prisoners or staff and for this reason we felt that the Serb Authorities were in some ways not cooperating with the monitoring activities they knew we wished to carry out. The EUG in Belgrade provided more information concerning the Nis establishment, which is attached to this report (Annex 1).

The following critical elements emerged from interviews and direct observations:

C1) In the admission phase, freely made statements from prisoners/detainees concerning their cultural, religious, ethnic or linguistic identities are not properly recorded. The prison staff tend to define their identity for them which is in contrast to the Serb prison regulation on data protection. Combined with a certain level of arbitrarinous in the definitions in the penitentiary classification of the detainees, this generates real and serious discrimination. The case reported by the prison educator Mr. Safuadan Plojovic in Nis is exemplary: "*When it comes to classification, there is a*

discriminatory attitude towards the members of national minorities (including Muslims). According to the national structure of convicted individuals in KZP Nis in 2008, members of national minorities made up 20% of total convicted population, out of which 90% were classified into the lowest categories V2 and V1 at the time of admission. The lowest categorization also implies the lowest privileges (visits, releases, weekends, etc.) and accommodation for prisoners. Prisoners who are members of national minorities are accommodated mostly in Pavilion C, where the number of inmates is always above the upper limit of accommodation capacity. In addition, Pavillon C is generally in poor condition, while the accommodation is inadequate for living. Insufficient running water in the system is the biggest problem. Instead, water is stored in containers and used for personal hygiene of prisoners and for cleaning the premises. Running water, a precondition of good hygiene, is scarce in Pavilion C. There is no hot water either, while other pavilions have both running and hot water."

Translation services or documents in a language different from Serb are not available at the initial registration for prison admission and therefore for non Serb-speaking minorities and particularly third country nationals or Albanians it is extremely difficult to communicate their situation, understand prison regulations or try to access a specific classification (pertaining to privileges etc). A correct approach for minority prisoners at this stage is impossible if linguistic barriers arise. The non-compliance with minimum standards for minority protection becomes an obstacle to deliver basic services to some prisoners who are therefore clearly discriminated against.

C.2) The condition of the 221 females detained is of particular concern: they cannot be transferred to prisons close to their family because in Serbia there is only 1 female prison, the semi-closed prison KPZ Požarevac. Therefore women are discriminated and disadvantaged compared with the other prisoners. For this treatment the prison administration is in breach of the basic principle of proximity that is a fundamental category to be adhered to in rehabilitation policies. Women serving sentences in Serb prisons are more exposed than other categories to the risk of losing contacts with their relatives and friends. Their children are also dramatically affected

by this poor treatment. The condition of the women prisons is very serious and needs to be addressed as soon as possible.

A very similar situation exists for juveniles, who are concentrated in 1 closed-type penal-correctional facility for juveniles and young offenders in Valjevo and 1 semi-closed type educational-correctional facility at the VPD Kruševac. The largest number of juveniles are of Serbian and Roma nationality (in nearly equal percentage); there were also 11 youths of Hungarian nationality, 7 of Bosnian nationality, 3 of Romanian and 1 of Albanian. Here we notice a phenomenon that is common to a number of prisons in the Western Balkans and in the rest of the world: juvenile categories are often also a relevant part of national and religious minorities. They are minorities among the minorities. For this very specific group community ties are of particular importance and the inability to comply with the proximity criteria has long-lasting implications.

The proximity poses a challenge to the Serbian judiciary system at large. Currently, for the detainees, who are not convicted and waiting sentencing, the jurisdiction of the territorial courts decides their destination. They are incarcerated where the crime took place are where they are arrested. For those convicted with sentences superior to 1 year they are detained in Nis without regard for where they are domiciled. This has a serious impact on rehabilitation policies especially for minority groups, who are detained in prisons far from their area of origin, thus cannot benefit fully from social integration policies such as alternative measures that may re-integrate them into their communities of origin or/and involve them in paid jobs or social work. Similar indirect discrimination occurs when we consider family communications, visits and connections with the outside world when somebody is serving the sentence far from their own place of origin.

However, the recent introduction of the electronic bracelets for prisoners in semi-detention is a very important advancement that could help tackling this general problem and therefore needs further pilot experiments within the framework of minority rights protection.

C.3) As a matter of fact, the poor infrastructure of some old Serbian prisons impacts on the prison population at large and not on minorities only. We have collected evidence from Novi Pazar and Nis that highlight how the criteria concerning dietary regimes for religious minorities are not respected. This is particularly true for minority groups with religious dietary requirements, such as Muslims. In the prison visited and from the interviews carried out with prisoners, there are no procedures in place to take care of minority prescriptions such as the Muslim '*sehur*' or the '*iftar*' during the Muslim holidays. Only in one case one prisoner who served a sentence in Nis told us that he had received some *halal* meat during the month of Ramadan because the community in Novi Pazar provided '*bairam* meat' to the prison for this purpose. This happened occasionally but is undoubtedly a positive practice that should be structured and promoted.

C.4) Regarding religious worship, the prisons visited didn't offer prisoners prayer halls, nor appropriate spaces for collective religious functions, holidays, ceremonies nor areas dedicated to religious activities accompanying or complimenting the ceremonies.

Whilst orthodox priests are available and regularly visit prison establishments, Muslim imams rarely access prison. The Novi Pazar prison directors, who showed openness toward religious practices, without any kind of discrimination, complained about the lack of availability on the part of certain religious organizations and the lack of representativeness of the Muslim community. "*It's difficult to choose between the followers of the Imam of Beograd and the Imam of Novi Pazar. Any decision could be interpreted as a form of discrimination. However some Imam visited prisons and if required we have no problems to allow access as foreseen by Act of House rules. The problem is that we don't have requests nor from the inmates and neither from the mosques*." On this very specific issue we have interviewed Ivan Lucic, chief of cabinet of the Mufti of Belgrade, and the advisor of the Mufti Zukorlic by the Sanjak local community in Novi Pazar. Both complained that "*there are no money from the government to organize a proper spiritual service in favour of the Muslim minorities*"

however they declared their availability to organize the service even on a volunteer basis.

C.5) As far as communication (points 21-24 and 36 of the questionnaires) and Legal Consultancy (points 17-20) as well as education (point 30) are concerned we noticed serious non-compliance with the International standards and the Serbian legal provisions. The main issue is linguistic: in all Serb prisons the regulations, laws and access to information is made in Serbian language. Different languages are not available and the prison staff (including psychologists, doctors and social workers) generally don't speak foreign languages or languages spoken by minority groups or third country nationals, such as Hungarians or other minorities. Intercultural mediators are not available and the professional profile is not used within the prison system. This is a very serious issue, that has also very tangible negative effects for some prisoners, who are clearly discriminated against because they are not in the position to access services (such as education, training, etc.), to petition and express themselves, in some case even unable to understand the basic prison rules.

In some cases even the basic rights of non-Serbian speaking prisoners are effected and become the subject of discrimination, because this problem is very large and covers the entire prison system (from books to labelling, signage, orders, prescriptions and communication with the prison staff at all levels). Considering the level of inter-inmate violence, this language factor, as well as ethnic-religious identities are powerful triggers for gang mechanisms. These are clearly visible within the prison system but are not adequately recognized and addressed by the prison administrations.

C.6) Because of the poor infrastructure, another issue needs to be mentioned. In Serbian prisons we visited we didn't see any disability access facilities. This very specific vulnerable minority is exposed to double discrimination because of the architectural barriers that impede access to all basic services, including kitchens, toilets and showers, clinics, etc. The treatment of people with disabilities within the

prison system is therefore inhumane and degrading. Disabled prisoners shouldn't be behind bars and for them specific alternative measures must be foreseen.

A similar problem is represented by the lack of procedures to keep the elderly and young prisoners/detainees separate.

C.7) The European legislation, as we have seen in previous chapters, privileges a grassroots and subsidiary approach in dealing with minority issues, where legal competences are more at national than at International level. For this reason NGOs and civil society should play a very important role in improving the conditions of minority groups in prisons through advocacy campaigns and service-oriented volunteering initiatives, such in the case of the 'Bairam meat' provided for the Muslim prisoners in Nis. Therefore during the EUG meeting we monitored the level of cooperation between prisons and NGOs in the very specific field of minority issues.

While we reordered and profiled a small number of organizations involved in prison monitoring at different levels, such as the Helsinki Committee for Human Rights or the Center for Human Rights in Nis, not one single organisation seems to be active in the cooperation with the prison institution to monitor the rights of minorities within prisons and organize service-based support for minorities.

This is noticeable considering the quite high number of minority organizations existing in Serbia that are involved in the debate around the compliance of Serbian legislations with the Framework Convention for the Protection of Minorities and considering also the important developments in the legislation concerning minorities and the activities of the councils for minorities. It seems that the prison environment is not considered a part of the minority concerns.

Mr. Damir Joka of the Ministry of Justice, offered us this picture concerning the state of cooperation between prison administration and civil society: "*The CSO network in Serbia (I think it applies for the Balkans in general) is in its lowest point since the EU IPA funding begun. Many if not most CSOs (it is known exactly which ones) are highly politicized, many have taken money from funds with no tangible results to show for it*

years back. There is a clear lack of good will to create a change therefore I feel a credible, expert network of CSOs (reference based and thoroughly checked), with persons who have no "past CSO dramas and/or incriminating past" can be part of our future project alliance."

C.8) Awareness amongst the prison staff concerning the issue of minority rights is relatively low, even though the senior management show knowledge and competences on the issue. In general terms the prison management has a positive attitude towards compliance with International standards on minority issues but complains about the lack of cooperation from the associations representing minority groups and request more pro-active participation of the civil societies in this kind of activities.

REPUBLIC OF KOSOVO

According to the constitution, independent Kosovo officially recognises 5 ethnic and national minorities: Serbs, Roma-Ashkalija-Egyptian communities, Bosniaks, Turkish community, and the Gorani community. These are the constitutionally recognised minorities, and for them article 64 of the 2008 Kosovo constitution gives the right to be represented in parliament with a number of guaranteed seats independently from the votes obtained[52].

The exact numbers of these groups and their percentage of the total population is still unofficial since the general demographic data of the country are not yet official.

The estimations on the population of Kosovo before the 1998 conflict already gave an unclear demographic picture of the country, further complicated by the massive movement of population both during and after the hostilities. In 1998, estimations by the UN Secretary-General reports and the World Bank put the country population between 1.74 and 2.25 million. These figures are the result of predictions based on the last officially available results, that is that of the Yugoslavian census of 1981, since the population massively boycotted the following census in 1991.

A new census was carried out in April 2011, not including the North part where Kosovo Serbs are living since they boycotted Pristina's referendum, but the results are not yet available. As of today only preliminary results have been communicated and the country population has been calculated at 1.733.872. In the census questionnaire individuals could indicate their ethnicity and religion. According to the Council of Europe Kosovo Country Report released in 2005 the Kosovo Serb – the biggest minority population accounting for 70% of all the non majority communities in Kosovo – were estimated at 139.417, or around 6% of

[52] The 20 seats reserved to minority population are divided in this way: 10 for the Serbian community; 4 for the Roma-Ashkalija-Egyptian communities; 3 to the Bosniaks community; 2 seats to the Turkish communities; 1 seat to the Gorani community.

the country population[53].

It is very difficult to obtain data of the Roma population after the war. Council of Europe estimations from 1999 based on UNHCR/OSCE data put this figure up to 15.000, but indicates also that a big part of this population has left Kosovo following threats. The *Gorani* community is a minority specific to Kosovo and they are a Slav-speaking/Islam practising ethnic group. They are estimated at around 10.000 people[54]. The *Bosniak community* is the new denomination of the old "Muslim nationality group" that was created at the time of the Socialist Federation of Yugoslavia. They are communities originating from other parts of former Yugoslavia – mostly Bosnia Herzegovina and Sandzak. As the Gorani, they are Muslim but they speak a Slavic language similar to Croatian or Serbian, according to the places of origin. The Bosniak community could consist of more than 20.000 members[55].

The small Turkish community is composed of people that differentiate from the other minorities of Kosovo because of their language since they speak a mixed language based on Turkish and Albanian dialects. Other minorities not included in the constitutional list of minorities are the Croats and the Cerkezi, (Circassians), a community whose ancestors were refugees from the Caucasus

[53] After the publication of the preliminary result of the 2011 census – that put the country population far below the 2,5 figure estimation that was included in the COE 2005 report – it would be difficult to estimate the percentage of the size of the Serbian community. Considering the huge reduction in the size of the overall population (almost a third compared to the figures available previous than 2011 and used in the COE report to calculate the minority percentage), it could be higher than 6%, but any estimation would be unrealistic. In order to assess the consistency of the Serbs of Kosovo it would be needed to control the results for the Kosovo Serb population that leaves outside the four municipalities of Northern Kosovo. In fact at least two thirds of the Serb minority population in Kosovo lives in scattered and small enclaves in the South, more exposed to the risk of emigration for economic or security reasons.

[54] Attention should be paid to the fact that even if the Gorani are Muslim like the Bosniaks – they represent a distinct community due to its historical localisation in the mountain region of Gora in the south-west, probably the most remote region in Kosovo. According to OSCE their numbers has been reduced in after 1999 of several thousands. A survey conducted jointly by UNHCR and the OSCE found that despite their shared religion, their relationship with Kosovo Albanians is not always easy given their ethnic and linguistic links with the Serbs, as well as their political attitudes.

[55] According to the Minority Right Group International report of 2006, the origin of the Bosniaks minority in Kosovo is an heritage of the conversion of the Slavic population that happened during the Ottoman Empire rule of the area when a large number of speakers of Slavic languages adopted Islam in Bosnia Herzegovina, in Sandzak and also in Kosovo. According to the Report of Minority Group Rights International, "the term 'Bosniak' was also largely adopted after 1999 by the Muslims in Kosovo whose first language was Bosnian. Bosniak has become the accepted term for those who were sometimes referred to as 'Slavic Muslims' and sometimes self-identifying as 'Torbesh'.[] They are particularly concerned to protect the Bosnian language as distinct from Serbian.[] The community is predominantly Muslim and numbered at least 35,000 in 1999.[] Bosniaks themselves state that their community in Kosovo numbered at least 100,000 in 1991 and is approximately 57,000 today.[]". See Clive Baldwin, Minority Rights in Kosovo under international rule, Minority Rights Group International, (2006) p. 9.

that were settled in Kosovo (as well as in other parts of former Yugoslavia) in the 1860s by the Ottoman Empire authorities. Many fled Kosovo when the Ottomans were driven out in 1912. By 1999 a few hundred remained in two villages in Kosovo.

Finally, although not recognised as an ethnic or minority group it should be remembered that in Kosovo almost 70.000 Roman Catholic Kosovars are resident, mainly in the municipalities of Djakovica/Gjakova, Klina/Klina, Prizren/Prizren and Vitina/Viti.

Kosovo is in a transition phase of the negotiation with the European Commission. The main principles of the SAP were set out in 1999 and minority protection issues are part of a number of declarations, such as the Feira European Council (June 2000), the Zagreb Summit (2000) and the Thessaloniki agenda for the Western Balkans (June 2003). In February 2012 the Council took note of the intention of the Commission to launch preliminary steps for an SAA, for which a feasibility study and a Staff Working Document are in place.

Kosovo adopted the main International regulations concerning International agreements for the protection of monitories through the Law No. 04/L-020 on amending and supplementing the Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, 21 December 2011. Article1.4 of this law explicitly recognizes Kosovo Serbs, Kosovo Turks, Kosovo Bosniaks, Roma, Ashkali, Egyptians, Goranis Kosovo Montenegrins and Kosovo Croats as communities that are to be afforded the protection of this law. Communities who are in a majority in Kosovo as a whole are also to be afforded the protection of this law where they are in a numerical minority in a particular municipality.

Law No. 02/L-37 on the Use of Languages, promulgated by UNMIK Regulation No. 2006/51, 20 October 2006; Law on Primary and Secondary Education in Kosovo, promulgated by UNMIK Regulation 2002/19, 31 October 2002 and Law on the Higher Education in Kosovo, promulgated by UNMIK

Regulation 2003/14, 12 May 2003; Law on Cultural Heritage, promulgated by UNMIK Regulation 2006/52, 6 November 2006.

The respect of the regulations through analysis based on a combination of quantitative and qualitative data concerning communities, returns and reintegration, culture and media; inter-community dialogue; education; language; and socio-economic rights and participation, is granted by the OSCE Mission in Kosovo. However, in all available reports there is a lack for what concerns the implementation of the Framework Convention within the prison system[56].

The Strategy for the Integration of Roma, Ashkali and Egyptian Communities, and its accompanying Strategy 2009–2015 (Action Plan), detail the challenges faced by the Roma, Ashkali and Egyptian communities in Kosovo, where progress is reported.

OSCE denounces a lack of central and coordinated activities regarding inter-community dialogue, particularly between Kosovo Serbs and Kosovo Albanians[57] and this is a clear indicator of one of the main issues of the local situation that has a serious impact on penitentiary policies.

Kosovo also has clear regulations concerning minority languages, such as Serbian, Bosnian, Turkish and Romani where the Albanian speaking population is the majority. Article 2 of the Law No. 02/L-37 on the Use of Languages, promulgated by UNMIK Regulation No. 2006/51, 20 October 2006, defines the official languages of Kosovo and also the status to be given to other languages in municipalities where a percentage of communities are residing. These languages

[56] Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities "Second Opinion on Kosovo" (adopted on 5 November 2009) ACFC/OP/II(2009)004, Strasbourg, 31 May 2010 Council of Europe, Committee of Ministers, second recommendations regarding the implementation of the Framework Convention in Kosovo, adopted by the Committee of Ministers on 6 July 2011 at the 1118 meeting of the Ministers' Deputies, Strasbourg (the Committee of Ministers second recommendations)

[57] UNMIK, Community Rights Assessment Report Third Edition, July 2012, pg.22-24

are given the status of "languages in official use". Community languages can, by law, be recognized and used in municipalities where the involved linguistic community represents 3 to 5 per cent of the population or where the language has been traditionally spoken. Languages traditionally spoken or spoken by at least 3 per cent and up to 5 per cent of the population can be recognized as languages in official use. Users of such languages can receive municipal services and obtain documents in their language only through individual requests. Languages spoken by 5 per cent or more of the population can be recognized as additional official languages of the municipality. Users of these languages have the same rights as users of the Albanian and the Serbian languages. In reality not one single report from the International organizations has checked the application of the laws concerning languages of minorities and of the related International standards within the prison system.

b) Minority situation in Prison

The prison service in Kosovo is fragmented and under constant strain due to the continuing divide between the Serbian and Albanian areas and the difficulties of creating harmonized services in the administration of the judiciary sector. It is projected that the Kosovo Correctional Service (KCS) and the Kosovo Probation Service (KPS) will be joined into one Agency in the near future, thus the (re)organization of the workflow and communication within correctional and probation services are areas where improvements will be extremely necessary.

However both services need to increase their recruitment of judges, prosecutors and prison staff from minority groups, as set out in the legislative framework. The refusal of the Serb minorities to undergo the vetting processes and the discrimination they are subjected to in the Albanian areas, make it extremely difficult to cover all vacant positions and recruit personnel in line with the provisions for minority protection.

The EC Progress Report 2012 clearly noted that "*Access to justice is hindered in the north of Kosovo*". This is particularly true for the correctional services and the rights of Serbs detained in Kosovo.

The Kosovo main prison network is based upon 9 establishments: Dubrava Prison is located in the Peja/Pec Region and houses prisoners of all risk levels. Built in 1976, this establishment suffered bomb damage during the 1999 war. The facility conditions were rated to be very poor by the Council of Europe according to a 2007 report.

In this prison there is a Hospital, Education units, Workshops, Agricultural projects etc. Dubrava is the biggest of the facilities within KCS and is capable of accommodating 1104 prisoners. Moreover there are 2 Correctional Centres: Lipjan/Lipljan Correctional Centre houses mainly female and juvenile prisoners and has a total capacity of 120 and a small mother and baby unit is incorporated into the facility. The facility also offers a number of work and educational activities. Smrekovnica Correctional Centre is located between Vushtri/Vucitrn and Mitrovice/Mitrovica. This Correctional Centre is managed as an open regime and houses prisoners that have been assessed in the low risk category. Smrekovnica Correctional Centre has a current total capacity of 100 with the likelihood it will increase further once refurbishment of facilities commences. This is the newest prison but still needs financial assistance to improve.

Finally there are 6 Detention Centers and their main purpose is to house Pre Trial detainees awaiting trial in the various regional courts: Gjilan Detention Centre with a total capacity of 94 detainees, Lipjan Detention Centre with a total capacity of 175 detainees.,Mitrovica Detention Centre with a total capacity of 79 detainees, Peja Detention Centre with a total capacity of 80 detainees, Pristina Detention Centre with a total capacity of 66 detainees and Prizren Detention Centre.

Logistical improvements are noted with the construction of the new high security prison facility near the village of Gërdoc/Grdovac in the municipality of Podujevë/Podujevo. The new location provides quicker access to courts and more

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secure and dignified detention for inmates. Funded jointly by the Government of Kosovo and the European Commission, it is designed to accommodate detainees whose escape would represent a danger to the public or to national security. When completed it will house 300 inmates. Kosovo is expected to soon receive a number of high-risk detainees as part of repatriation agreements signed with European countries.

For convicted persons with mental disorders there is no separate institution or block within a correctional centre in Kosovo. Temporary treatment for persons suffering from mental health problems is available in the psychiatric wing of Correctional Centre Dubrava and Hospital in Pristina. However, there is no facility providing adequate psychiatric or psychological care to accommodate criminal offenders with mental disorders or diminished mental capacity.

Despite important financial efforts from International donors, serious criticisms persist concerning the Kosovo prison system and its ability to comply with international standards. In terms of correctional services, the Commission's Progress Report for Kosovo highlights the fact that the overall conditions in prisons and detention facilities continue to be an issue of concern. Alternatives to detention need to be used more frequently. The range of community-based program for juvenile offenders continues to be limited and facilities to imprison juveniles are lacking. The KCS has no adequate information system that can record and provide reliable information on the prison population. This impedes the production of statistics, on recidivism for instance, and the definition of a functioning social reintegration program. Further to this, the 2011 Progress Report for Kosovo provided that "Correctional Service has no electronic information system that can record and provide reliable data on the prison population. This makes it impossible to plan effective social reintegration programmes. Corruption within the prison system needs to be addressed".

Without a reliable data base it is hard for the KCS to compile accurate statistics. As is noticeable from the below data we were provided with some statistics divided by establishment:

Date 04-07-2011								
Prison	**Current No of prisoners**	**Capacity**	**Vacant beds**	**Detainees**	**Sentenced**	**Females**	**juveniles**	**minor offenders**
Dubrava Prison	765	1104	339	126	639			
Lipjan CC	84	120	36	25	59	31	35	18
Lipjan DC	146	150	4	128	18			
Prizren DC	69	92	23	55	14			
Peja DC	64	80	16	57	7			
Mitrovica DC	26	79	53	8	18			
Gjilan DC	75	94	19	59	16			
Smrekonicë CC	51	100	49	0	51			
Prishtina DC	64	66	1	64	0			
TOTAL	**1344**	**1885**	**540**	**522**	**822**			

Ethnicity		
Kosovo Albanian	**Kosovo Serbian**	**Others**
723	0	43
76	0	8
142	0	4
61	0	8
57	0	6
0	21	5
63	11	1
51	0	0
56	6	2
1229	38	77

However records only Indicate Kosovo Albanian and Kosovo Serbian prisoners. This does not give us a clear picture of other official minorities (Kosovo Turkish,

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Bosnians, Gorani and RAE - Roma, Egiptians and Ashkali) and non official minorities Croats and Montenegrins that are in the process of becoming official minorities of Kosovo. Reliable statistics concerning minors are also not reliable.

Overall, there is a need to modernize working methods and to build the capacity of correctional and probation staff in order to contribute to the development of a safe, secure and transparent environment for persons detained in the prisons. This is particularly urgent in view of the fact that EULEX will be significantly downsizing in this area in the coming years.

C) Fact Finding from the Field Assessments: Weaknesses and non-compliances of the Kosovo prison system.

The prison assessment was conducted in Kosovo on the 20th of April 2012, with a meeting with the Ministry of Justice in Pristina, an EUG and 2 visits in the Lipjan Correction Center and in the neighbouring Lipjan Detention Facility.

Built in 1998 the correctional center hosts juveniles and women. During the visit the correctional center hosted 27 juveniles detainees, 19 women detainees, 11 convicted juveniles, 25 juveniles in re-educational measures, 25 convicted women and 13 minor offenders.

C1) In the admission phase, free self-declarations of prisoners/detainees concerning their cultural, religious, ethnic or linguistic identities are not properly recorded. Correctional Centers in Kosovo do not have a modern database of statistics on central level. Each Correctional Center is responsible for handling its own database related to the penitentiary population where ethnicity is mentioned but religion is not. Also, this does not give us a clear picture of other official minorities (Kosovo Turkish, Bosnians, Gorani and RAE - *Roma, Egiptians and Ashkali*). This is a serious constraint for the organization of customized services which address the linguistic, cultural, social and religious needs of the different communities.

During the admission process, translation services or documents in a language different from Albanian were not available. For other non-Albanian-speaking prisoners or Kosovo minorities, among them the 77 units classified as 'others' and the 11 Serbs detained in Gijlan DC, it is therefore extremely difficult to communicate their situation or understand prison regulations. This is a serious form of discrimination contrary to the law of Kosovo and International regulations. The matter becomes extremely serious when it is then applied to prison classification and treatment, because neither the judge, who has competences over minors, and neither the prison director, who exercises powers and competences over prisoners, can perform a correct assessment of the prisoner due to cultural and linguistic barriers.

The condition of the 43 segregated females is of particular concern: they cannot be transferred to prisons close to their family because in Kosovo the main penitentiary institution for women is in Lipjian and therefore women are discriminated and disadvantaged compared with the other prisoners. They are exposed to the risk of losing contacts with their relatives and friends. Also their children are dramatically affected by this poor treatment. Moreover, we noted that during the air, sport and leisure activities as well as working time in the small production facilities, there is no separation based on age or legal status (convicted or detainees). Therefore the condition of the women in prisons is really serious and needs to be addressed as soon as possible.

Finally, the condition of the 23 juveniles is below the minimum standards because they don't have separated areas, as prescribed by the Law. Some juveniles in the correctional establishment also have toilets outside their cells.

C.2) The proximity criteria is one of the components of discrimination for specific groups of prisoners and detainees. In Kosovo, because of the lack of penitentiary infrastructures for specific minority groups, it's not possible to allocate women and juveniles to his/her place of detention or to consider proximity criteria with his/her family. This has a serious impact on rehabilitation policies: women, juveniles and prisoners belonging to minority groups, who are detained in prisons far

from their area of origin, cannot benefit fully from social integration policies such as training courses, or alternative measures that may re-integrate them into their communities of origin or/and involve them in paid jobs or social work, as prescribed by penitentiary law on criminal executions. Moreover the distance from home, families and original communities exposes these groups to a specific vulnerability from other prisoners and prison staff. Questions about how the list and frequency of visits are decided by the penitentiary staff were left without any clear answer. Because of the discretionary power of the director, potential forms of discrimination may also arise.

C.3) Prisoners with disabilities do not have their basic human rights respected in the prison system. In Lipjian as well as in the entire Kosovo prison system this minority is exposed to a double discrimination because the establishments are build with architectural barriers that impede access to all basic services for those prisoners affected by physical disabilities. For convicted persons with mental disorders there is no separate institution or block within the correctional centre in Kosovo. Temporary treatment for persons suffering from mental health problems is available in the psychiatric wing of the Correctional Centre Dubrava and Hospital in Pristina. However, there is no facility providing adequate psychiatric or psychological care to accommodate criminal offenders with mental disorders or diminished mental capacity.

The treatment of people with disabilities within the prison is inhumane and degrading, specific alternative measures must be foreseen.

C.4) Also in the area of communication (points 21-24 and 36 of the questionnaires) and Legal Consultancy (points 17-20) as well as education (point 30) we noticed serious non compliances with the International standards. The main question has to do with the language: in all prisons in Kosovo regulations, laws and access to information is made in the Albanian languages or in Serb language in the Mitrovica area. Different languages are not available and the prison staff (including psychologists, doctors and social workers) generally don't speak foreign languages or languages spoken by minority groups or third country nationals. During the visit in Lipijan there was only one Serb-speaking staff member. This is a very serious issue,

that has very tangible negative effects for some prisoners, who are clearly discriminated against because they are not in a position to access services (such as education or health care) or express themselves. In some cases even the basic rights of those non-national speaking prisoners are effected and subject to discrimination, because this problem is very large and covers the entire prison system (from books to labels, writings, orders, prescriptions and standard communication with the prison staff at all levels). Special procedures for ethnic and linguistic minorities are not available (Points 44-46 of the Questionnaire).

C.5) NGOs and Civil Society organizations were also the subject of our monitoring activity, considering the importance grassroots initiatives have for prison subsidiary policies within the prison system. Unfortunately, associations that represent religious and ethnic minorities in Kosovo don't exist. Kosovo doesn't have any associations of former inmates or their families. One Association of Former Political Prisoners was founded but they are not really active in the specific field of minorities. They are, rather, a network of former political prisoners now outside the prisons. Over the last 10 years the KCS have received a lot of assistance from international partners. They have also received some assistance from local NGOs. How ever this assistance is not recorded. The only information we have at present about Kosovo entities assisting the Correctional service is the following:

The OSCE Mission in Kosovo monitors detention facilities and supports the creation of a sustainable local detention monitoring mechanism by agreement with the Ombudsperson Institution of Kosovo and two NGOs: NGO "Kosova Rehabilitation Centre for Torture Victims (KRCT)" and NGO "Council for the Defense of Human Rights and Freedom", which would help prevent torture and other cruel, inhuman or degrading treatment or punishment entered that into force in May 2011. These two organisations publish precious prison report, in line with CPT methodologies. Unfortunately, issues related to the very specific subject of prison minorities or vulnerable groups is not the focus of their activities and therefore these target groups are rarely mentioned in their reports.

The absence of a structured policy towards prison minorities has as a tangible consequence the lack of a strategy to leverage communities to organize subsidiary services, such as working within the framework of alternative measures, educational and technical vocational training, prison volunteering, support to probation servces etc.

C.6) This lack of coordination also has an impact on the quality of the staff: Kosovo Correctional Service is responsible for all training of staff within the organization. Most of this training is done at the former police academy in Vushtri "Kosovo Center for Public Safety, Education and Development". The staff lacks a culture of social rehabilitation and implementation of alternative measures. The unlimited power of the prison governors/directors combined with a gap in rehabilitation policies may result in mistreatment and abuses as well as in a poor rehabilitation service that leads to higher counts of recidivism.

Prison staff awareness concerning the issue of minority rights is relatively low. In general terms the prison managerial staff need to pay attention to the recruitment of new staff coming from minority groups, and their training in rehabilitation measures. The profiles of cultural mediators are non-existent within the penitentiary staff and leveraging with the minority communities is non-existent because of the lack of public-private partnership in the prison subsidiary policies. Experts in social work and alternative measures capable of connecting the prison environment with the minority communities are also needed for rehabilitation policies to expand and need to be addressed.

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TURKEY

Turkey represents a very difficult and complex case as far as minority issues are concerned because the official policy of the country on this issue is connected to the peculiar history of Turkey and its historical formation. These peculiarities make the Turkish approach to ethnic, national and religious minority issues a specific case different from other European countries, with the exception of France.

The State administration doesn't ask about ethnic, religious or other origins in its data collection. There are important ethnic and linguistic minorities which are easily identified in Turkey.

- The Kurdish community is the largest ethnic minority in Turkey, with a population estimated to be at least 20 million. They mostly live in south-eastern and eastern Turkey, although a large number have migrated to cities in western Turkey.
- The Roma population is over 500,000 according to official records, and Roma live throughout Turkey
- The Bosnian population is more than 1 million.
- Arabs live in all parts of Turkey, but are concentrated in the provinces of Antakya, Mardin and Siirt. Some define themselves by religion (as Alevis) rather than as Arabs.
- The Circassians, who number over 3 million, live throughout Turkey.
- Laz live around Artvin, Rize and in the large cities. Their population is between 500,000 and 1 million.
- Ethnic Bulgarians mostly live in Thrace.

Also there is an other important minority component represented by religious minorities

- It is estimated that there are 60,000 Armenian Orthodox Christians, 20,000 Jews and 2,000–3,000 Greek Orthodox Christians resident in Turkey. These are the only groups recognized as 'non-Muslim minorities', as we will see below.
- However there are also also 15,000–20 000 Syriac Orthodox Christians and

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5,000–7,000 Yazidis.

- Additionally, there are Muslim religious minorities, in particular the large Alevi community, whose population is estimated at 12–15 million.

For the moment Turkey is not part of the COE Framework Convention on the protection on national minorities, but is part of other international conventions focused on human rights. With regard to international human rights instruments, Turkey ratified the Council of Europe's Convention on preventing and combating violence against women and domestic violence on 14 March 2012. Three additional Protocols to the European Convention on Human Rights have not yet been ratified (Protocols 4, 7 and 12).

On the specific issue the Turkish national and anti-discriminatory policies for what concerns minorities are derived from the Treaty of Lausanne signed by Turkey in 1923. In the spirit of the time and in continuity with the policies of the Ottoman Empire the definition of minorities still in force in Turkey based on the Treaty of Lausanne is that of *"Turkish nationals belonging to non-Muslim minorities".*

The Treaty of Lausanne is interpreted to include only three minority groups in Turkey, the Armenians, the Greeks and the Jews. Moreover, in the Constitution of Turkey there is a special provision that states that no privilege to any individual, family group or class should be granted by the State in order to respect the principle of equality. Article 10 provides the basis for equal treatment, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect. Collective rights for minorities are perceived as a potential breach of this concept of citizenship, in line with a secularist approach derived from the French Revolution.

The cornerstone of the minority policy in Turkey is therefore the principle that Muslim citizens in Turkey can't have an ethnic identity other than Turkish, that's to say their citizenship.

The consequence of this assumption is that Kurds or Roma of Muslim religion are not recognised as a minority and accordingly they belong to the Turkish nation.

Non-Muslims are recognised as minority groups but they are de facto a religious and not a national minority. Often their associations are registered as churches.

With this background it is not surprising that official quantitative data concerning the size of the population of groups with different religious, ethnic or other identity are missing.

However, Turkey is (and remains) a party to the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR) since 1954 and this is therefore the basis for the penitentiary policy of the Turkish Ministry of Justice in respect to minorities, meant as individual and not collective rights, in line with the MS prerogatives and the legal tools allowed by the Convention. During the visit the Ministry of Justice stated that their policies are based upon Article 14 of the Convention (ECHR). These Individual rights are outlined and guaranteed as: "*without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*". In this respect Turkey signed the protocol against discrimination (Protocol 12 to Convention-ECHR) In 2001.

Nevertheless a general statement of principles on prisoners' rights, incorporating the principles of the European Convention of Human Rights, is lacking and a complete overhaul of the complaints system in prisons to make it genuinely available to all prisoners should be carried out, in accordance with the Optional Protocol to the Convention Against Torture.

b) TURKISH PENITENTIARY SYSTEM

The Turkish penitentiary system is managed by a complex system of ministerial responsibilities: Ministry of Justice, General Directorate of Prisons and Detention Houses, that is responsible for indoor security and prison policies at large; Ministry of Interior is responsible for perimeter security and also for short-term police detention and for a number of immigration centres.

Prisons have a traditional classification in terms of security standards based upon a threefold system (High security prisons, Medium Security Prisons, Low Security Prisons) and in terms of profiles of prisoners, based upon a classification in 4 different types (Prisons for male convicted and remanded prisoners,Prisons for women, Prisons

for Juvenile and Youth, Juvenile Reformatories). Besides, there are also probation and support centres.

This is the chart illustrating the large and complex Turkish prison system:

Type	Number
Closed Prison	326
Open prison	33
Juvenile Reformatories	3
Closed Prisons For Women	4
Juvenile Youth-Closed	3
Open prisons for women	1
Total	**370**

Because of the legal framework there does not exist any further information of prisoners about ethnic identity or religious affiliation. There is no data relevant to officially defined minorities as well, including the one classified by the Turkish law as such.

The statistics we have accessed cover only information of

- Demographic characteristics
- Type of crime
- Legal status
- Address information

Below the charts illustrating and summarizing the data collected during our visit:

Type of crime	Number
Common crime	115.318
Terror	7.255
Mafia	2.458
Total	125.031

STATUS	Number
Convicted	70.780
Convicted but not finally sentenced	18.741
Remanded	35.510
Total	**125.031**

The number of foreign prisoners is impressive:

Foreign Prisoners	Number
Convicted	700
Convicted but not finally sentenced	506
Remanded	1008
Total	**2214**

Considering the lack of legal instruments in place to protect minorities such as foreigners in prisons, this issue should be a serious concern for the European Commission. In fact the prison director clarified us that "*no special treatment for religious differences is foreseen by the prison administration. No special treatment for ethnic differences because ethnic difference not recognized*". Another important matter stemming from these numbers is that the proportion of prisoners waiting to be released or for final sentencing is still

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high, despite an important amendment of the Law on Conditional Release alleviated the prison overcrowding.

However, in general terms and on issues not related with to the rights of minorities, we acknowledged with our visit that reform of the prison system continued. The case management model developed by the Ministry of Justice to improve rehabilitation services is in operation in five rehabilitation centres for convicts and detainees. The 2000 reform has undoubtedly improved the quality of the prison standards of certain facilities. The improved logistic conditions surely contributed to the relatively low number of suicides, estimated at 35 during our visit.

We have been informed that the Ministry of Justice started an investigation into allegations of ill treatment in the Adana Pozantı juveniles' prison. Following the allegations of ill treatment in Adana Pozantı juveniles' prison, minors were transferred to a facility in Ankara far from their families.

Furthermore implementation of the tripartite protocol between the Ministries of Health, Justice and the Interior began in November 2011, to prevent law enforcement officers being present at medical examinations of prisoners.

C) A unique case history for minority rights

During our visit to the Ankara prison compound on February 27-29, 2012 we were very graciously hosted by the director of the prison and the prison staff. However, despite our repeated requests it was not possible for us to visit inside the prison where the detainees are held and we were not able to carry out interviews either with the prison staff or with the detainees themselves. Therefore, whilst the Turkish penitentiary administration were happy to participate with interest and provide much interesting information at the EUGs they did not allow us access to gather information first hand.

For this reason this report cannot provide any independent opinions regarding the treatment of minority groups inside Turkish prisons. We are therefore restricted to reporting the information that was garnered through our meetings with the families of detainees, with the few NGOs who work inside the prison system (and who are often biased in one way or

another) and with the information gathered from the experts working at the Ministry of Justice and Interior Ministry in Turkey and finally from the Kurdish political movements who contacted us.

Attached to this document (ALL. 2) we will therefore publish with no further comment and with no translation or interpretation from the original the letters that political prisoners sent to us regarding their conditions. Clearly without any input from the Turkish authorities regarding the real conditions of prisoners and without any access given to us to visit the actual conditions we will make no comment regarding these letters. Due to the clearly partisan nature of their content we advise that their content be considered with extreme caution.

C.1) NGOs and families of prisoners made serious allegations of discrimination regarding the treatment of all national minorities and politically opposed prisoners even from the initial classification phase of prisoner admission. Around 2400 cased of juveniles and youth have undergone court proceedings for crimes related to their political beliefs and they are held in penitentiary areas with the most dangerous detainees which clearly represents a huge risk.

Numerous ill-treatment allegations, coming from prisoners as well as NGOs and families of inmates, continue to cause concern, including the tape-recording of prisoners, the use of tapping telephone communications and the continuous control of all private communications of the prisoners, with the only exclusion being correspondence with their lawyers. These are serious infringements of the basic human rights and legal conventions and protocols signed by Turkey.

Another serious cause for concerns is represented by the excessive use of solitary confinement, and excessive strip searches of inmates and visitors, as well as abandoning detainees in dangerous health conditions, with terminal illnesses or serious pathologies which are not treated correctly as a form of punishment.

It's a serious problem that juveniles, children, especially girls, are not held separately from adults in all prisons.

Proximity criteria are not considered in allocating beds to the prisoners and if women want to access certain specific female services, they need to be transferred to specialized female institutions, no matter how far they are from their families or relatives.

Excessive restrictions continue regarding the availability of newspapers, magazines and books in prisons. The practice adopted in relation to open and closed visits is of concern. Reports of restrictions on the use of the Kurdish language during visits and exchanges of letters persist. In general terms, prison institutions don't allow the use of languages different from the Turkish one.

Regarding the socially vulnerable and/or persons with disabilities, including 247 inmates with extremely serious mental problems, there are serious concerns: the Strategy Paper on Accessibility and the National Action Plan remained without consequences within the prisons. The prison director was not aware of its implications within the prison facility. A national monitoring mechanism in line with the UN Convention on the Rights of Disabled Persons and the corresponding optional protocol is still not in place.

Complaints that conditions in F-type high-security prisons cause physiological and psychological damage have been reported and are also contained in the letters received by the prisoners.

Special attention should be drawn to the "Removal Centres" operated by the Interior Ministry and which at the time of our visit, according to data given to us by Halil Akbas from the Interior Ministry, house around 20000 people. The majority of these are held for immigration crimes. These numbers must have risen exponentially since the political crisis in the area and in neighbouring Syria has deepened. These persons should be held for up to 6 months and if unable to present adequate papers will be deported. Despite the implementation of a community Twinning project, the conditions in these centres are criticized heavily by the Ministry of Interiors themselves, *"there are absolutely no measures of any kind taken to protect minorities, because we have no resources."* There are no cultural mediators, there are no adequate language services, there are no NGOS actively supporting the staff at the Interior ministry, basic services are described by the Minister as being *"difficult*

and require more investment. The situation for women and children clearly merits special attention."

C.2) The number of NGOs and CSOs formally active in the field of prison activities seems to be quite large. During project implementation we compiled the following list:

- Bar Associations
- Association for Solidarity of Juridical Members' Spouses
- Semiha Şakir Sarıgöl Foundation
- Association for Solidarity with Youth Deprived of Liberty
- Turkish Foundation for Juvenile Freedom
- Gama Education Foundation
- Association of Photograph Artists
- Foundation for Education Volunteers
- HÜDER – Prisoners Association
- TAYAD – Association for Solidarity of Families of Remanded and Convicted Prisoners
- Association for Solidarity with Youth Deprived of Freedom
- Turkish Foundation for Juvenile Freedom

However despite the quite high number of NGOs, during our visit in the Ankara prison, we collected complaints from the director and the managerial staff regarding cooperation with the voluntary sector and the civil society: *"Relations with NGOS are not at expected levels. We have not had a lot of experience in collaborating with Turkish NGOs or foreign NGOs although we have created some collaboration with some local NGOs. We are working out a strategic plan to apply to this specific situation which we hope to implement soon."*
We discovered through our interviews that local NGOs have great difficulty obtaining access to the prisons. Normally, in the F2 areas where human rights are most at risk, NGOS are not admitted, above all in Sinjan.

Some non-majority NGOs said they faced discrimination on trying to gain access to the prison. Non-Muslim communities — as organised structures of religious groups — continue to face

problems due to their lack of legal personality which also has adverse effects on their ability to obtain permission to access the prisons.

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RECOMMENDATIONS

The following recommendations are the result of our monitoring in the field over the course of the two year project. We have divided the recommendations into three subsections; legislation, operations and perhaps most importantly the principle of subsidiarity by which we mean the local community being mobilised to support public systems and provide services where there is currently little financial or other support to do so. This final aspect is an essential part of European penitentiary policy and has revealed itself as being very week in the Western Balkans and in Turkey. Taking into consideration the serious financial crisis, we believe that without adequate subsidiarity policies it will not be possible to adopt any effective protection programmes for the rights of all prisoners not only minority prisoners. Not only that, it is also impossible without subsidiarity to introduce effective alternative measures to enact the pillar of social rehabilitation for the detainee. It is only by leveraging the local communities and civil society with particular attention given to production and the supply of services on a local and international level that the prison systems can put in place effective and sustainable alternative measures.

The authorities in the Western Balkans and in Turkey are invited to examine the following recommendations with a view to further improving the implementation of the Framework Convention:

1. Legislation and regulations

1.1- The majority of the countries in the Western Balkans with the exception of Turkey have adopted legislation regarding the protection of minorities according to international conventions and protocols and above all according to their own national definition of the concept of minority. Unfortunately these legislative and regulatory provisions are not extended to the prison system. Therefore it is necessary for the nation states and the competent authorities adopt measures in order to support the transition of these norms and legislations relevant to the protection of minority rights within the penitentiary system.

1.2- The Turkish model of citizenship is unlike the other nation states considered here but equally legitimate. However, it is important in the prison system specific norms and regulations are adopted to protect ethnic, linguistic and religious minorities as well as vulnerable groups so that they can fully enjoy their rights as Turkish citizens in line with the Constitution and Turkish law. Not to implement these laws leaves the penitentiary administration in Turkey at risk of violating a series of human rights. This is a serious concern.

1.3- Under the legislative and regulatory profile, it is worth introducing a quota system to represent minority groups in the pentientiary and judiciary systems. In this way minority groups will be represented in staff and public administration positions in the prison system and related services in order to ensure that their needs are fully including areas such as education, training and healthcare.

1.4- It is necessary to define within the prison's legal and regulatory framework the kind of privileges that might be opportune to award to minorities and above all the application of alternative measures rather than prison for these specific groups. Today this framework is very weak, lacking or not applied and must be enacted to respect the particular conditions of minorities. The harmonisation of these norms and procedures regarding alternative measures requires input and support from the international community in order to realise the possibility of real social rehabilitation for prisoners.

1.5- Integrate into current regulations norms that favour access to alternative measures including semi-free alternatives, through the use of private organisations for those detainees from special minority groups in particular those who are physically handicapped, persons with mental health problems and mothers with babies and pre-school children.

2. Aspects of Operational procedure

2.1 – The prison staff including the ministries and the ombudsman's office do not have an adequate level of awareness regarding the rights of minorities though it must be owned and noted that great improvements and progress have been made at managerial level and in terms of the directives arriving from the Ministries and the internal regulation of the prisons

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themselves. It would be advisable to invest in the quality of local staff through targeted training in this specific area of protecting minority rights.

2.2 – From a legal and technical point of view, address the current lack of data on minority groups by including a voluntary question on ethnic and religious affiliation in prison admission procedures as well as the inclusion of vulnerable groups within these categories in the prison admission process, while respecting the international standards on personal data protection, including the principle of self-identification and ensuring that this principle is respected when issuing certificates and prison information;

2.3 - ensure that persons belonging to "ethno-linguistic-religious" minorities and third country nationals do not face undue obstacles in enjoying the protection of the Framework Convention and the National legislations. Experts in minority issues should work with the prison staff to refine the admission process for detainees and sentenced prisoners and should also be present during the admission process so that linguistic and cultural differences are respected and no discrimination takes place when assigning the prisoner with his classification regarding levels of privilege and security within the prison.

2.4 - address the existing shortcomings in the field of minority language education, textbooks and teacher training; ensure the effective consultation of representatives of national minorities in those fields;

2.5 – the principle of being imprisoned close to your area of residence must be guaranteed within the rules that apply to the classification of the prisoner and where he will serve his sentence or be detained. This is of particular importance for those groups such as women, young people, the elderly and the sick where the loss of contact with their community of origin can damage irreparably their practical possibilities of rehabilitation and re-insertion into society after the sentence ends.

3- Subsidiarity

3.1- In the Western Balkans and in Turkey the principle of subsidiarity and of public-private partnerships have very limited application and are at best ineffectual. This is a very

serious limitation when seeking to impose rehabilitation policies or social responsibility initiatives which are aimed at re-inserting detainees into society or those initiatives designed to protect the rights of minorities. It is necessary to create a framework of regulations and Community projects that transfer good practices from the rest of Europe to the prison system in this region. The instrument of most value that could permit the application of an organic framework of good practices could be that of a Community led Twinning.

3.2- Introducing a sense of civic responsibility which the prison system can rely on when it is not able to supply adequate services would allow for the private social sector to substitute the public sector. This is particularly relevant for services concerning religious minorities (provision of spiritual support inside and outside the prison), for vulnerable groups such as women, the elderly and sick, drug addicts and of course for juveniles. Surveillance judges, when present, or the competent authorities in general must be able to entrust these specific groups of prisoner directly into the care of the private social sector that should be supported by the international community in order to organise adequate services whilst leveraging local community spirit and the spirit of volunteering. The religious groups and the ethnic communities can play a very important role in this area which today is largely unexplored.

3.3- Joint training programmes for both Ministry staff, prison staff and managers and for organisations representing minorities, religious institutions and the local community as a whole should be instigated in order to educate regarding the importance of the principle of subsidiarity in carrying out prison policies. This is particularly important in a time of serious financial crisis which can accentuate the poor conditions of the most vulnerable members of society. In particular professional profiles already present in other European nations should be introduced to the prison system including “intercultural mediators” and “social enterprise facilitators”. These can be trained from amongst the local CSO and NGO volunteers representing the broad range of citizens present inside the prison system. The cultural fragmentation in the region can be transformed into an opportunity for growth if we can acknowledge the specific needs and preferences of each group and channel the responses to these needs into specific social actions answered by their own community representatives.

3.4- The prison system needs to be encouraged to experiment with using public private partnerships to organise production centres either inside prisons or in the local community where prisoners can work as part of an alternative measure or on day release. In order to achieve this it is necessary to create a framework at national and regional level to apply tax privileges and export privileges as well as the possibility to compete at national and international tender for these specific prison production enterprises.

3.5- Specific attention should be given to initiatives from the local community and religious institutions in order to combat radicalisation and the parallel phenomenon of prison gangs which can present a serious threat to the region as well as to the international community. At the time of writing there is a lack of awareness of the threat posed by radicalisation and gang culture within the prison system as well as a lack of regulatory tools at institutional level to address the issues.

ATTACHMENTS

24 Şubat 2012
Silivri
1 Nolu cezaevi B/3
Alt Tecrit Hücresi

Sevgili dostlar;

28 Şubat 2012 den bugüne her başıma tecrit hücresinde tutuluyorum. Gemiş kapışa alınmam, yanım başka tutuklu verilmeri konusunda yaptığım başvurular ma yanıt verilmemektedir. Cezaevinde disiplin cezası alanlar ile bulaşıcı hastalık taşıyanların tutulduğu hücrede kalmaktayım. Bunun gerekçesi olarak bana "Amirler böyle istiyor" denilmektedir.

Ayrıca haftalık spor hakkım sırasında salona yalnız çıkartılıyorum. Oysa cezaevinde benim dışımda bütün tutuklu ve hükümlüler toplu halde spora çıkarılmaktadır.

Kaldığım hücrede tamirat halen devam ediyor. Örneğin; dört kez lağım suyu bastı. İki kez yağmur suyu bastı.

Cezaevinde, kimseyle temas ettirilmiyorum. konuştum muyorum. Tecrit bütün ağırlığıyla devam ediyor. Bunun hiçbir gerekçesi yoktur. Ne cezaevinde ne de başka bir noktada hiç bir cezam yoktur.

Cezaevinde rahatsızlandım. Ellerim ve ayaklarım şa rardı. Ancak üniversite hastanesinde tedavi edilmedim. Bana "literatürde böyle bir hastalık yok" teşhisi konuldu.

Yapılanın zulmdür. Bu nedenle direnişte ve cesaret tedir; demokrasi ve hukukun üstünlüğü amacı kavgamın diyetir olarak mahkum edildiğine inanıyorum. Zulme direnme yi insanlığımın temeli sayıyorum.

Saygılarımla.

Turgay Özkan
tutuklu

Mr. Safuadan PLOJOVIĆ

Graduated at the Faculty of Defectology, University of Belgrade
Specialist in Pedagogy
Masters in Defectology
Masters thesis: *The need for treatment of malpractice of psychoactive substances in prisons.*

Position and treatment of Muslim prisoners serving a sentence in Serbian prisons

Practices of serving a prison sentence throughout the world are significantly different, which questions some fundamental rights of human freedom and legal certainty. Organization and conditions of serving sentence in penal institutions differ in many ways. The system of execution of criminal sanctions should set the principals and rules of good organization, in line with generally accepted standards laid down in international documents, whose purpose is to ensure equal conditions for penalty execution and protection of human rights in this domain, regardless of the differences and specifics of a convicted individual.

The system of execution of criminal sanctions in Serbia does not recognize the specific position and needs of Muslim prisoners. This means that conditions for serving the prison sentence in Serbian penal institutions are inadequate, which leads to frequent discrimination of Muslim prisoners. Causes of discrimination begin with systemic and procedural deficiencies, prejudice of other prisoners who make up the vast majority, as well as prejudice of the prison staff.

Institutions for execution of criminal sanctions by their very nature have a negative effect on prisoners. Negative consequences are numerous and depend on the personality of a prisoner, type and regime of the institution for execution of criminal sanctions. An unpleasant feelings of deprivation (denial or withholding) of psychological, social, economic and other needs, that are present in the minds of people deprived of freedom, have negative effects on their lives. Deprivation can be alleviated by granting prisoners certain privileges that will stimulate good behavior and acceptance of obligations imposed by the institution.

The unpleasant feeling of ***deprivation of freedom*** is more distinct among Muslim prisoners who are serving a sentence in penal institutions in the Republic of Serbia, because of being additionally exposed to mortification (suppression or degradation) of their identity through obstruction of their religious or ethnic freedom. Such humiliating treatment is for them a kind of sub-sentence which is directly contrary to the purpose of sentencing. Freedom of religion in the Islamic way of life is reflected in obligations that every Muslim must practice if conditions for that exist, no matter where in the world he may be.

Namaz (Prayer) is the first obligation of every Muslim. It is practiced five times a day in different intervals of time, which are determined by sunrise and sunset. A Muslim is required to perform ablution (***Wudhu***) before Namaz. The act of Wudhu consists of washing hands, legs and head. Not one prison in Serbia has a prayer room for Namaz or Wudhu. ***Namaz-e-Jumuah*** is a mandatory prayer for each Muslim and it is performed once a week, every Friday at noon. This prayer is led by an ecclesiastical individual, usually an Imam. During the prayer, Imam first delivers spiritual or secular sermons. However, ***Imam's visits*** to penal institutions are very rare and almost useless as they are usually only ceremonial, which means that the right to be visited by Imam is not respected.

Fasting the month of Ramadan is an obligation of every Islam believer. The Islamic month of fasting has very rigorous rules - it forbids taking food or liquids and smoking cigarettes, and prescribes strict rules in line with the Fasting. Muslims fast during this holy month from first light until sunset. The last meal before fasting (Sehur) is taken after midnight before sunrise, and the first meal after fasting (Iftar) is taken after sundown, which requires additional procedures in prisons that often do not exist. This especially applies to the last meal Sehur that is taken by prisoners earlier than it should, making the fasting time longer.

Not much of ***religious literature*** is available for Islam believers. Prison libraries practically do not have any religious literature and everything comes down to individual purchase. Prisoners almost never exercise the right to possess and read this type of

literature, because they fear that they might be attacked by other prisoners, or that they might be deprived from some privileges by the prison staff. Prisoners also fear that their religious literature might be desecrated, destroyed, burned, trampled, thrown away, etc. Current conditions in penal institutions of the Republic of Serbia do not provide conditions for basic religious service of the Islamic faith to its members who are serving a prison sentence, which is the right guaranteed in Article 113 of the Serbian Law on Execution of Criminal Sanctions.

Muslim dietary practice is specific because it implies eating only allowed *Halal* foods (no pork and alcohol; meat eaten by prisoners should be treated according to religious rituals). The cooking methods, pots, pans and other cookware must fulfill special conditions in order to meet the criteria of Muslim believers in prisons. Since the vast majority of prisons in Serbia are not able to provide such dietary practice, the rules for gift packages sent to prisoners by their family are more flexible for Muslims than for other prisoners. But this represents additional expense for their families due to the cost of food, the cost of sending or bringing the package to prisons which are usually located far away from their place of living.

Prisoners acquire ***information*** mostly by watching television and listening to the radio in their rooms. Free printed magazines are unavailable to any of them. Prisoners usually get local information from visitors, letters or from other prisoners who return to prison after spending a weekend at home. Language barrier is present with the Albanians and other foreigners, while Bosniak prisoners do not have language problem because of similarities between Serbian and Bosnian languages. Albanians and other foreign prisoners do not have any opportunities for ***education*** because of the language barrier. ***Literature*** in English or Albanian language almost does not exist in prison libraries. The language barrier represents a special problem concerning security measures, discipline procedures, complaints, legal assistance, categorization and rulebooks of penal institutions.

Penal institutions of the Republic of Serbia do not provide even the minimum conditions to foster the identity of Muslim prisoners (not to mention special privileges to stimulate good behavior and acceptance of obligations imposed by the institution), that are necessary for overcoming the deprivation of freedom among Muslim prisoners.

Deprivation of autonomy is a normative pressure on convicted persons, which is perceived as loss of personal independence. Institutions for serving imprisonment sentence implement precise normative acts which regulate the conduct of prisoners through general and internal legal regulations. This means that prisoners must respect numerous rules and orders which control their behavior. A feeling of deprivation of autonomy is even stronger with prisoners who are members of national minorities due to the fact that they do not have access to the information about their rights and obligations while incarcerated, and that it was not given to them at the time of admission to the institution. Their knowledge about their rights and obligations usually comes down to sanctions, forbidden conduct, such as inappropriate behavior towards prison staff, fights, possession of narcotics, cell phones, as well as disciplinary procedures in prison, which they have learned about from their own experience or from other prisoners. In-house rules are neither available to inmates, nor hanging in some visible place in the penal institution. This type of deprivation is greatly influenced by staff and policies of the penal institution. Prison guards and other staff members are often rude and arrogant, which creates a feeling of humiliation among the members of national minorities of Islamic confession. Prison staff members are also rude and arrogant when they conduct room searches. Rooms of Muslim prisoners are more often searched than those of other prisoners. Prisoners suffer psychological abuse by prison guards who often make negative comments while checking the contents of gift packages received by prisoners from their families, including food, religious and other literature and magazines. Physical violence is mostly connected with prisoners locked in isolation.

Deprivation of security can be seen through a constant fear of prisoners for their personal security while incarcerated. Co-existence with prisoners who express deviant and criminal behavior like the violence, substance abuse, aggressive homosexuality and various forms of physical and psychological abuse, create a constant physical or psychological pressure on prisoner's integrity. Members of national minorities (Muslims and other minorities) are often isolated by members of the majority nation and by informal groups formed among prisoners, which increases the risk for their personal security. Attacks on them are often covered up to avoid retaliation. They feel safe only within the group they belong to, due to prejudice and negative attitude toward members of other religions. One of the best ways to reduce insecurity of convicted individuals is their proper classification into categories. The criteria for categorization are mostly

connected with personal characteristics of an individual. However, when it comes to classification, there is a discriminatory attitude towards the members of national minorities (including Muslims). According to the national structure of convicted individuals in KPZ Nis (Penal and Correctional Facility in the city of Nis, Serbia) in 2008, members of national minorities made up 20% of total convicted population, out of which 90% were classified into the lowest categories V2 and V1 at the time of admission. The lowest categorization also implies the lowest privileges (visits, releases, weekends, etc.) and accommodation for prisoners. Prisoners who are members of national minorities are accommodated mostly in Pavilion C, where the number of inmates is always above the upper limit of accommodation capacity. In addition, Pavilion C is generally in poor condition, while the accommodation is inadequate for living. Insufficient running water in the system is the biggest problem. Instead, water is stored in containers and used for personal hygiene of prisoners and for cleaning the premises. Running water, a precondition of good hygiene, is scarce in Pavilion C. There is no hot water either, while other pavilions have both running and hot water.

Deprivation of material goods is reflected through differences between life in prison and life at liberty. In Serbian penal institutions, deprivation of material goods and services depends on the prisoners' collective and subculture developed within that collective, which starts to dominate because of its possession of goods needed by prisoners. This is a way to easily manipulate other prisoners, especially those who are less protected and under-represented. In most cases they are members of national minorities serving prison sentence in big prisons.

Deprivation of heterosexual relationships applies to reduction in the intensity of sexual drive and occurrence of homosexuality in male prisons. Granting the right to prisoners to spend time in privacy with their married or unmarried partners inside the institution, and an opportunity to spend weekends and vacation time outside the institution are privileges that can only have positive effect on convicted individuals and preserve their marriages or relationships with partners outside the prison. National minorities are especially handicapped in exercising this right because they are often classified into a lower category, which does not grant privileges such as weekend release and vacation outside the penal institution. Unprotected prisoners who are often members of national minorities are especially exposed to sexual harassment and aggressive homosexuality in

prisons. The occurrence and intensity of deprivation is stronger among Muslim prisoners due to specifics of their way of life. Penal institutions in which they serve their sentences do not care much and usually lack recourses to cover the minimum of their basic needs, laid down in domestic and international rules and laws on serving sentences. Such a situation culminated in 2009, when one hundred prisoners in *Pavilion C of* the *Penal and Correctional Facility in Niš* went on a hunger-strike, protesting against living conditions in prison. They were dissatisfied with accommodation, hygiene, health protection and food. It can be concluded that the system of execution of criminal sanctions in Serbia does not recognize the specific needs of Muslim prisoners, which is a discrimination against them in penal institutions in Serbia, even though Serbia took on the obligation to respect the EU standards in this domain by becoming the member of the Council of Europe.

1. Cezaevinde aynı suçtan yatanların haftada 10 saat bir araya gelme sohbet etme hakkı var. Ancak bu hak burada kullandırılmıyor.
2. Bazı cezaevlerinde ~~tahliyelere~~ tutuklu ve hükümlülere Dinüstü bilgisayar alma ve kapışında çalışma imkanı tanınırken, iddianameleri ve delil klasörleri yüzbinlerce sayfa tutan bizlere bu hak verilmediği gibi bilgisayar la çalışma imkanı haftada 2 saat ile sınırlanıyor.
3. Cezaevinde işkence kurbağla, elektrik-verme ile yapılmıyor. İnsanların birbirleri diyaloglarını tamamen kısıtlanarak, insanlar dört duvar arasına tecrit ediliyor. Cezaevi içerisindeki sosyal faaliyetler (konser, tiyatro, konferans ...v.b) ile toplu spor müsabakalarına, turnuvalara müsaade edilmiyor. Aynı cezaevinde başka suçlardan hükümlü/tutuklu bulunanlar bunlardan istifade ederken

özellikle, bizlere bu imkanlardan faydalandırılmıyoruz.

4. Cezaevi sınırları dahilinde bir toprak parçası ve yeşillik yok. Heryer beton ve demirle kaplı. Bu husus uzun vadede fiziksel ve psikolojik açıdan çok zararlı etkilere sahip.

5. Tutuklu olan, sabıkalar cezaevinde hükümlülerle aynı şartlara muhatap. ~~Tutuklu~~. Tutukluların, cezaları suçlu olduklarını kesinleşinceye kadar tedbir olan tutuklulugun cezaya dönmemesi için daha fazla sosyal imkanlar (Telefon etme, kapalı ve açık görüş. ~~Kan~~) sağlanmalı.

6. Ceza infaz kurumu (yada cezayı mahkeme emrini) yerine getirmekle, infaz etmekle yükümlü. Ancak ~~1~~ Nolu Cik. sanıkların barındırılmasında tutuklama nedenlerini, mahkeme kararını değil, Savcılık iddianamesini esas alıyor. Kendini mahkeme (yerine koyarak, ~~kara~~ sanığın ~~suç~~ iddianamede ispat edilen suçlardan

suçlu olduğu hükmünü veriyor.

7. Ayrıca 1 No.lu CK. Anayasa ve yasaları ihlal ederek sanıklara eşit olmayan muamele yapıyor. 5275 Sayılı Kanunun 9. maddesi 302-303-304-307-308/309-310-311-312 313-314-315 no.lu suçlardan hüküm giymiş bu suçlardan hüküm giyenlerin yüksek güvenlikli ceza infaz kurumunda infaz edileceğini söylüyor. 1 No.lu CİK. bu suçlardan ayrım yaparak bir kısmını hücreden hücreye koğuşlarda tutuyor, bir kısmını normal koğuşlarda tutmuyor. Kanunun uygulamasında elinde olmayan yetkiyi kullanarak sanıklar arasında ayrım yapıyor.

Levent SEKTAŞ
Silivri 1 No.lu Cezaevi

Türkiye hapishanelerinde yaşanan sorunlar

Her ne kadar Adalet Bakanlığı, Ceza ve Tevkif Evleri Genel Müdürlüğüne resmi olarak bağlı olsada Türkiye hapishaneleri müdürlerin, icra yönetmelik kuralları koyduğu özerk statüdedir. Durumun böyle olması ve tek karar merci müdür olması nedeniyle her uygulama müdür eli ve gözetiminde yapılmaktadır. Böyle bir yapı nedeniyle de hapishanelerdeki binlerce hükümlü ve tutuklu, keyfi uygulamalar, onur kırıcı davranmalar ve insanlık onurunu ayaklar altına alan durumlara maruz kalmaktadır. Bu uygulamalar hapishane sınırları dışında, mahkeme ve hastane sevklerinde de etkin olarak yaşanmaktadır.

Yaşanan bu onur kırıcı olaylara itiraz edip dayatmacı bir işlerce olduğunu ifade etmekse, disiplin suçu işlenmiş sayılıyor ve bunun akabinde tutuklu ve hükümlülere cezalar veriliyor. Bu cezalar, hücreye koyma, ziyaretten yoksun bırakma, 6 ay veya 1 yıl iletişimin engellenmesi şeklinde uygulanıyor. Bu uygulamalardan biraz bahsetmek istiyorum.

Belirteceğim olaylar hem karşılaştığım, hem de diğer hükümlü ve tutukluların yaşadığı sorunlardan ibarettir.

- Koğuş'tan her çıkışta el'le üst arama dayatması
- Yine aynı şekilde çıplak arama dayatması yapılması
- Olağan üstü yaralanmalarda yada acil hastalık durumlarında hapishane revirinde gerekli tıbbi malzemelerin olmamasıyla birlikte hapishanede hazırda ambulans bekletilmemesi.
- Ziyaretçilerce getirilen, defter, kitap, kalem ve birçok giysinin idarece alınmaması.
- Hapishanelerde, Adalet Bakanlığı'nın belirlediği ortak bir uygulama olmadığı için bir hapishanede içeri sokulması uygun olan kıyafetlerin bazı hapishanelerin kurallarına göre içeri alınmasının yasak olması. Örneğin; Kandıra F Tipi Ceza Evi'nde ziyaretçiler tarafından getirilen atkı, şapka, bere, havlu, ıcamasır ve kapşonlu montların içeri alınmasına rağmen Metris ve Maltepe Ceza Evinde yukarıda saydığım şeylerin içeriye sokmanın yasak olması.
- Yine aileler tarafından getirilen gömlek, pantolon, ayakkabı ıçeriye sokulan ihtiyaçlar gibi ihtiyaçların birden fazla olmamak kaydıyla tutukluya ve hükümlüye verilmek üzere alınması.
- Revire çıkmak için yada herhangi bir istekte bulunmak için yazdığımız dilekçelere uzun süre cevap verilmemesi.
- Ziyaret sürelerinin 30 dakikayla kısıtlı olması (haftalık)
- Sohbet genelgesinin (2007/45-1) uygulanmaması.
- Revire çıkarılan tutuklu ve hükümlülerin sağlık sorunlarıyla ciddi anlamda ilgilenilmemesi.
- Hastaneye sevk edilenlerin 35 gün geçmesine rağmen araca (jandarma aracı) yok denilerek hastaneye götürülmeyerek kaderine terk edilmesi.
- Hastaneye ve mahkemeye kelepçeli götürülmek.
- Askeri aracın içerisinde hastane yada mahkeme sevki sırasında 1 m² lik odada 6 kişinin havasız, güneş görmeyen bu yerde saatlerce elleri kelepçeli bekletilmesi. İtiraz edincede hakaretle, küfüre ve şiddete maruz kalmak

- Elektrik parasının tutuklu ve hükümlüden tahsil edilmesi. Kim ne kadar elektrik kullandığını bilmeden getirilen tutarın zorla ödetilmesi. Ödeme yapmayan kaçusların elektriğinin kesilmesi. Örneğin: Ocak ayında beraber birlikte toplanda 3 kişinin kaldığı ve sadece televizyon ile ketılın kullanıldığı alana 65 TL fatura gönderildi. Normal bir aile bile asansör ve bulaşık makinesi ile elektrikli süpürge kullanmasına rağmen bu faturayla arak karşılaşıyor.
- Kantinde satılan ürünlerin, dışarıya göre çok pahalı satılması
- Nevresim, battaniye gibi ihtiyaçların zorunlu olarak kantinden alınması.
- Kütüphanede bulunan kitapların yüzde 65'inin dini kitap olması. (Sanki tüm tutuklu ve hükümlülerin dinden yoksunmuş gibi algılanması
- Sabah ve akşam sayımlarında asker gibi hazır ol'da tutuklu ve hükümlülerin bekletilmesi.
- Cezaevi'yle ilk tanışan ya da bir kapalıdan bir hapishaneye sevk edilen tutukluların tüm elbiselerinin çıkartılarak (külot dışında) onur kırıcı bir biçimde aranması. Aramaya direnen kişilere ise tutanak tutulması, disiplin cezası verilmesi.
- Hastane ya da mahkemeye götürülürken cezaevi çıkışında infaz memurları tarafından arama yapılmasına rağmen, tutuklu ve hükümlülerin infaz memurları tarafından askere teslim edilir edilmez ayrı aramanın birer dakika arayla yapılarak insanın onurunun kırılması, tabi dönüşte de ayrı olayın yaşanması (yeniden)
- Mahkemeye götürülürken adliyede konulduğunuz hücreler kilitlenmesine rağmen kelepçelerin çıkartılmayarak keyfi uygulama yapılması.
- Hapishanelerde sık sık suların kesilmesi
- Banya yapmak için idarenin belirlediği gün ve o gün içerisinde belirlenen 2 saatlik süreyi beklemek.

Ağgdas Ulus

23.02.2012

Silivri Cezaevleri Zincirinde durum

1. Cezaevine alındığınız ilk gün koğuşta "müdüriyet" imzalı bir yazı bulunuyor. Yazı, "herkes ömrünün bir döneminde suç işlemiş olabilir" diye başlıyor. Yani tutuklanıp cezaevine konduğunuzda kesin suçlusunuz, suç işlemişsiniz demektir. Yönetim böyle bakıyor.

2. Halen tutuklularla ilgili herhangi bir yasa ya da yönetmelik yok. Yani Adalet Bakanlığı Ceza ve Tevkifevleri Genel Müdürlüğü de tutuklu cezaevindeki hakları, bakımından tutukluları da mahkumlarla eşit tutuyor.

3- Özellikle "yoksul psikolojisi" diye nitelendirilen Silivri'deki gibi L Tipi cezaevlerinde kapalı sistemi "kampı" uygulanıyor. Kimi 21 kişilik koğuşlarda bu sayıdan daha fazla kişi kalırken kimisinde 1, 2 ya da 3 kişi kalıyor.

4- Kamplaşmada bilinen nedenlerle ilgili yargılanmalara da özellikle "yalnızlaştırma" muamelesi yapılıyor. Bu bir bakıma işkence gibi bir şey. Bu kişiler cezaevinin çok sayrık sosyal etkinliklerinden de büyük ölçüde yararlandırılmıyor.

5- Tutuklularla sohbet eden, bir koğuştan ötekine gazete-kitap gibi hiçbir suç unsuru oluşturmayan bir şey götüren infaz koruma memurları hakkında hemen soruşturma açılıyor. Bu da yalnızlaştırmanın bir parçası.

6- Kamera sistemi "sürekli gözlem" için bütün olanakları zorlayarak uygulanıyor. Türkiye'de yasa dışı ortam dinleme ve kamera kaydı görüntüleri medyaya sızdığı için bu kayıtların bir gün "düzenlenmiş şekilde" medyaya sızdırılacağı endişesi hakim.

7- Silivri cezaevleri zinciri toplam 4 bin kişiye göre inşa edilmiş. Altyapı da öyle. Oysa şu anda 10 binden fazla tutuklu ve hükümlü var. Bu durum ~~çok~~ su kesintisine neden oluyor. Günde ortalama 8-10 saat su akıyor.

8- Kapuslara bilgisayar verilmiyor. Depolara internet bağlantısı olmayan, salt yazı yazma ve dijital iddianame eklerini inceleme amaçlı bilgisayar istedik, verilmedi. Bunun yerine haftada 2 saat bilgisayar odasını kullanma hakkı var. Bu da çok çok yetersiz. Özellikle yazı yazan bir kişi için bu haftada sadece iki saat yemek yemesine izin vermek gibi bir şey.

9- Herkesin önceden belirlenmiş bir saatte önceden belirlenmiş bir telefon numarası ile haftada 10 dakika konuşma hakkı var. Bu hakkın Avrupa cezaevlerinde çok daha geniş ölçekte kullanıldığını duyuyoruz. Bilgisayar kısıtlaması ile birlikte telefon sınırı da dikkate alındığında cezaevlerine iletişim çağının henüz girmemiş olduğunu söyleyebiliriz.

10- Cezaevi yönetimi L tipi cezaevleri için "oda sistemi" diyor. Cezaevi inşaatı başlarken her koğuşa 7 oda yapılmış, her odada 5 kişi kalacak şekilde planlanmış. İnşaat bitince tek kişilik odalara 2 yatak daha eklenmiş. Plan aynen biçimde. 7 odanın kullandığı ortak ~~[illegible]~~ alanında bir televizyon

var. Televizyon da yönetimin seçtiği 2 kanalla sınırlı. Maden "oda sistemi" denilen, odalara televizyon verilmesi gerekir. Kalabalık koğuşlarda bu konuda karşıya varan olumsuzluklar yaşanıyor.

11- Özellikle Erpenekan davasından yapılanan milletvekilleri, gazeteciler, akademisyenler, alimler, polisler ayrıca yalnız tutuluyor. Yönetmelikte bu tür koğuşların haftada 3 kez toplam 10 saat buluşturulacağı yazıldığı halde, bu uygulanmıyor. Yalnızlaştırmayı bir ölçüde azaltacak en önemli yasal olanaklardan biri budur.

Mustafa Balbay
1 Nolu Cezaevi
Silivri

Silivri Cezaevleri zincirinde sağlık

1- Doktor yetersizdir. Örneğin; 1 ve 3 nolu cezaevinden bir pratisyen hekim sorumludur. Rapor almak için dilekçe yazdığınızda, sıklıkla, "doktor bugün öteki cezaevindeki yoğunluk nedeniyle gelemeyecektir. Durumunuz acil değilse, yarın rapor alabilirsiniz" denilmektedir.

2- Ciddi bir hastalık durumunda "sevk zinciri" uygulanmaktadır. Örneğin bir ihtisas hastanesine gitmeniz gerektiğinde, önce rapor, raporda Silivri'deki 8 cezaevinden sorumlu kampus sağlık ocağına, oradan Silivri Devlet hastanesine, oradan İstanbul'daki büyük hastanelere sevk ediliyorsunuz.

3- Bir hastanede yatarken bir başkasına naklinize gerekiyorsa, önce cerraviye getiriliyorsunuz, sonra iyileşmeniz bildirildiğinde hastanenize götürülüyorsunuz.

4- Doktora yardım edecek bütün personel gardiyanlardan oluşuyor. Hatta doktorun kış gelmediği günlerde o gardiyanlar, "durumunuzu anlatın, acil mi, bakalım" diyorlar.

Bu yüzden gardiyanlara "Gar. Dr." diye ilim taktık.

Mustafa Balbay