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Judiciary and State-Building of Kosovo: the Execution of Imprisonment for Women in the Republic of Kosovo

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Abstract

Historically it is known that criminal offenses made by females are at a lower level than criminal offenses made by males. However, regardless of gender, it is important to note that for the perpetrators of criminal offenses have also been created the legal basis, and earlier has been used also the customary law, in order to sanction these criminal offenses. But, the main problem throughout the history of mankind has been that through the execution of these sanctions is the re-socialization of those persons achieved, especially for the females, as well as the issue of the physical aspect of the place, where the females should be held, in special prisons or together with other perpetrators of criminal offenses.

When considering the penitentiary system in Kosovo, for females who in one way or another have committed a crime and been punished with a prison sentence, it is notable that from the moment they begin serving the sentence, they should be sent to a special prison for women in Kosovo, known as the Lipjan Prison, which is located around 15 kilometers from the capital of Kosovo – Pristina.

In this paper, we will try to elaborate historical aspects of the development of the prison for women during the state-building of Kosovo, then the legal basis on which the sentence is served, and we shall not neglect studying and presenting most of the aspects related to the functioning of the single prison for women during the state-building of the Republic of Kosovo.

Key words: *criminal offenses, females, jail sentence, re-socialization.*

Introduction

Shearer (1996), on Antipas Ministries, while explaining the tortures made by CIA Batalion 316 in Honduras, quoted one of the torturers, CIA Agent Jose Barrera, who said that *"They always asked to be killed. Torture is worse than death"*.

We began this paper with this quotation by Jose Barrero, to present in essence the aspect that in contemporary times, prisons are not or should not be considered as places to be tortured, but are places where those who commit a

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criminal offense are held and are serving the sentence for the committed offense, but at the same time are prepared with different educational programs, for their resocialization and the unhindered return in the societies where they have lived before (Ministry of Justice, 2018). But prisons throughout history have not always had this purpose, so before we get to the main topic, we want to give some historical and cultural explanations about what the prisons were used for, and what torture is being done in prisons or correctional centers as we call them today in most democratic countries. Even though today there is tighter control of the correctional centers, torture and maltreatment of various forms is almost impossible to stop. And this depends on many aspects, ranging from the state system, laws in force, culture, society, etc., which have their impact on serving punishment for a perpetrator of a criminal offense. This is even more difficult if we are dealing with female perpetrators, where it is well known that discrimination and violation of women's rights has been one of the longest violations of freedoms and rights recognized by human history. In some societies this continues the trend of quite primitive times - unfortunately for their fates.¹ Janey (2013, p.3) states that *"We would like to believe that by discussing what has happened, we will change things. So far, we have a mental illness that needs to be addressed, starting with its roots."*

As said above in this article, different cultural practices and perceptions undoubtedly affect the meaning of legal provisions and international standards, and often their interpretation comes through the lens of a particular culture, violating the most fundamental rights of a perpetrator of a criminal offense. For example, physical punishment, or the causation of stick or wrist pain as a means of enforcing punishment, is a serious form of mistreatment, and this is still done without a trial (Daniels, 2004, pp. 20-59), as happened in many different judicial processes after the Second World War. Also, within the Islamic tradition and Sharia law, such physical punishment, and even other forms like amputation, are not only admissible, but are legalized by a number of religious courts, which apart from marriage and inheritance, also regulate other spheres of physical and spiritual life of Muslims. For example, in Nigeria's state of Zamafra, punishments such as corporal punishment, amputation, the death penalty, and imprisonment until death can be imposed under the 2000 Shari'a Criminal Code. Similarly, in

¹ Many third world countries all around the world, like in Asia, Africa, South America, to this day use prisons as exclusive places for torture of prisoners, even we have had many different cases or different affairs also from the states that are considered the most democratic in the world, such as the US with the Guantanamo Prison and the tortures that have been committed there are considered to be one of the most difficult tortures for prisoners, and may even be compared to medieval and primitivism tortures. Furthermore, please see the request to close the Guantanamo Prison exclusively for the reasons stated above: <http://www.closeguantanamo.org/Prisoners>, last seen on 18 september, 2018, at 21:48.

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Saudi Arabia, Iran, Libya and Afghanistan, religious courts, based on the principles of Shari'a law, use similar views in their decisions (Qendra Evropiane e Trajnimit dhe Huluntimit për të Drejtat e Njeriut dhe Demokraci, 2003, p. 79).

To stop these inhumane forms of humiliation of individuals, and in reaction to the torture they can undergo in correctional facilities, the international community through its institutions has established institutional means of monitoring and controlling prisons across different countries.² One of the latest developments was achieved at the 57th Session of the UN General Assembly in New York in 2002, where the Optional Protocol to the UN Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment of 1984 was adopted (Kombet e Bashkuara, 2002, pp. 346-366). The protocol is designed, through regular prison visits by local and international specialized bodies, to prevent torture and other forms of mistreatment in prisons. Thus, based on the Optional Protocol, an international expert body will be established, namely the Subcommittee of the UN Committee against Torture (United Nations Human Rights – Office of the High Commissioner, 2018). The Protocol also obliges states to establish local visiting bodies. These local and international bodies will visit the prisons regularly and make recommendations for improving the treatment of prisoners and improving living conditions for persons deprived of freedom. Kosovo has also established such state mechanisms as the Inspectorate of the Ministry of Justice for Inspection in Correctional Services of the Republic of Kosovo (Ministry of Justice, 2018). Based on its legal mandate, this inspectorate has conducted inspection activities to ensure security measures in the Kosovo Correctional Service, respect of the rights of prisoners, and that re-socialization activities are done in accordance with the Law on Execution of Criminal Sanctions, the Minimum Standards for Prisoners and the European Prison Rules (Inspektorati i Ministrisë së Drejtësisë për Inspektimin e Punës në Shërbimin Korrektues të Kosovës, 2014, p.1), which has managed to have measurable results and also major challenges, according to the EU Compact Progress Report, EULEX and the Ministry of Justice (EU & EULEX & Ministry of Justice, 2015, pp. 19-21).

The focus on preventing torture and mistreatment in correctional centers is a new development within the UN system of human rights, as existing international bodies can only act once violation has occurred. Visitation of correctional centers is one of the most effective measures to prevent mistreatment in correctional centers and improve conditions in these centers. Through Optional Protocol, for the first time in the framework of an international instrument, have been established criteria and guarantees for effective and preventive visits by established local expert bodies. For this reason, this Protocol is considered a real

² The UN and the Council of Europe are the two international organizations that have mostly dealt with issues of protection of prisoners' rights by issuing relevant international documents on which the most important principles for the protection of the rights of prisoners are established.

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step towards strengthening domestic and international mechanisms against torture and inhumane and humiliating mistreatment in correctional institutions throughout the world.

However, today it is thought that preventive measures for preventing mistreatment in correctional centers are sufficient (though it is not so), for they are not fully implemented at the local level. The complete eradication of maltreatment can only become a reality when internationally recognized standards are found in independent implementation and monitoring systems at both local and international levels of all UN member states, including countries such as the Republic of Kosovo, which for political reasons is not yet part of the UN. Legislation such as the LESP, according to Prof. Rexhep Gashi will be "a modern law that will respond to modern penitentiary standards and requirements" and at the same time will enable successful "re-education and re-socialization" of convicted persons (Gashi, 2005, pp. 39-40). Moreover, the provision of rehabilitation, legal assistance, compensation, and assistance to victims of inhumane and degrading mistreatment for their reintegration into social life are essential requirements for a fair and equal national order, which characterizes the developed countries in Europe and North America, and the Far East, where the rule of law implies subordination of the state apparatus to justice (Fromont, 2009, pp. 12-13).

And, being such, it can be seen that there are three main ways for effective prevention of mistreatment in correctional institutions (Qendra Evropiane e Trajnimit dhe Hulumtimit për të Drejtat e Njeriut dhe Demokraci, 2003, pp. 83-83):

1. Creating an effective legal framework and ensuring its implementation, as well as applying appropriate safeguards to prevent mistreatment - for example, providing fundamental rights guarantees (right to a lawyer, doctor, judge, etc.) and not detaining without possibility of communication being offered.
2. Establish control mechanisms, in particular local mechanisms for regular prison visitation, and provide the possibility for civil organizations to monitor and report independently.
3. Continuous training for police officers, correctional service officers, lawyers, judges, doctors, etc.

We can therefore say that each of us, through concrete actions, campaigning, lobbying for ratification of international instruments and their implementation on the local level, or writing letters and requests, can participate actively in the protection of the rights of prisoners, and in particular the rights of imprisoned females. All of us can contribute to raising awareness and increasing educational activities at home, in the district that we live, or in the regions and even at the country level, with a view to protecting the rights of prisoners. And, last but not

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least, we can help victims of mistreatment get through their correctional institutions, by informing them about how their case can be addressed, or supporting them by helping them report their cases, as well as taking legal steps against the officers of the correctional service. Such mechanisms exist in most democratic countries, as well as in the Republic of Kosovo, mechanisms such as the Ombudsperson, CDHRF, KRCT, and many other organizations at the local and international level.

Correctional Centers for Women - Discrimination against Women

Before we write about the Lipjan women's correctional center, we would first like to present some elements of discrimination from the history of women, in particular discrimination and mistreatment in correctional institutions, not forgetting the development of the role of women for women's rights in human history. It is therefore important to see how women have fought for their most basic rights, even ones within penal institutions, which at very early stages seemed to be quite a ridiculous pursuit.

Females, as persons today, have weight and value, however respecting women's rights remains very controversial around the world. In modern times, women with more international documents have their rights guaranteed and their disrespect is as punishable as any other criminal offense. Women today have the right to education, work, and life pursuing their own personal wishes, and conforming to existing norms and laws, they can vote and be elected. Females have for long shown their strength, left deep traces in world history, and continues to do so today. While women may be in conflict with the law, they can not be careless of the law, and it is important that the law should apply equally to them, and above all, that punishment be within the framework of optimal conditions that must exist in correctional facilities, that in no way they be subject to any torture or discrimination while serving their sentence.

In the most ancient times of the existence of mankind that this world recognizes and accepts as such, the first gender differences were made. Even in the primitive time of society there were also initial gender differentials, which are based on physical characteristics, and which immediately degraded the role of women in the community. At that time life was difficult and the way of survival was quite severe. To survive, they needed food, food had to be provided through hunting, hunting required strength, and males were stronger. After hunting, a male was received into the circle around the fire, which provided even greater respect in society, and so the mens began to occupy their seats, leaving the women aside and sidelined. This is because females lacked physical strength, they gave birth and were unable to provide food for themselves much less for others, and all this made the woman to be left aside (Giddnes, 2006, p. 201).

So this is how the first genesis of female discrimination begins. This is the first step of society towards women's inequality. By this step, at this stage, men

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felt power, were dominant and superior, thus creating a kind of dominance and arrogance over the other race - females. But to this day, although the world has begun to change—humanity is more developed and many things radically changed, evolution is seen everywhere in the world, the world has gotten another picture, and apparently everything is approaching perfection—still one thing has remained the same: "discrimination of the females is still continuing" (French, 1992, p. 163), and even the situation has worsened for a long time.

Over time, a woman was forced to marry against her wish, she had no right to birth control or abortion, and once married was considered as the husband's private property, obliged to preserve her husband's morale, to stay under the husband's regime and to make children. The only outlet she had was the education of her children. In the case of a mistake, she was scolded by her husband and family. She, as the private property of the man who possessed her, dared not disobey his orders, otherwise she would be subjected to physical violence. And this situation stayed so for a long time (Smart, 1992, p. 67).

"If by force is understood the physical force, then, of course, the female is weaker than the male. If by force is understood the moral force, then the woman immeasurably stands higher than the male"- says Mahatma Gandhi.

As soon as moral strength began to be empowered, women raised their voices for the first time. During this time they realized they had rights, and as human beings had the right to enjoy them. After a while, came the first fractures of the male order of our societies. For the first time in the bourgeois societies of the eighteenth century, the call of women for rights became powerful. They had many reasons. First, the General Declaration of Human Rights (Gruda, 2010, pp. 22-29) on the basis of the natural law in France and the United States Constitution^[3]³ initiated demands for equal rights for women and this was much better established in the time after the WWII with the Declaration American Rights and Duties (Gruda, 2010, pp. 102-108).

At this time, a woman was "liberated" to work for gain, but she still had to create a family and a private home. She was excluded from many economic and political decisions. But this time, women brought awareness to some extent of their aspirations. The first movement of women took place between 1848-1914, where a fierce struggle for political and civic rights broke out with the first feminist movements. At this time the right to vote was the primary demand that was being made, which was achieved in different places at different times (Ministry of Justice, 2018). However, it should not be forgotten that the war that has been waged to protect the rights of women, which in fact has a long history, is inspirational to all women of the world! Some thinkers and sociologists rightly say that the degree of emancipation of a human society is measured by the degree of emancipation of women (Sadikaj, 2003, p. 126), which constitutes a very important part of society. Empowerment and emancipation are values of these

3 The US Constitution and its role for human rights has been extraordinary in the history of the protection of human rights and freedoms.

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societies, but also among the challenges they face, since such empowerment and emancipation must take place in all areas where women can make their contribution (Arbëri, 2016, p. 345).

Therefore today it is not debatable whether women's written rights should be fulfilled, today they are ostensibly protected from any form of discrimination or inequality, they are protected by law and have the right to appeal. In all international human rights conventions, women's rights are not excluded, and the prohibition of discrimination due to gender is a fundamental part of human rights conventions such as the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *Declaration on the Elimination of Discrimination Against Women*, which preceded this Convention (Gruda, 2010, pp. 244-262). Subsequently discrimination or violence against women has been combatted with all means, one of which is the *Protection of Women from Violence under the Recommendations of the Committee of Ministers of the Council of Europe* (Konventa e Këshillit të Evropës mbi parandalimin dhe luftimin e dhunës ndaj grave dhe dhunën në familje, 2011) which document had two positive aspects, being on the one hand a convention for the protection of human rights and on the other hand a convention on criminal law (Rizvanolli-Kusari, 2013, pp. 44-45).

Even in Kosovo, these rights are regulated and protected by the Constitution and laws in accordance with the Constitution. Only a few years ago the President of Kosovo was a female. So things have moved in a positive direction, but they are still not very satisfactory. In Kosovo, the Balkans, Europe and in different countries of the world, the rights of women have evolved, today their status marks progress in the community, and today a woman is not or can not be considered as an object. These things are documented in almost every constitution, agreement, and convention.

However experiences across various cultures reveal a different picture demonstrating the opposite. Even today, cases where women are treated unequally are numerous and every day, everywhere there are violations of women's rights. We see them, hear them, experience women's sufferings, yet keep a spectator's place (Tysoe, 1992, p. 301), doing nothing. And this is even more evident when it comes to imprisoned women, far away from the public eye and the media.

We discussed the historical aspect of discrimination against women, hoping to argue that females have been consistently discriminated against, and therefore the prohibition of this discrimination should be done once and for all. Also, we tried to point out that while men who commit various offenses may be punished and sentenced, women may be punished without any trial and the punishment against them is always rude - amounting to a death penalty in different guises. Therefore, many countries have also begun creating *penal* institutions for women, leaving much to be desired as regards to living conditions and the manner of their treatment in these institutions. In reaction, many countries began creating *correctional* institutions only for women. The ranks of correctional officials, until recently all male, have begun to include females as well.

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On the other hand, Kosovo does not have a long history of female prisons. At the time of the former Yugoslavia system, the Lipjan Prison, in operation since 1978 as a juvenile facility (Ministry of Justice, 2018), started in 1981 to become a prison for women as well. So we can freely say that Lipjan Prison has a relatively short history compared to other prisons in different countries. And this story would be split into two or possibly three different stages, that from 1981 until 1989, with the fall of communism and the beginning of the former Yugoslavia's collapse, then from 1990 until 1999, when the penitentiary institutions were completely under Serbian rule, and after 1999, when Kosovo begins a new era - that of freedom. It should also be noted that during the 1998-1999 period, this center was out of institutional management, as it was used by a paramilitary organization for criminal purposes against the Albanian people of Kosovo (Ministry of Justice, 2018).

In order to operate these prisons, Kosovo immediately after the war in 1999 began establishing institutions that would run prisons in Kosovo, including the Lipjan Prison. However, after the end of the 1999 war, the infrastructure of correctional institutions in Kosovo was devastated. Initially with the support of the international community and UNMIK (United Nations Mission in Kosovo), and later with investments by the Government of Kosovo, existing institutions were rebuilt and new institutions were founded. The establishment and development of Kosovo Correctional Service Institutions in the post-war period since 1999 have been part of a legal transition that the Republic of Kosovo has undergone during international administration under UN Security Council Resolution 1244. The process of reforming the Kosovo Correctional Service Institutions in the post-war period has been one of the areas, where besides effort being put into building new concepts of operation, much effort has been put into the unification of rules and procedures with international norms and standards. Now, ten years after the declaration of independence, Kosovo has pledged to pursue its path towards the European Union, which has prompted the Kosovo Correctional Institutions to develop rapidly in order to meet international standards for an EU accession and membership in other international structures.

Establishment of the Correctional Center for Women in the Republic of Kosovo

It is understandable that correctional institutions need to exist and as such they should exist for females as well, so today's democratic states have established the legal basis and on that basis have established correctional institutions for females. Like any other state institution, correctional centers are an integral part of the history of a state as a whole. Correctional Centers are a reality that belongs to any country, regardless of its economic or social-political development (Sufaj, 2000, pp. 2-10). Studies in this area are of particular importance as they relate to the well-being of society, human relations and conflict reduction, so studies in this field include a wide range of interests that are crucial to the genuine and democratic development of a society. They orient the state structures to provide a

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fair solution to problems, based on more reasonable laws, democratic and humane, based on many important documents, both domestic and international, for the protection of prisoners' freedoms and rights.

Before the twentieth century, in our country, detention was only one of the forms of punishment and we can say not the main one. It is known that in our country besides the official Roman criminal law, then Byzantine, Albanian, later Ottoman, Serbian and Greek there was a customary or traditional law⁴, which provided punishments under these official legal systems, such as the Ottoman, given the five century Ottoman rule in Albanian lands. But this was not very much applied in remote and mountainous areas, which did not accept foreign laws, especially the Ottoman one (Gashi, 2012, p. 29), but applied Albanian customary law. The main forms of punishment envisioned in Albanian customary law were: the death penalty, abolition from the province, burning of the house, not having the right to work the land, cutting of trees, fines in money, etc. and the tougher penalties were especially for women, most especially for loyalty issues⁵. Later, with the commencement of the functioning of correctional institutions within the various systems, the prison sentence also began to be adapted. For historical reasons of the Albanian people, the exercise of the laws has been very difficult, given that for almost 100 years they were directly threatened by their extinction, in all parts inhabited by Albanians, and especially in Kosovo and its surrounding regions (Gruda, 2016, pp. 50-100) inhabited by Albanians. The creation of Correctional Centers in Kosovo began only after the Second World War within the former Yugoslavia, but Albanian perpetrators at that time were sent to correctional centers of other parts of the former SFRY, and especially Serbia.

The framework of the creation of correctional facilities in Kosovo at that time included the Correctional Center in Lipjan for juveniles and females. This correctional center is a semi-open institution. This center is the only penitentiary institution in the Republic of Kosovo which includes several categories of prisoners such as minors needing educational measures, juvenile offenders and pre-detained juveniles as well as convicted, pre-detainee and juvenile women. Condemned juvenile males are accommodated in specific facilities or floors, while all women for lack of space are together, both adult and younger women, even though that is contrary to one of the European Union's recommendations for many years, from 2009 onwards (Komisioni i Komunitetit Evropian, 2009-2010,

4 Please see: The Kanun of Lekë Dukagjini, the Kanun of Skanderbeg, the Kanun of Labëria, etc., in which canons have been found a large number of criminal norms, which related to the penalties and the manner of execution of these penalties.

5 According to the Kanun of Lekë Dukagjini, on the occasion of marriage, the girl's father handed the bullet to the groom, which in case of betrayal by his daughter he was free to kill and did not have any debt or (blood) to the family of girl, so a kind of death sentence for women without trial.

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p. 14). But according to the Director of the Correctional Center in Lipjan, Hestet Loku, it is important that the number of younger females in this center has never been large, most often between 1 and 2 female juveniles. This was true from 2010-2015 (Tribuna Channel TV, 2018), but the overall number is still almost always overcrowded: even according to the QKRC research in 2014 up to 6 women were accommodated in a single room (QKRMT & KRCT, 2014, p. 30).

Due to overcrowding in other correctional centers, the Correctional Center in Lipjan has another category of offenders with short sentences or near the end of their sentences, but this category is separated from other prisoners (Tribuna Channel TV, 2018). The total capacity of the Correctional Center in Lipjan is 138 seats as well as 6 seats in local or special prison sections. In addition to residential facilities, the Correctional Center in Lipjan also has 12 other accompanying facilities. According to some OSCE polls in 2009/2010, the physical conditions in the women's facility were very good, especially lighting, ventilation, furniture, decorations and the general condition. Even in this research, the management of this center points out that it deserves to be praised for its efforts to equip the facility for mothers and infants, and also because the ambulance covering both sections of women and juveniles was completely renovated in 2010 (Organizata për Siguri dhe Bashkëpunim në Evropë, 2010, p. 15).

The legal basis for the functioning of Lipjan Correctional Center

The 1999 war in Kosovo left many buildings destroyed, including Correctional Institutions in Kosovo, which have been among the most damaged institutions in terms of infrastructure and all other aspects. In this respect it is worth mentioning that the history of the penitentiary system is an inseparable part of the general history of a state, and Kosovo institutions do not make any exception (Sadiku, 2010, pp. 10-21). Initially, with the entry of KFOR forces in Kosovo, all institutions, including Detention Centers and Correctional Centers, were under the administration and management of KFOR. They initially provided the physical security of institutions and their management as well.

The Kosovo Correctional Service (KCS) was established in November 1999 by UNMIK within the framework of the first pillar of justice as a reserved responsibility of the SRSG (Security Representative of the Secretary General) and in support of local staff began work immediately in November 1999. The KCS inherited a state of dysfunctional infrastructure, but it was consolidated and became operational very soon for meeting the needs of Kosovo for detention and other sentences. KCS initially opened and operated the Detention Center in Prizren to continue with the consolidation of the infrastructure of Correctional Institutions in Dubrava, Gjilan, Lipjan, Peja, Mitrovica, and then in all other Centers of Kosovo (Ministry of Justice, 2018).

The KCS under international monitoring has continuously recruited local correctional officers to meet operational needs of this service, which under these

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conditions has faced many challenges, not to overlook the aspect of its subculture of prison work (Kauffman, 1998, pp. 19-25). The KCS is built on international criteria and standards, similar to the most advanced correctional systems in Europe, as international staff have brought best practices from their states. Since its establishment, the KCS is part of the general development of the situation in post-conflict Kosovo, which has undergone various challenges and difficulties throughout the transition phase in Kosovo, challenges that continue to follow this institution even today (EU & EULEX & Ministry of Justice, 2015, pp. 19-21).

In the beginning, the legal basis for the work of the Correctional Institutions was UNMIK Regulation 1999/24, which made applicable the Law on Execution of Criminal Sanctions of 1977. Also applicable to the work of the KCS were the rules of European prisons as well as international standards that were applied directly to Kosovo Correctional Institutions. In 2001, legal infrastructure was complemented⁶, by establishing a clearer basis between the Provisional Institutions of Self-Government and UNMIK, however, the development of the KCS remains under the reserved responsibility of the SRSG, under the division of the Provisional Institutions of Self-Government, through the Department of Justice's criminal management. During the period when the KCS was under reserved responsibility, the efforts of local staff continued to increase professional and managerial capacities and to prepare for the acquisition of competencies and responsibilities from internationals, who until then managed KCS.

In 2005 - by UNMIK Regulation no. 2005/53 the legal basis for establishing the Ministry of Justice was established and the initial competencies were defined and in March 2006 the Ministry of Justice started its work. At the later stage in 2006, UNMIK Regulation 2006/26, of April 27, 2006, the responsibilities of the Ministry of Justice expanded to include competencies over the Correctional Service, excluding the command of emergency situations at the Dubrava Correctional Center until the end of the UNMIK executive mission. After this phase, the KCS recruited completely new management from local staff and was independently developed by UNMIK under the leadership of the Ministry of Justice. This period of competence transfer lasted until Kosovo's Declaration of Independence in 2008 and it was of particular interest for the continuation of professional work of correctional institutions (Dreshaj, 2010, pp. 20-41).

Like the establishment of the KCS, the creation of state correctional centers is always done on the basis of a legal decision - a legal foundation that creates the initial condition for an institution to be created. This is a practice of most of today's countries, especially the democratic ones, where the rule of law functions. Kosovo is no exception to this form of institution building, given that Kosovo has issued legislation after the 1999 war in almost complete harmony

⁶ At this time the Kosovo Constitutional Framework was adopted, which was approved by the UN SRSG.

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with the *Acquis Communautaire* legislation of the European Union⁷, attempting to establish also legislation in harmony with most international conventions, especially those dealing with the protection of human rights and freedoms, and with the European Convention on Human Rights, which protects individuals by forcing judges to interpret the laws "as far as possible" in accordance with this Convention (Herring, 2013, pp. 43-48). For this reason and in order to regulate this area in correctional institutions, local legislation has foreseen specific provisions for the concrete regulation of correctional institutions in the Republic of Kosovo. This legal basis includes a number of local and international legal resources, which may be presented as follows:

We are starting with the highest legal act of the Republic of Kosovo, i.e. the Constitution of the Republic of Kosovo (Constitution of the Republic of Kosovo, Article 21), which in Chapter II - Fundamental Rights and Freedoms states that "Fundamental human rights and freedoms are indivisible, inalienable and are the basis of the legal order of the Republic of Kosovo." Article 21 states that "No one is subjected to torture, punishment or cruel treatment, inhumane or degrading treatment."

Then the Law on Execution of Criminal Sanctions (*Ligji për Ekzekutimin e Sankcioneve Penale*, 2013, Article 4), which in Article 4 states that "The execution of criminal sanctions aims at the re-socialization and reintegration of the convicted into society and their preparation for life and responsible conduct" [...]. Paragraph 7 states that "convicted persons are not placed in the same part of the institution with pre-detainees", but according to the KRCT 2014 survey, in the women's unit convicted in Lipjan Prison, given the lack of space pre-detainees are put together with convicted females. Even when pre-detainees share the same room space, they have contact with other categories during outings in the outside (QKRMT & KRCT, 2014, pp. 35-36). The Ministry of Justice issued an ordinance regarding the placement of convicted persons of specific age, health category or category that endangers security. Thus, the law itself, as well as the international conventions expressly emphasize that the environments in which the convicts live have to have enough space, with the necessary natural and artificial lighting, to enable work, active and relaxed stay, and be equipped with hygienic services. Where climate conditions require, the heating of the premises must be ensured. When it is not possible to provide accommodation in individual rooms, the assignment of convicted persons to the same room should be done in such a way as to avoid conflicts and mutually negative impacts. For this purpose the age group criteria, the type of criminal offenses committed and the intellectual and psychological characteristics of convicts are used. For each convicted person, a separate bed and a suitable sleeping set are provided. Minimum quotas for the surfaces, volumes, lighting and ventilation of the prisoners' premises are set in the

⁷ Kosovo has adopted most of its legislation in accordance with *Acquis Communautaire* of the European Union.

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prison regulations, according to the recommendations of the Ministry of Health (Avokati i Popullit, 2008, p. 93).

- Law on the Ombudsperson (Law on the Ombudsperson, 2010). “Officials of the Ombudsperson Institution can at any time and without any notice enter and inspect any place, where persons are deprived of their freedom and other institutions restricting freedom of movement and may be present at meetings and hearings, when such persons are involved.”
- Administrative Instruction on Disciplinary Procedures and Measures for Prisoners in Correctional Institutions in the Republic of Kosovo with protocol no. 01-1608I dated 01.12.2009 (Administrative Instruction, 2009).
- Sub-legal acts deriving from the Law on Execution of Criminal Penal Sanctions (Internal Rules of Procedure of the Kosovo Correctional Service, House Rules).
- European Prison Rules (Council of Europe, 2006). It should be noted that these rules do not represent a model system and that, in practice, many European prison services pursue higher standards than those set out in the rules and others make efforts and continue to strive in this direction. Whenever there are difficulties or practical problems to be overcome in implementing these rules, the Council of Europe has the mechanism and experience available to assist with advice and results from the experience of different prison administrations within its sphere (Gruda, 2010, pp. 47-75).

These rules have repeatedly emphasized the values of human dignity, the commitment of prison administrations to humane and positive treatment, and the importance of the role of staff and effective modern ways of administration. These are set out to provide references, encouragement and guidance ready for those working at all levels of prison administration. The explanatory memorandum accompanying the rules seeks to provide the understanding, acceptance and flexibility needed to achieve the highest realistic level of implementation beyond the core standards:

- Universal Declaration of Human Rights
- European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (Gruda, 2010, pp. 65-83)
- International Covenant on Civil and Political Rights
- Convention on the Rights of the Child
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is also an important document.

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Apart from the aforementioned international acts in the field of international justice, we also have so-called "soft legislation", which includes principles, guidelines, standard rules and recommendations, among which the most popular are:

- Minimum Standards for the Treatment of Prisoners, 1977 (Kombet e Bashkuara, 2005, pp. 159-178);
- United Nations Standard Minimum Rules for Juvenile Justice Administration, 1985, known as "PEKIN Rules" (Kombet e Bashkuara, 2002, pp. 450-483);
- United Nations Standard Minimum Standards for Alternative Measures (Non-Prisoners), December 14, 1990, known as the "TOKIOS Rules" (Kombet e Bashkuara, 2002, pp. 424-437);
- European Prison Rules, according to Recommendation no. 2006/2, etc.

Conclusion

The Kosovo Correctional Service after 1999, under the supervision and contribution of the international community, marks a significant breakthrough in the humanitarian field of the penitentiary system. This visible progress is affirmed by reports of many international and local stakeholders. International stakeholders helped the Kosovo Correctional Service by renovating all Correctional Centers and Detention Centers, by increasing new capacities for prisoner accommodation, by increasing staff capacities with training at home and abroad, and by raising technical and security capacities for successful work as much as possible.

During this period of international administration the legal infrastructure was established, as were sub-legal acts and standards of practical actions, all based on the most advanced international standards. In accordance with the requirements arising from the legal Infrastructure, the Kosovo Correctional Service has also established adequate institutions for the security and treatment of prisoners in accordance with the law and international standards.

With the proclamation of Kosovo's independence, new conditions and circumstances are created for the acquisition of full competences in the management of Correctional Institutions in Kosovo. In this context the legal infrastructure regulating the functioning of the Correctional Institutions has been amended. In accordance with the legislation, the bylaws and internal rules for the work of the Kosovo Correctional Service have been issued.

Therefore, at the end of this article, we can conclude that in the penitentiary system of the Republic of Kosovo many prisoners' rights have been provided for, and some modern penitentiary requirements have been included. This is important and characteristic for the very core of Lipjan / Lipljan Prison as well, where convicted women are also incarcerated. But the particular thing in this

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whole process is that the realization of some of these rights in penitentiary practice is not always attainable and that even in this area there are some obstacles and difficulties, which hamper the process of re-socialization and re-training of convicted persons during the serving of imprisonment.

The special feature of the penitentiary system in the Republic of Kosovo is the very legal basis for the functioning of these centers as well as the KCS itself, which is the main institution for maintaining order and discipline in the correctional centers. By contrast, prior to 1999, the correctional centers in Kosovo were seen only as centers for torture, not as centers where the resocialization of persons could be achieved and their return to society. And in that way, we can say that Lipjan Prison is a correctional center, which aims at the rehabilitation, re-education and re-socialization of convicted persons, in this case convicted women, who are serving sentences in Lipjan Prison.

For this reason, through this paper, we have also attempted to present the legal basis of the Correctional Centers in Kosovo, especially of Lipjan, arguing that this legal basis is very advanced in terms of the protection of freedoms and rights and especially in the concrete case of women prisoners.

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