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THE FEMININE IN THE PORTUGUESE LEGISLATION AND CASE LAW OF ENFORCEMENT OF PRISON SENTENCES

The normative Portuguese framework is based on an idea of equality before the law (Article 13 Constitution of the Portuguese Republic) which, in a first analysis, apparently renders away from the questioning of differentiation, particularly gender differentiation. It is, however, common ground that, beyond legal equality there is, and there must be, a healthy material inequality that guarantees the accomplishment of positive discrimination. Based on these assertions, and taking into account the Portuguese penitentiary context, we propose in this study to investigate aspects of the law which are, in its letter, neutral, but may entail special protections or, on the contrary, challenges to the female prison population. Similarly, jurisprudential research will be carried out in the search for decision-making elements that can be identified as specially addressed to the female sex, either in their favour or in their detriment. The aim of this study is, solely, to research legislation associated with the enforcement of prison sentences, in an attempt to unveil and systematize norms that may deserve a gendered reading, beyond the apparently innocuous character of their letter in terms of legal formulation. Available case law will also be researched in order to ascertain whether and how, when the enforcement of prison sentences is at stake, the female prison population receives differentiated treatment according to

their sex, in a (re)reading of the law, by its enforcer. The aim is to investigate the extent to which the female variable weighs on judicial decision-making in the enforcement of prison sentences. This is a prospective study based in the analysis of legal and case-law documents. From the data obtained in the researches carried out, we will try to elaborate theory, either in the sense of the adequacy of the law, the need for its change at the normative level, or the need for the adequacy of its application at the jurisprudential level. Our main goal is to construct a theory able to protect women's rights in penitentiary environments.

Keywords: *Female Prison Population, Enforcement of Prison Sentences, Law, Case-Law, Women Rights.*

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