

# Policy Paper

*on reducing overcrowding in prisons and  
pre-trial detention facilities in Albania*



REPUBLIC OF ALBANIA  
MINISTRY OF JUSTICE  
General Directorate of Prisons



Organization for Security and  
Co-operation in Europe  
**Presence in Albania**



Policy Paper  
on reducing overcrowding in prisons and  
pre-trial detention facilities in Albania



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Expert:

**Dr. Evisa Kambellari**

Consultative group of experts:

**Alba Jorganxhi,**  
OSCE Presence in Albania

**Greg Riley-Smith,**  
Twinning Project “Support to the Penitentiary  
and the Probation Service in Albania”

**Blerta Doçi,**  
General Directorate of Prisons

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## METHODOLOGY

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This document is aimed at identifying the elements of the application of criminal policies or the practice of criminal justice bodies that lead to increased crowding in prisons and pre-trial detention facilities, with the purpose of making recommendations on issues that should become subject to further review by the relevant actors.

The study is aimed at collecting data that will provide a clearer picture of the challenges the prison administration faces when it comes to managing physical capacities and respecting the rights of prisoners/detainees, with the goal of devising the necessary forms of intervention so to achieve stable control over the population of prison and pre-trial detention facilities.

The quantitative method has been used to complete the second part of this study. The evaluation is based on the study and interpretation of statistical data on different indicators, such as: population rates in the prison system in the last seven years as well as the weight of each category of prisoners in the total current prison population, data showing the annual progress of the number of detainees, on types of sentences given by courts, etc.

This study is based on data/information collected from:

- Meetings with representatives of the General Directorate of Prisons, Probation Service, General Prosecutor's Office structures, as well as employees of the prison administration.
- Studying the reports of the People's Advocate on the role of the National Mechanism on Prevention of Torture in regards to the prison overcrowding situation, and reports on other human rights monitoring mechanisms, study reports on the state of the criminal justice system in general, etc.
- Visits in those Institutions for the Execution of Criminal Decisions (IECD) where the consequences of overcrowding in the life quality of prisoners is more visible, and reflection of problems regarding the implementation of living surface conditions for prisoners, use of common premises etc.
- Frequent meetings of the working group used to discuss the progress and issues of the study and proposals for further steps.

## INTRODUCTION

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Prison overcrowding is a complex issue that represents a serious concern for a number of governments nowadays. In the course of time, the prison population in Albania has been on the increase, presenting the government with a challenge when it comes to the efficient management of the penitentiary system. Currently, the total number of offenders placed in pre-trial detention facilities and prisons noticeably exceeds the normal capacity of such institutions<sup>1</sup>. Prison overcrowding is considered as a serious humanitarian concern, since it eventually generates prison conditions that don't meet the required standards<sup>2</sup>, creates problems in meeting the basic needs of prisoners, and compromises the effectiveness of the applied rehabilitation programmes. In recent reports, different actors of the criminal justice system and of human rights monitoring mechanisms, have emphasized the seriousness of the issue and have called on the need to apply measures alternative to imprisonment for offenders.

First of all, this document provides a general landscape of the current situation of the penitentiary system, with a special focus on presenting the main issues the prison administration faces in terms of effective management of detention/imprisonment institutions and respect of fundamental rights of prisoners.

It provides an analysis of some of the main issues of punitive policy as well as the functioning of the criminal justice system that have had considerable influence in prison overcrowding.

The last part contains a collection of the main findings of the study and recommendations on issues that should be the subject of review or revision by policymakers in order to address prison overcrowding. A special emphasis is put on the need to take into consideration new approaches in the treatment of offenders such as: rationalisation of punitive policy, enhancement of the application of alternatives to imprisonment, enhancement of community roles in the management of persons that display deviant behaviour, restructuration of the penitentiary system, expansion of the field of application of restorative justice in criminal cases, as well as structural reforms to prevent factors that motivate criminal behaviour.

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1 This observation is made by referring to the official figures issued from the General Directorate of Prisons for the years 2014, 2015.

2 United Nations Office on Drugs And Crime (2013). Handbook on strategies to reduce overcrowding in prisons. *Foreword by the International Committee of the Red Cross (ICRC)*, <http://www.unodc.org/> [20 May 2015].





# PART I

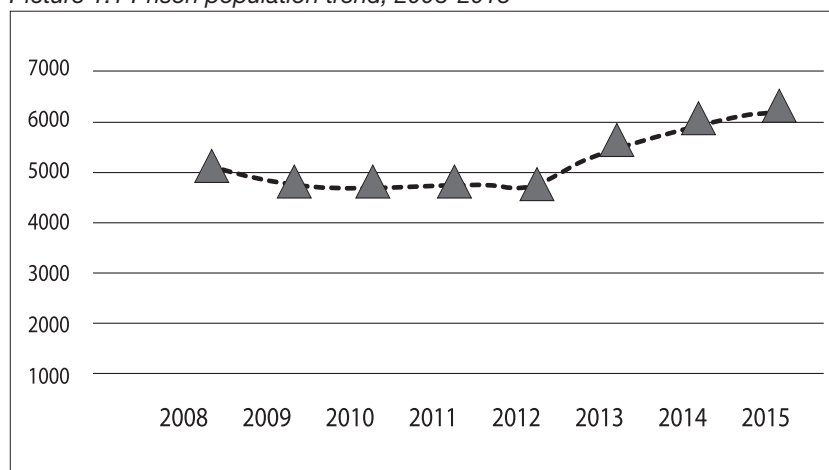
## 1. General overview of the penitentiary system state

The General Directorate of Prisons currently administers 23 Institutions for the Execution of Criminal Decisions (IECD), which serve as prisons or as pre-trial detention facilities, also including an Institute for Juveniles in Kavaja, as well as a special Institution for persons placed under the medical measure of mandatory medical treatment, for problems related to mental health issues and the elderly in Kruja<sup>3</sup>.

Official figures show that over the last few years, the prison population has undergone a continuous increase, noticeably exceeding the normal capacity of such institutions. Prison overcrowding currently represents a serious concern for the prison administration, which must provide suitable housing and fulfil the basic living needs for an increasing number of prisoners.

Data in the following graph show the prison population trend in the last eight years.

Picture 1.1 Prison population trend, 2008-2015<sup>4</sup>

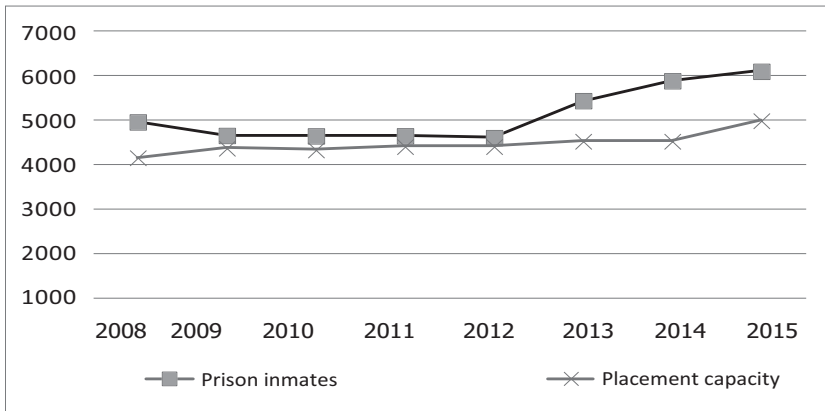


The prison population growth has led to more and more serious problems regarding the use of the physical capacity of IECDs as compared to the increased flow of prisoners.

<sup>3</sup> "Fact Finding for Institutional Self Assessment, Sector: Fundamental Rights, Penitentiary System", p. 1., General Directorate of Prisons, 2015.

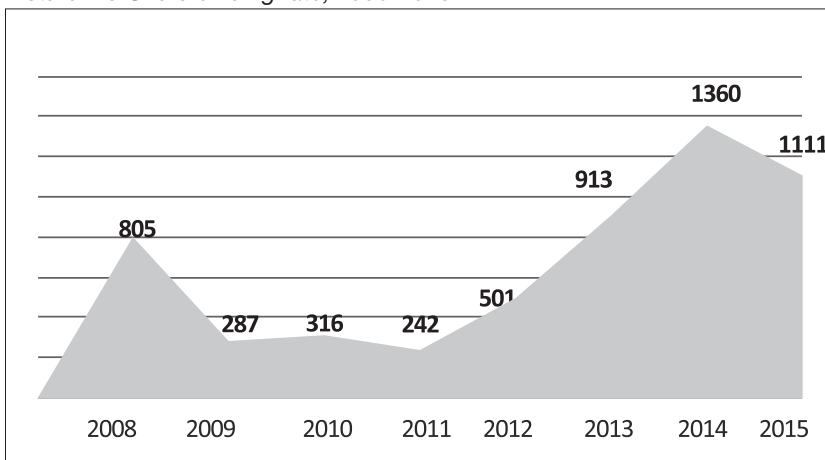
<sup>4</sup> Data on 2015 are taken from statistics produced by GDP on the state of prisoners in August.

Picture 1.2 Overcrowding - prison inmates and placement capacities (2008-2015)



Since 2012 the overcrowding rate has undergone continuous increase, reaching its most critical level in 2014. In 2014, overcrowding in IECD was at the level of 30% over the allowed capacity, compared to 20% in 2013. Data on overcrowding until August 2015 show that the situation continues to be problematic, with an overcrowding at the level of 22% over the capacity.

Picture 1.3 Overcrowding rate, 2008-2015



Even though data clearly show an increasing trend of the prison population, there is still no multilateral evaluation to identify the factors that lead to the increased rates of prison sentences or pre-trial detention. Special sources show that the problem is a result of the interaction of a complexity of factors related to issues of criminal policy as well as with problems in the efficient functioning of the criminal justice system. Data from recent years show that the prison overcrowding issue has become deeply concerning. In these circumstances, well thought interventions are very necessary to prevent increased numbers of prisoners in the future.

## 1.1 Results of monitoring

Human rights monitoring bodies unanimously state that the main that the penitentiary system faces now is overcrowding. Monitoring missions of the Albanian Helsinki Committee in 2014 have concluded there are real problems related to living conditions in pre-trial detention facilities and prisons in the country, because of overcrowding, as well as lack of adequate financial resources to cope with such situation<sup>5</sup>. The report emphasized that not being able to accommodate all prisoners, pre-trial detention facilities and prison directors had turned other working premises in premises to house prisoners. Moreover, many prisoners didn't have their own bed, instead, they often slept on the floor, in some cases without a mattress but with blankets laid on the floor. They also identified problems with the ventilation and provision of hygienic conditions.<sup>6</sup>

In January 2015, through an official report, the People's Advocate expressed his serious concern in relation to the prison overcrowding situation and asked the relevant state authorities to undertake proper measures to solve the problem. Some of the points of the report mention the critical situation a monitoring group observed in some IECD, and especially in pre-trial detention facilities. Some of the main violations were related to the living surface and other consequences because of the lack of necessary space.

It was observed that in the major part of IECDs the number of prisoners/pre-trial detainees noticeably exceeded the official capacity and in some of them the situation was even more critical reaching up to the double of the normal number of prisoners these institutions can have, such as the case of IECD Jordan Misja (313), Elbasan, Fushë-Kruja, Drenova etc<sup>7</sup>. In 'Jordan Misja' pre-trial detention facility, the personal living surface for prisoners reached 2.2 m<sup>2</sup>, while the minimal standard is 6 m<sup>2</sup> per person<sup>8</sup>. In this facility, sleeping on the floor was a factor in almost every room. Sleeping on the floor was evident also in other monitored institutions, such as in Drenova IECD and Elbasan IECD<sup>9</sup>.

Exacerbating this, the practice of re designating premises designed for activities into cellular accommodation, due to overcrowding, has limited the options for organising activities in a number of IECDs such as in Burrel, Korça, Durrës, Lezha,

5 See: "Report on the human rights situation of persons deprived from freedom in the police directorates and commissariats and institutions of pre-trial detention and institutions for the execution of criminal decisions", Albanian Helsinki Committee, Tirana 2014, p.9.

6 Same report, p. 38-39.

7 People's Advocate Report, dated 06.01.2015, *On the situation of overcrowding in penitentiary institutions*, p. 4-7.

8 See: Rule 18 Commentary of European Prison Rules European Prison Rules, which states that the Committee for the Prevention of Torture considers that the minimal surface of the prison cell must be 6 m<sup>2</sup>, and in the event of joint accommodation of several prisoners in a cell, the minimal surface for prisoners should not be less than 4 m<sup>2</sup>. <http://www.coe.int/t/dghl/standardsetting/prisons/E%20commentary%20to%20the%20EPR.pdf>.

9 In a case in Rrogozhina, NMPT observed that a room of the following dimensions: 6x7x2.50m, was inhabited for several months by 21 pre-trial detainees. In this room, 14 persons slept in 7 bunk beds, 5 others slept in a mattress placed on the floor and two other pre-trial detainees slept in shifts or two persons in the same bed. See above: report of the People's Advocate, p. 5-6.

Tepelena, Jordan Misja, Mine Peza, Kosova-Lushnja etc<sup>10</sup>.

Legal obligations regarding the establishment of special medical institutions, with the purpose of accommodating and treating persons sentenced by the court with the measure of “mandatory medical treatment” and “temporary housing” have not been applied. The treatment of this category of prisoners in IECD continues to be illegal, also leading to overcrowding.

Their housing in Kruja IECD and in the prison hospitals has continuously been reported as a flagrant violation of the law and international standards, leading to discriminatory treatment of such patients and in the deterioration of their health<sup>11</sup>.

## 2. *Prison overcrowding consequences*

### 2.1 *Social costs*

From a macro perspective, the increase of the prison population represents a serious issue for public funds. Each year, the government spends hundreds of millions of ALL to support the normal administration of the penitentiary system. Eventually, overcrowding also causes unavoidable social costs, since an increasing amount of public funds will be used for the administration of prisons thereby taking money from projects that help meeting the different needs of life in the community.

Funds that go to meet the increasing needs of the penitentiary system, as a result of overcrowding, could be used to improve infrastructure and human capacities engaged in the application of alternatives to imprisonment.

Eventually, overcrowding also causes the increased deterioration of buildings, noticeably reducing the value of investments made recently to improve the premises of IECDs, leading also to the need for other expenditure that increase the maintenance and administration costs of these institutions.

In Picture 1.4. there is an overview of the total factual costs of the penitentiary system for the years 2010-2014. It is to be noted that the expenses have increased considerably in 2014. The annual costs of each category are considerably high because of a gradually increasing prison population.

10 Activity of the People’s Advocate of Albania in the role of the National mechanism on Prevention of Torture. Special Report, 2014, p.15

11 See above: “*Report on the human rights situation ...*”, Albanian Helsinki Committee, Tirana 2014, f.55.

Table 1.1 shows the daily expenses for offenders as divided by category.

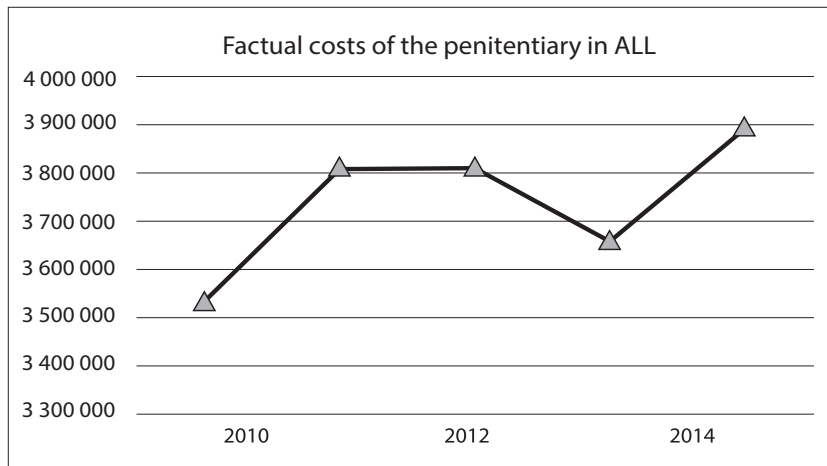


Table 1.1

Category	Expenses in Euro/day/person
<b>All</b>	14.21 Eur
<b>Pre-trial detainees</b>	14.63 Eur
<b>Prisoners</b>	12.30 Eur
<b>Ill offenders</b>	46.26 Eur
<b>Juveniles</b>	17.54 Eur

## 2.2 Limitation of prisoner's rehabilitation options

Social reintegration seems to be seriously affected by an overcrowded IECD. Social reintegration refers to assistance through common activities that contribute to the moral, educational, and professional development of prisoners as well as to addressing their special needs such as psychological conditions, drug dependency, anger management, etc.

In the last report on the state of the penitentiary system, the People's Advocate reported that overcrowding has led to the reduction of physical space, which is necessary to facilitate common activities. Moreover, having to deal with an increased number of prisoners, the prison administration finds it impossible to properly meet the requirements for designation and organisation of individual rehabilitating programmes suited to the specific personalities of each prisoner.

Limitations in the necessary physical space and in human resources pose a challenge to the effective implementation of general and individual rehabilitation programmes<sup>12</sup>. In the current staff structure, the number of educators and psycho-social employees is very low to effectively meet the needs of prisoners regarding educational, recreational, and psycho-social counselling and assistance

<sup>12</sup> United Nations Office on Drugs and Crime, *Custodial and Non-Custodial Measures, Social Reintegration*, (2006),1, <https://www.unodc.org> 23 June 2015.

programmes. In concrete terms, in total there are 27 psychologists, 29 social workers, and 60 educators, while the number of prisoners that need their assistance exceeds the real possibilities of these professionals to provide the relevant services.

According to the GDP, overcrowding also leads to consequences regarding the transfer of prisoners from pre-trial detention and police stations to less overcrowded institutions that are located far from where their families reside<sup>13</sup>. Transfer to such institutions lessens the possibility of frequent (regular) visits from external contacts. Detachment from family links especially, may negatively affect the rehabilitation of prisoners. This is true because studies show that prisoners, who receive active interest from family members during detention, have an increased probability of being reintegrated into society and have lower rates of recidivism<sup>14</sup>.

### 2.3 *Issues with the fulfilment of basic needs*

Situational evaluation shows that prison overcrowding lessens the possibilities of the prison administration to fulfil the basic needs of prisoners. This phenomenon leads to consequences regarding the reduction of personal physical space, exercise, medical treatment, necessary hygienic conditions, etc., inevitably resulting in violation of rules and standards on the treatment of prisoners and pre-trial detainees.

### 2.4 *Psychological effects on prisoners/pre-trial detainees*

Overcrowding plays a considerable role in the increase of psychological tensions and pressures for prisoners. Studies show that it creates a situation of competition among prisoners when it comes to using the limited resources, becomes a cause for aggressive behaviour among them or against the prison administration, results in increase of suicide rate, as well as victimisation of the most vulnerable persons<sup>15</sup>. High stress levels may cause chronic emotional and psychological problems to prisoners<sup>16</sup>, which continue after release from prison. In the meantime, studies have shown that negative psychological effects during prison time may lead to the increase of recidivism rates<sup>17</sup>. Former prisoners return to the society holding a psychological burden caused by the deprivation of liberty, which can represent a real obstacle to their normal socialisation and reintegration into society. Psychological problems, along with other risk factors, such as stigmatisation or the lack of employment perspectives, may become dangerous criminal stimuli.

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13 Annual analysis of the General Directorate of Prisons, 2013.

14 See: Marion Vacharet, *Private Family Visits in Canada, Between Rehabilitation and Stricter Control: Portrait of a System*, <https://champhenal.revues.org/2322> [28 May 2015].

15 *The Effects of Prison Overcrowding*. John Howard Society of Alberta (1996). <http://www.johnhoward.ab.ca/pub/C42.htm> [20 June 2015].

16 See: Robert.M Freeman, *Correctional Organization and Management. Public Policy Challenges, Behaviour, and Structure* (Woburn: Butterworth-Heinemann, 1999), 88.

17 Joan Petersilia and Kevin R. Reitz, *The Oxford Handbook of Sentencing and Corrections* (Oxford: Oxford University Press, 2012), 599.

2.5 *Reduction of the possibility to classify prisoners according to their degree of risk*

Overcrowded prisons can turn into “facilities” of further criminal sophistication, since the possibility for separation of prisoners according to the degree of the risk is low. Prisoners sentenced with less serious offenses share the same premises with dangerous offenders, and as a result, they are under the influence of more sophisticated criminal thinking and behaviour models<sup>18</sup>.

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18 D.A. Andrews and James Bonta, *The Psychology of Criminal Conduct* (Oxon: Routledge, 2015), 435.







## PART II

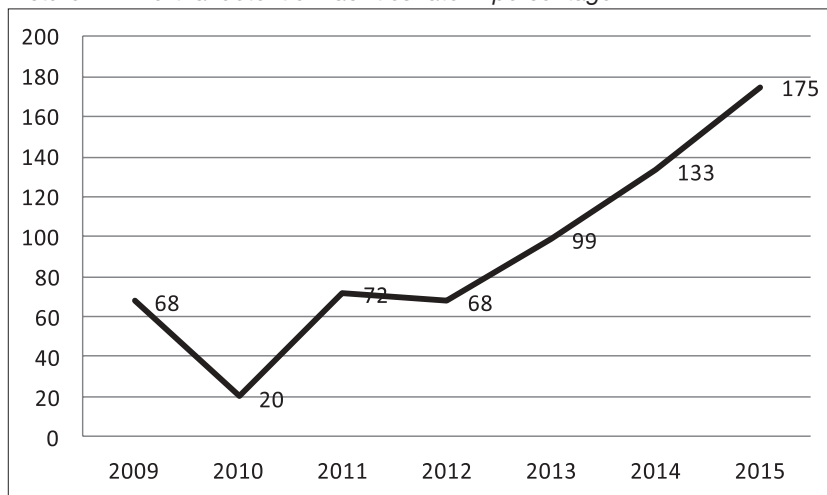
### CAUSES OF PRISON OVERCROWDING

#### 1. Increase of the number of pre-trial detainees

Political pressure towards more punitive penal policy, as well as some practical problems of the functioning of criminal justice bodies, has played a considerable role in the increase of the population in pre-trial detention facilities.

The increase in the number of pre-trial detainees is one of the main causes of prison overcrowding, especially during the last three years. A study of official data on pre-trial detention facilities overcrowding during the last seven years shows an increasing excess of the normal capacity of such facilities. Picture 2.1 clearly shows the overcrowding rate has reached very high figures especially during 2013-2015.

Picture 2.1 Pre-trial detention facilities rate in percentage

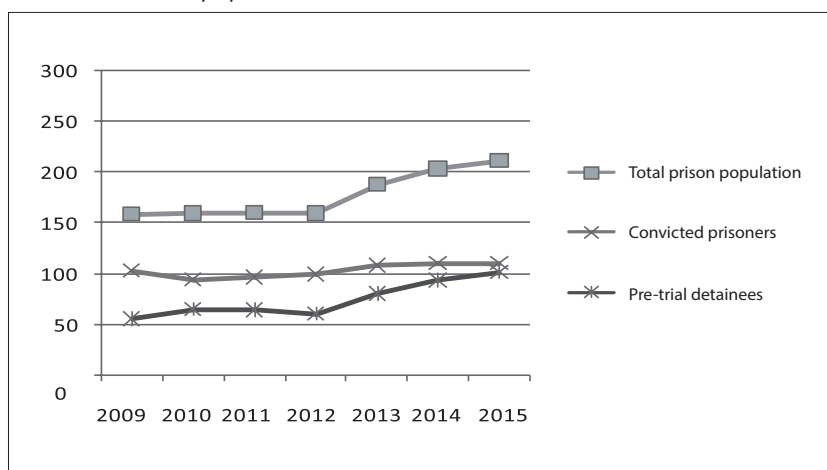


Data in table 2.1 provide a general overview on the progress of population in prisons and in pre-trial detention facilities during the last seven years, also reflecting the impact such trends have had over the penitentiary system overcrowding situation in general.

Table 2.1 Prison population (2009-2015)19

Year	2009	2010	2011	2012	2013	2014	2015 (august)
Total prison population	4667	4657	4659	4618	5450	5897	6110
Total prison population per 100 000	158	159	160	159	188	203	211
Prisoners	3039	2772	2809	2862	3139	3183	3188
Prisoners for 100 000	103	94	96	99	108	110	110
Pre-trial detainees	1628	1885	1850	1756	2311	2714	2922
P-T detainees per 100 000	55	65	64	60	80	93	101
Placement capacity	4380	4341	4417	4417	4537	4537	4999
Overcrowding total	287	316	242	201	913	1360	1111
Increasing/decreasing rate of number of prisoners		-267	+37	+53	+277	+44	
Increasing/decreasing rate of number of P-T detainees		+257	-35	-94	+555	+403	
Changes in overcrowding rate		+29	-74	-41	+712	+447	

Picture 2.2 Prison population trend for 100 000 inhabitants



Data of the table as well as of Picture 2.2 show the decreasing trend of the gap between the number of prisoners and pre-trial detainees in the course of time.

The population rate in pre-trial detention facilities has undergone a considerable increase since 2013, reaching its most critical point in August 2015, with 101 pre-trial detainees for 100 000 inhabitants.

Moreover, the overcrowding rate is largely affected by the pre-trial detention facilities overcrowding rate, resulting in increase or decrease depending on the changes of the latter. The graph clearly shows how the trend of the total number of prison population and the trend of the number of pre-trial detainees in the course of time follow more or less the same pattern.

19 Source: Official figures provided by the General Directorate of Prisons.

### 1.1. *Political pressure towards a more punitive policy*

During 2014, the National Mechanism on the Prevention of Torture has emphasized that the major part of pre-trial detainees placed in overcrowded cells find themselves there because of the recent policies of the government to roughen criminal punishment for electrical power thieves and for traffic offenders. The NMPT Director has called on the government to review its policies and on the justice system not to make use of the security measure arrest in prison for less serious criminal offenses<sup>20</sup>. On the grounds of registers inspected by NMPT in police stations, the majority of persons placed in security rooms, as well as those transferred, have been detained/arrested for offenses such as: driving without a driver's licence (the majority of persons part of this category were juveniles); drunk driving; illegal electricity supply line; domestic violence, etc. The increase of the number of persons detained/arrested for the first three offenses shows that a very important factor of overcrowding is the more punitive of criminal policy<sup>21</sup>.

The number of pre-trial detainees has continued to increase throughout 2015. In August, overcrowding in pre-trial detention facilities reached critical levels, with an overcrowding rate of 75% over the normal capacity. The study of official data shows that currently the number of pre-trial detainees comprises 47.8% of the total prison population

### 1.2 *Inappropriate use of the detention on remand measure*

Human rights' monitoring groups have constantly expressed the concern that the application, on a priority basis, of the measure "Detention on remand" by the courts is one of the main causes of overpopulation in the detention facilities<sup>22</sup>. According to them, the requests for the implementation of the detention on remand measure are not always justified by the needs of the criminal justice system. The People's Advocate has said that deprivation of freedom through detention on remand should not be considered as the main alternative, but as the most serious measure which is issued only for cases set forth in articles 228 and 229 of the Criminal Procedure Code<sup>23</sup>. This institution has stated that in rendering this measure the High Court's stance (expressed in decisions 8, dated 19.1.2001 and 46, dated 28.1.1999 of the Criminal College of the High Court) should be kept in mind; they read: "...in order to issue detention on remand as a security measure, the grounded doubt that the defendant might avoid trial or execution of decision, or that he presents the risk of committing another grave criminal offence or of the same type as the one he has been prosecuted for..." and "...When ordering security measures, the court shall

20 Erebara, Gj. (2015). *Albania Ombudsman Slams Jail Overcrowding*. <http://www.balkaninsight.com/>, [10 June 2015].

21 See: Activity of the People's Advocate of Albania in the role of National Mechanism on Prevention of Torture. Special Report, 2014, p.247.

22 See: "Report on the human rights situation of persons deprived from freedom in the police directorates and commissariats and institutions of pre-trial detention and institutions for the execution of criminal decisions", Albanian Helsinki Committee, Tirana 2014, f.8,36, <http://ahc.org.al/f.8,36> [5 July 2015]

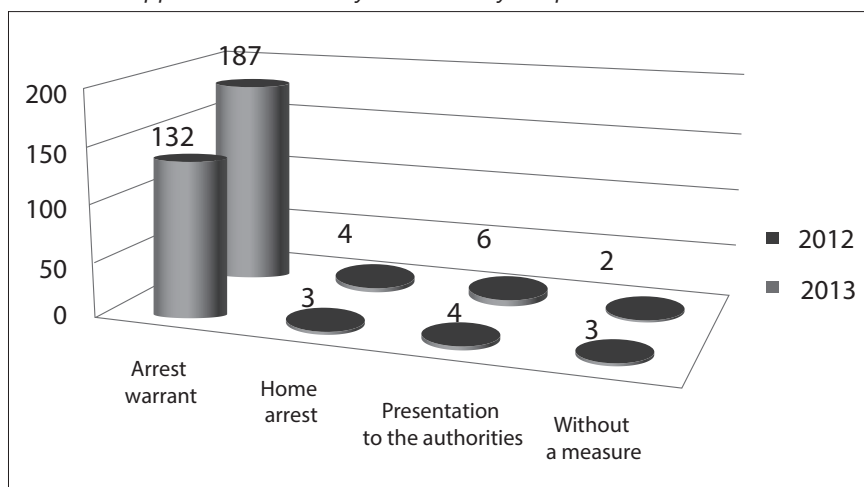
23 Report of the Albanian People's Advocate "On the situation of overcrowding in penitentiary institutions", January 6, 2015.

bear in mind the compatibility of each of the measures with the level of need for security to be taken in the current case...”<sup>24</sup>.

Recently this measure has been applied extensively, even for criminal offences which do not present a level of danger that corresponds to the restriction of detention on remand, such as, stealing electrical power, drunk driving, or without a driver’s license, etc. More concerning is the application of these measures usually for juvenile offenders. Studies on the criminal justice system show that the issue of overuse of detention remains to be addressed, because detention should not be seen as the proper solution or standard measure<sup>25</sup>

Figures from the General Prosecutor’s Office show that the arrest warrant is the most common measure in the working practice of the prosecution, being applied in more than 90% of the cases (See: Picture 2.3)

Picture 2.3 Application of security measures by the prosecution



Such a trend seems to be dominant even in 2014. Thus, 100 out of 120 persons, whose cases have been carried from the previous year, are placed under an arrest warrant.

### 1.3 Delays in procedural deadlines

In its annual report on monitoring the respect for human rights’ in Albania, the Albanian Helsinki Committee states that the prolongation of detention timeframes continues to be a current problem as regards respect for the rights of persons in pre-trial detention. Unnecessary extention of the period of pre-trial detention is mainly the result of long or slow investigations, as well as the procrastination

<sup>24</sup> Same source.

<sup>25</sup> Source: *Report on the feasibility study for the program of the justice reform in Albania*, prepared by the working group of the Justice Chain (Swedish Police, Swedish Prosecutorial Authority, Swedish Administration of National Courts and Swedish Prison and Probation Service), 2015, p. 31.

## PART II

### CAUSES OF PRISON OVERCROWDING

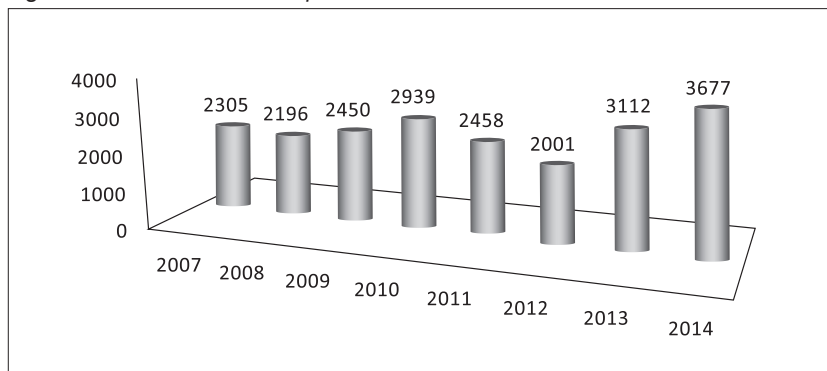
of judicial proceedings in the criminal courts. The postponement of sessions considerably impacts the extension of detention time periods, in cases when the defendant has been placed in detention on remand, following the request of the prosecutor's office.

Lack of addresses of the parties (which makes their summoning difficult), absence of the parties, lawyers or prosecutor<sup>26</sup>, is among the main reasons for the postponement of the sessions. In its most recent study, the AHK notes that the parties postpone the process, mainly those who request postponement of the trial<sup>27</sup>. The absence of prosecutors in hearing sessions remains a problem and in such cases they do not submit a justification to the court. Such problems used to be even more persistent in the case of women in detention and in many cases it has been found out that women have spent a long time waiting for the final decision to be issued by the court. Their time in detention would vary from 14 months to 2 years<sup>28</sup>.

Unnecessary delays within the judicial process is a factor that can have an impact on the overcrowding situation. Even though statistical data indicate that the number of concluded criminal cases has considerably increased<sup>29</sup>, the number of cases that are waiting to be tried in the criminal courts continues to remain high.

The data in Figure 2.3, showing the number of incomplete cases, demonstrates an increasing trend over the last three years. The delays within the judicial process inevitably impacts the detention of persons against whom a security measure has been issued for the restriction of personal freedom, by prolonging the time of their stay in the Institutions for the Execution of Criminal Decisions.

Figure 2.3 Number of incomplete trial cases 2007-2014



26 See above: report on the feasibility study ..... Working group of the Justice Chain, 2015, p.15.

27 See: 'Study report on the decisions of the prosecutor's office to not initiate and dismiss criminal proceedings and proceedings to execute the execution of criminal decisions', Albanian Helsinki Committee, Tirana 2014. p. 49. <http://ahc.org.al/>, accessed on 26 September 2015.

28 See the above: See: "Report on the human rights situation ....", Albanian Helsinki Committee, Tirana 2014, p.13.

29 According to Statistical Annual 2014, the work volume had an increase of finalized criminal offences, with 5742 more cases than in 2013, 4640 more cases than 2012 and 4997 more cases than 2011.

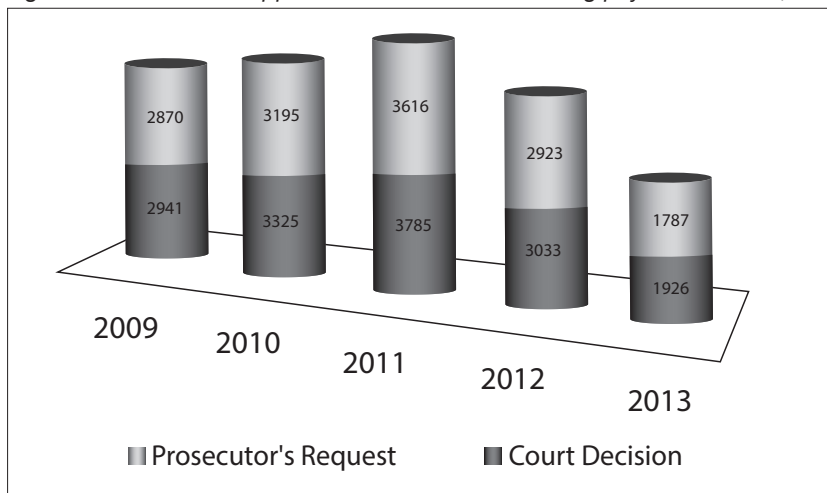
Another problem that is identified regarding procedural time frames for detained persons is the delay in issuing the reasoning of judicial decisions. Lack of reasoning within the legal deadline of court decisions brings about delays in the issuance of orders for the execution of such decisions by the prosecutor's office, which often results in very grave violation of human rights. For instance, monitoring in the courts in Tirana and Durrës has indicated that, in more than half of the court decisions for immediate execution, orders for such execution were issued by the prosecutor's office with a delay of 2-4 days<sup>30</sup>.

## 2. The punitive trend in the activity of criminal justice bodies

### a. The activity of the prosecutor's office

An analysis of statistical data on the types of sentences requested by the prosecutor's office and rendered by the court, shows that there is a considerable decrease of decisions ordering fines during 2012-2013.

Figure 2.2 Data on the application of decisions ordering payment of fines, 2009 – 2013<sup>31</sup>



Statistical data show a decrease of 36.49% of requests for fines, as asked by prosecutors, during 2013, as compared to 2012. Also during 2012 there is a decrease of 19.86% as compared to 2011. The same trend is noticed with regards to decisions rendered by courts in the case of sentences for fine payment. In 2013, there was a decrease of 38.86% of this sentence as compared to 2012, and in 2012 there is a decrease of 19.16% as compared to 2010.

30 See above: 'Study report on prosecutor's office decisions to not initiate ...', Albanian Helsinki Committee, Tirana 2014. p. 80.

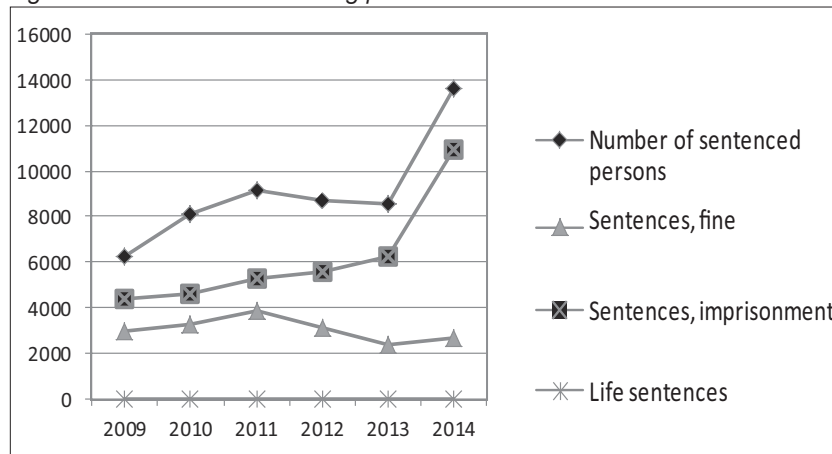
31 The data has been taken from the Annual Report of the General Prosecutor's Office on the Situation of Criminality 2013, p.209, <http://www.pp.gov.al/> [30 August 2015].

b. Sentences rendered by courts<sup>32</sup>

Statistics show that during 2012 and 2013 there was a considerable decrease in decisions resulting in a fine, of 18.8% and 24.30% respectively, as compared to the preceding year. In 2014 a small increase of 1.4% is noticed, compared with the preceding year, however, the imprisonment sentence considerably dominates in court decisions.

If we analyze the general punitive practice of courts during the last five years, we notice that the application of fines was not proportional to the number of sentenced persons, while the figure clearly indicates that the imprisonment sentence has proportionally increased throughout the years, which has served to increase the difference between the imprisonment sentence and sentence by fine, rendered by the court.

Figure 2.3 The courts sentencing practice<sup>33</sup>



Statistics show that there was a decrease of 23.9% of sentences for long imprisonment of 10-25 years, issued by the court during 2012, as compared to 2011. In the meantime, such sentences have increased by 28.9% in 2013. The most recent data show that there is a slight increase in the application of imprisonment sentence from 10 to 25 years.

32 The data has been taken from the study of Statistical Annuals of the Ministry of Justice.

33 Source: Statistical Yearbooks of the Ministry of Justice

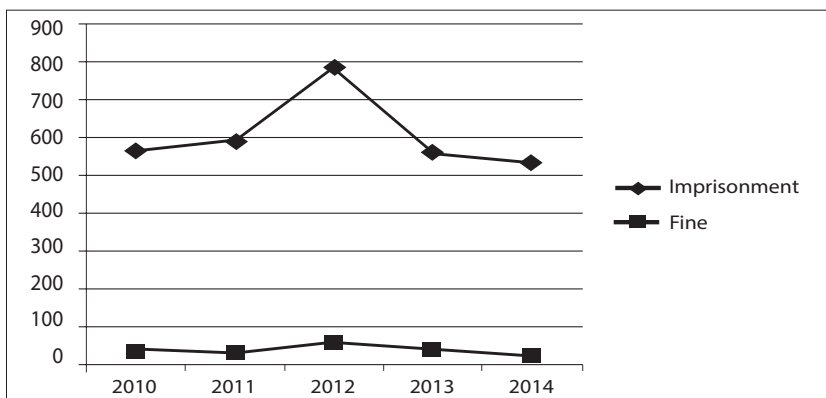
Table 2.3 Total numbers of punishments, according to their type, 2009-2010

	2009	2010	2011	2012	2013	2014
Fine	2949	3270	3838	3114	2357	2694
Imprisonment (5 days-2 years)	3340	3671	4234	4386	4889	9442
Imprisonment (2-5 years)	577	558	630	707	812	935
Imprisonment (5-10 years)	292	241	259	367	346	355
Imprisonment (10-25 years)	157	149	155	118	166	174
Imprisonment (25-35 years)	-	-	-	-	-	5
Life imprisonment	10	7	13	11	8	13

- As regards minor convicts

Imprisonment is usually applied for minor offenders. The trend of punishment by fine has decreased in 2013 and 2014. Imprisonment of up to two years is inefficient, it presents problems in regards to meeting objectives for the rehabilitation of non-dangerous offenders. Orientation towards short imprisonment sentences for minors, besides aggravating the situation of overpopulation, can negatively influence efforts for the remodeling of their behavior.

Figure 2.4 Sentencing practice for minors 2010-2014



For this category of minor offenders it would be good to work further for the application of alternatives to imprisonment.

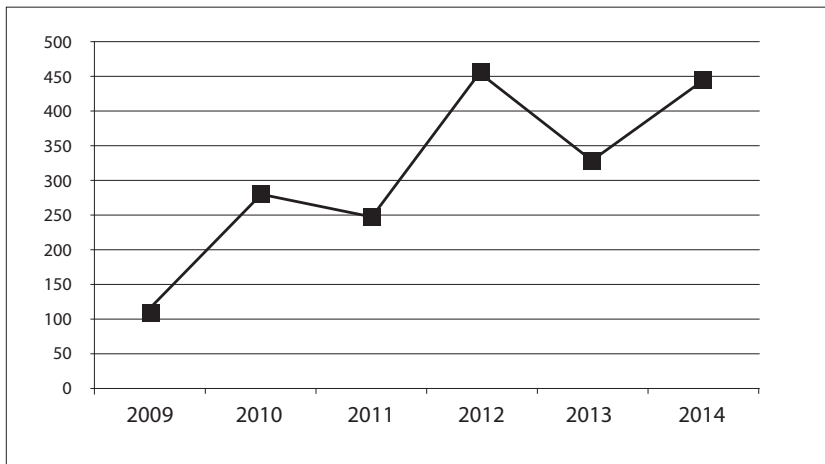
Table 2.4 Types of sentences ordered for minors

Sentence	2010	2011	2012	2013	2014
fine	26	24	45	33	13
up to 2 yrs impris.	539	553	724	525	481
2-5 yrs impris.	22	24	51	25	44
5-10 yrs impris.	4	4	11	6	7
10-25 yrs impris.	1	6	1	0	0



Meanwhile, the application of alternatives to imprisonment for minors has continuously increased since 2013.

Figure 2.5 Number of minors on alternatives to imprisonment (2009-2014)



### 3. More punitive sentences

In the framework of amendments to the Criminal Code in 2013, a number of criminal offences, about which a fine or imprisonment sentence could be ordered, are now punishable by imprisonment alone<sup>34</sup>. In some cases, the drastic nature of punishment applied does not seem to meet the requirement of the proportionality of sentence in relation to the danger that the offence presents, especially when no aggravating circumstances exist. For instance, criminal offences such as coercion through threat or violence to hand over property, stealing of property left to one's administration, forgery of documents or abuse of office, could be sentenced with a fine, in cases when they have not caused grave consequences or when the profile of the offender is of a person who is not highly dangerous to society. Based on the amendments to the law, the court cannot now order a fine for such offences..

The report of the General Prosecutor's Office on crime in 2014 reads that the criminal offense of murder due to family relations presents an increasing trend, regardless of the harsh policy followed by the serious crimes prosecution office against defendants accused for this crime.<sup>35</sup> We recall that the amendments of 2013 established very high margins of sentences (not less than 25 years or life sentence) for the perpetrators of murder within the family.

The Recommendations of the Ministry of Justice for the General Prosecutor in 'The

34 The amendments are provided under article 48 of Law No. 144/2013 'On some changes on Law no 7895, dated 27.01.1995 'The Criminal Code of the Republic of Albania'

35 Sokolaj, T. Report on crime during 2014, increase of murder in the family. <http://www.panorama.com.al/raporti-per-krimin-ne-vitin-2014-rriten-vrasjet-ne-familje/>

Fight Against Criminality in 2015' request the criminal policy of this body to be aimed at harshening the sentence for the criminal offence of unauthorized production and possession of weapons, for the criminal offences against the environment, for the criminal offence of illegal construction, for the criminal offence of stealing electrical power, etc<sup>36</sup>.

It is worth mentioning here, that increasing the length of imprisonment increases the number of detainees in the penitentiary institutions. Studies show that long imprisonment combined with stable numbers of new prisoners, would again result in an increased number of prisoners.<sup>37</sup>

The amendments brought about by Law 144/2013 to the criminal code, the sentence for the unauthorized production and possession of weapons, increased considerably; however, in 2014, persons sentenced for this offense remain at the same level compared to the preceding year (338 persons sentenced as compared to 335 in 2013). If we look at these recommendations, alongside the stance of the *ad hoc* Parliamentary Committee and group of high level experts for the justice reform, we notice a lack of coherence regarding the direction that the criminal policy should follow for this category of criminal offences. According to them, the constant amendments resulted in failure to have sentences harmonized within the provisions of the Criminal Code (for example, a case of unauthorized weapon possession can be practically sentenced on the same basis as murder)<sup>38</sup>. The Commission has also expressed the opinion that the most drastic punishment with the highest minimum margins, for non-application of alternative sentences by court, are not always an efficient solution and that the establishment of margins should follow a scientific methodology and not a trend of the moment to punish a certain behavior.<sup>39</sup> Some researchers are of the opinion that long sentences of imprisonment sometimes lose their primary objective, which is to rehabilitate the convict, and could negatively affect them. According to them, generally, levels of recidivism increase with the time spent in prison<sup>40</sup>.

Moreover, the criminal legislation has become more detailed over the years, recently including criminal offences or groups of criminal offences which not always serve to or are along the same lines of the essential objectives observed by the Criminal Law. Also, other offences against moral or ethical norms, such as disturbance

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36 Recommendation for the General Prosecutor 'On the Fight Against Criminality during 2015', p. 9. Ministry of Justice [http://www.drejtesia.gov.al/files/userfiles/Rekomandimet\\_per\\_Prokurorine\\_e\\_Pergjithshme.pdf](http://www.drejtesia.gov.al/files/userfiles/Rekomandimet_per_Prokurorine_e_Pergjithshme.pdf)

37 *Prison Overcrowding and Prison Population Inflation*: Recommendation No. R (99) 22, Adopted by the Committee of Ministers of the Council of Europe on 30 September 1999 and Report. (Council of Europe Pub., 2000), 41.

38 Special Parliamentary Committee on the Reform of the System of Justice, "Analysis of justice system in Albania", June 2015, 158, <http://shqiptarja.com/>, accessed on 3 July 2015.

39 See above "Analysis of Justice System in Albania", 173.

40 Paula Smith, M.A. Claire Goggin, and M.A. Paul Gendreau, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences* (2002), file:///C:/Users/pc/Downloads/Smith%20Goggin%20&%20Gendreau%202002.pdf, accessed on June 15, 2013.

of public peace, immoral behavior in public<sup>41</sup>, as well as offense and defamation between private persons could be addressed respectively through administrative or civil proceedings, instead of being subject to criminal punishment.<sup>42</sup>

The political requirement that the prosecutor's offices and judiciary should be harsher against perpetrators of minor offences have also been reflected at the sentencing stage.

Thus, in 2014, statistical data show that 526 persons were sentenced for the illegal extraction of electricity and 3372 people were sentenced for drunk driving or without driving license. This figure is several times higher compared to the number of people sentenced for such offences in 2013 (53 persons for illegal connections of electricity or electrical power theft and 465 persons sentenced for drunk driving or without driving license<sup>43</sup>).

The solution to the problem must not be seen only in terms of harsher sentences but also in terms of finding mechanisms which increase law enforcement efficiency. Considering that the amendments to the law are delayed, it cannot be said that they have considerably influenced the current increase of the number of inmates in the institutions for the execution of the criminal decisions. This stance, however, will lead in the establishment of a stable body of convicts and will be inevitably reflected in a further increase.

#### 4. Low application of some of alternatives to imprisonment

Alternatives to imprisonment play a very important role in the differentiation of offenders based on their personal characteristics and needs. In 2008, a number of alternative sentences were sanctioned in the Criminal Code; such as semi-freedom, suspension of the execution of the imprisonment decision and placement in probation, house arrest, and work in public interest or early release on parole. The Probation Service is the responsible authority for an efficient implementation of alternative sentences and constant monitoring of persons placed under one of these measures.

The increased application of alternative sentences by courts from year to year is commendable as indicated below.

41 Article 274 of the Criminal Code of R.A – Disturbance of Public Peace *'Throwing stones or other items into the premises of a citizen, creating disturbing noises such as gunshots or other blasts, using sirens on vehicles irregularly, or doing any other indecent behavior in streets, squares and public places, which clearly affect peace and morality or show a clear indifference for the environment, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment'*.

42 For a similar opinion see: *'OSCE media freedom representative, on official visit to Denmark, urges for full decriminalization of defamation, blasphemy.'* <http://www.osce.org/fom/108769>, accessed on July 1, 2015.

43 Statistical Annual 2014, of the Ministry of Justice, p. 38-44, <http://www.drejtesia.gov.al/>.

Type of alternative sentence	2011	2012	2013	2014
Article 59 of CC, Suspension	1,616	2,166	1,758	3,189
Article 59/a of CC, Home confinement	68	34	36	56
Article 64 of CC, Release on parole	206	188	146	64
Article 63 of CC, Work in public interest	226	214	145	694
Article 58 of CC, Semi-freedom	1	0	0	0
<b>Total</b>	<b>2,117</b>	<b>2,602</b>	<b>2,085</b>	<b>4,003</b>

However, it must be pointed out that not all alternative sentences have been applied as much as they could have been. For example, the alternative sentence of semi-freedom has been applied only once to date.

Based on the law, the court can order the execution of imprisonment in semi-freedom, for sentences up to one year imprisonment, by taking into account, on a case by case basis, the obligations of the sentenced person with regards to work, education, professional qualification or skills, essential family responsibilities, or need for medical treatment or rehabilitation<sup>44</sup>. Persons in semi-freedom are obliged to return in prison after carrying out obligations or pertinent tasks, within the time frame ordered by the court. The application of this alternative sentence requires that special institutions become functional, different from conventional prisons, which are designed for inmates deprived of their liberty all the time, and which, as a result, are characterized by very restrictive security measures. To efficiently apply such a sentence, it is necessary to establish open institutions where the sentence can be served. These establishments would engage sufficient human resources to monitor that educational, professional, family-related, or medical obligations for the population.

The alternative sentence of house arrest has had a low application as a result of the lack of the necessary number of employees to enable the supervision of the inmate and of the low application of electronic monitoring.

Based on the law, electronic monitoring is applied, among others, for persons who are subject to:

- *Coercive remand orders provided for in item “a”, “c” and “d” of Article 232 of the Criminal Procedure Code;*
- *Alternative to imprisonment provided for in articles 58, 59, 59/a and 64 of the Criminal Code<sup>45</sup>;*

Low application of electronic monitoring in practice directly influences the reduction of possibilities for the application of alternative sentences such as house arrest or on parole.

According to data from the Probation Service, the electronic monitoring system has a capacity to monitor a total of 300 persons at any one time. This measure has

<sup>44</sup> Article 58 of the Criminal Code

<sup>45</sup> See: Law no. 10 494, dt 22.12.2011 “On electronic monitoring of persons whose mobility is restricted by a court decision”.

been applied in 23 cases since 2013.

All subjects under monitoring were placed in coercive remand orders, as per article 232 of Criminal Procedure Code. In 2015, 15 persons have been placed under electronic monitoring.

According to criminal law practitioners, the reason behind the low application of this measure is related to the small number of requests for its application by prosecutors, and in the hesitance of courts to allow such requests.

Until recently, a factor which hindered the broad application of electronic monitoring was the limited geographic coverage of the infrastructure for technical support. Consequently, this measure was applied only in the region of Tirana.

Currently, the necessary supporting infrastructure has been expanded in all regions of the country; however, the application remains low due to low level of knowledge and awareness by the criminal justice actors, regarding the circumstances of this measure's application.

## 5. *Treatment of persons suffering from mental problems*

The legal obligation to establish special medical institutions, for purposes of treating persons about whom the court has ordered "obligatory medical treatment" and "temporary hospitalization", have not been applied<sup>46</sup>. The treatment of this category of inmates in the IECs continues to be against the law, thus contributing to an artificial increase of prison population.

During 2015, 98 persons under the measure of obligatory medical treatment and 290 persons with mental health problems have been identified. These persons are held in the premises of Prison Hospital and IEC in Kruja of a capacity of 294 places.

## 6. *Increase of criminality*

### 6.1 *Social-economic factors*

The problem of the increasing population in prisons is not a result of only following inappropriate criminal policies. The fact that the high prison population is also accompanied by a parallel increase in criminality should not be underestimated..

To deal with the issue of prisons' overpopulation requires the development of a

<sup>46</sup> Article 28 of the Law no. 44/2012 "on Mental Health" provide for:

1. Special medical institutions are those institutions which serve to treat persons, suffering from from mental disorder who have committed a criminal offence, for whom the competent court has decided obligatory medical treatment in a detention or prison medical institution which treats detainees or prisoners suffering mental health disorders while they serve the sentence, and also for the medical treatment of persons for whom the court has decided temporary hospitalisation in a special medial institution, as per article 239 if the Criminal Procedure Code.
2. Medical treatment of persons in special medical institutions is the same with the treatment of other patients suffering mental health disorders. Special medical institutions, determined in item 1 of this article, are part of the integrated health system. The manners and rules to establish and run such special medical instituions and the security measures to protect them are determined by the Council of Ministers.

comprehensive criminal policy which focuses not only on the processing of proper mechanisms to punish and treat the convicts, but also on drafting strategies for crime prevention. This process requires a comprehensive approach both in relation to the current situation of criminality in the country and also towards risk factors which vary across different regions of the country. Studies conducted on the current prisoner population indicate that the main factors influencing criminal behavior are related to the social structure, hard economic conditions and experiences of domestic violence. Based on annual statistics of the Ministry of Justice, the criminal offences committed against property and in the economic field continue to be the criminal offences of highest occurrence.

The following table shows that the offences in question constitute the biggest number of the committed criminal offences in country level, over recent years.

Sentenced persons according to the categories of criminal offences in %	2010	2011	2012	2013	2014
Criminal offences against property and in the economic field	54	54	55	52	51
Criminal offences against public order and security	30	31	31	30	30
Criminal offences against moral, dignity and family	2	2	2	6	9
Criminal offences against justice	4	5	4	3	3.5
Criminal offences against life	4	4	3	1	3
Criminal offences against health	2	2	2	2	2
Others	4	3	3	6	2

The increasing trend of criminal offences committed against property shows that one of the dominating factors of crime incitement is economically driven..

As can be seen in the Table, the persons sentenced for this category of criminal offences constitute half of the total number of all sentenced persons. The main reasons for economic crime should be seen as closely related to the low living standard, lack of proportional (uniform) economic development between different geographic zones and high rates of unemployment among young people.. In Albania there is a disproportionality of economic development between cities and villages and between cities themselves. This is mainly due to the failure of governmental policies in promoting and supporting a well-structured, wide ranging economy from the geographic viewpoint. The main investments and industrial enterprises are concentrated in a few big cities and this has further emphasized the imbalance in the development of urban centers

Main industrial investments and plants are concentrated in some of the biggest towns and this has deepened imbalances in the development of urban centers and remote rural areas. Lack of investment and limited local resources in supporting the economic development have increased unemployment and, as a result, have led to an even graver economic situation in these areas. Disproportionality in economic

## PART II

### CAUSES OF PRISON OVERCROWDING

development has constantly generated waves of uncontrolled demographic movement and has resulted in broadening the gap between offer and demand in the labor market.

Inequality of income is another entrenched and serious problem due to the rapid changes to the social structure of towns. Unemployment and/or inequality of income, together with personal risk factors, can cause involvement in criminal behaviours<sup>47</sup>.

Statistics show that unemployment levels remain high, especially for the age group of 15-29, where the unemployment rate is 34,1. Unemployment of young people has increased, as compared to previous years.<sup>48</sup>

Unemployment level						
Age group	2010	2011	2012	2013	2014	2015
15-29	22,5	21,9	26,0	27,2	32,5	34,1
15-64	14,2	14,3	13,8	16,4	17,9	17,3

Research shows that high unemployment rate may intensify the motivation to commit crime. According to the Vecker-Erlach prevention model (theory) "being young and unemployed increases the chances to commit a crime"<sup>49</sup>.

Studies on current prison population show that a considerable number of inmates are young, 18<30 years old. This category of sentenced persons constitutes 47.4% of the total number of inmates.

In conclusion, it is worth mentioning that the socio-economic elements which influence criminality must be given the necessary attention when drafting crime-prevention policies, for purposes of early prevention of criminal behaviours.

<sup>47</sup> See: Philip Feldman, *The Psychology of Crime: A Social Science Textbook*, (Cambridge: Cambridge University Press, 1993), 253-258.

<sup>48</sup> Source: Labour Force Surveys 2007-2014, <http://www.instat.gov.a>

<sup>49</sup> Sunčica Vujić, *Econometric studies to the economic and social factors of crime*, (Tinbergen Institute research series, no.454, 2009), 98.







## PART III

### CONCLUSIONS AND RECOMMENDATIONS

In general terms, an effective policy to reduce prison overcrowding requires a reassessment of both the actual criminal policy and the operating practice of the criminal justice system. In Albania, crime issues are traditionally addressed by the State through the institutionalised response of the criminal justice system. It seems that the prevailing punitive approach has failed to yield satisfactory results in reducing crime rate so far. Statistics indicate that the number of criminal cases has followed a rising trend in recent years.

In the light of increased criminality, governments often face a difficult dilemma: should they move towards a more punitive policy, or invest more in social policy and adaptation of non-custodial instruments for control of deviant behaviour.

This document aims to assist policymakers by setting forth a set of recommendations on potential action lines in the field of criminal policy and management of the penitentiary system.

The recommendations below include further intervention that are necessary to address the problems tackled in this document.

#### **1.** *On the overall orientation of the criminal policy*

##### **Conclusions**

- The usual practice shows a considerable increase in the application of prison sentences over other main or alternative sentences. More importance is attached to the preventive impact that imprisonment of offenders has in society, rather than to the preventive impact that the sentence might have on offenders themselves.
- The trend to turn criminal penalties into risk management instruments and fulfilment of public safety and security goals shifts the attention of the criminal justice system away from the individual's guilt (for a criminal

offence committed in the past) and onto the danger of potential criminal behaviour in the future<sup>50</sup>. In this case, criminal punishments corresponds to what may occur and this turns it (from a social control mechanism) into a 'social protection' mechanism. Hence, there is the risk that the criminal law becomes an element of overall security policy which seeks to optimise protection against dangerous individuals under the cost of justice and proportional sentences<sup>51</sup>.

- It is a practice-based generalization that governments taking a punitive stand against crime fail to address the key factors leading to criminal behaviour; consequently, the prison population increases more with detainees from most vulnerable groups, rather than with dangerous and violent offenders<sup>52</sup>. Moreover, critics of situational crime prevention policies affirm that measures to discourage criminal motivation must be taken, otherwise reduction of chances to commit crime will simply lead to crime redistribution and not to crime decrease<sup>53</sup>.
- Such a trend is problematic, because it may lead to failure to successfully fulfil both the crime prevention and individual prevention functions. Studies show that there is no direct link between increased prison sentences and decreased crime rate<sup>54</sup>. Even when the mutual correlation is acknowledged, high conviction rates seem to have little impact on reducing crime rates, and sometimes it is even contradictory<sup>55</sup>. This reinforces the belief that - besides repressive criminal stance - there is a set of socio-economic factors and the characteristics of the structure of local communities that influence in the reduction or increase of criminality over certain periods.
- Concentrated focus on the impact of the sentences in general shifts the attention away from the impact of the deprivation of liberty over the individual himself, particularly first-time offenders. Imprisonment of first-time offenders may give rise to deviant behaviour in the future. Experts increasingly express the concern that prisons may contribute to more violent behaviour patterns among the detainees. Prison life is characterized by a set of pressuring factors such as confined living and exposure to physical

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50 See: Albrecht, H.J. Criminal Sanctions and Crime Control: Past, Presence and Future in Europe. Book of the science symposium 'Criminal Justice System and the Social Welfare', 2015, pg. 10 Tirana: Printed by 'Mileniumi i Ri'.

51 Hassemer, W. (2006). Sicherheit durch Strafrecht. HRR-Strafrecht 7(4), 130-143, cituar nga Albrecht, H.J. Criminal Sanctions and Crime Control: Past, Presence and Future in Europe.... 2015, f. 10.

52 See: United Nations Office on Drugs And Crime (2013). Custodial and Non-Custodial Measures: The Prison System, f, 1, [http://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/1\\_Prison\\_%20System.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/1_Prison_%20System.pdf), accessed on 30 June 2015.

53 Clarke, R.V. Situational Prevention, Criminology and Social Values., in Von Hirsch, A., Garland, D., & Wakefield, A. (2000). Ethical and Social Perspectives on Situational Crime Prevention. Portland: Hart Publishing.

54 Aebi, M.F., Linde, A., dhe Delgrande, N. Is There a Relationship Between Imprisonment and Crime in Western Europe??. European Journal of Criminal Policy and Research, 2015, fq. 1-22.

55 See: Brym, R. J., dhe Lie, J. Sociology: Pop Culture to Social Structure, Belmont: Wadsworth Cengage Learning, 2013, f. 117; si dhe Shahidullah, SH.M. Crime Policy in America: Law, Institutions and Programs. Lanham, University Press of America, 2008, f.272.

violence. Meanwhile, funds for education, vocational training, recreational programmes, physical activities or psychological counselling are limited. Naturally, the prison population finds itself under increasing psychological pressure, unprofessional treatment and lacking job opportunities; these constitute a bigger threat following release from the penitentiary system, than imprisonment in the first place<sup>56</sup>.

- The negative impact of the prison sentence of an adult over his/her family must also be considered. Criminologists believe that family disruption is a significant factor that compels children - lacking the attention/control of one parent - towards deviant behaviour<sup>57</sup>.
- indicated above heavier punishment is likely to lead to escalation of crime. Instead of serving as crime deterrent, prison sentence may increase crime rate in the long run<sup>58</sup>.

## Recommendations

- Revision of the punitive approach towards a more rational framework is of fundamental importance. International treaties recommend that certain types of offenses are decriminalised or reclassified as lesser offenses, so that they are not punishable by prison sentences<sup>59</sup>.
- It is important that the response of the criminal justice system focuses more on special crime prevention interests alongside the overall prevention goals.
- Increasing attention must be attached to non-custodial policies, in order to prevent crime and criminal behaviour. These policies stem from the premise that strategies for crime prevention and deviant behaviour may work more effectively when adapted to the specific needs and concerns of the local communities. Social support policies place the emphasis on the rehabilitation of the offender, and on the rehabilitation of the society or communities in general, as a way to prevent the individual's need for involvement in criminal behaviour<sup>60</sup>.
- The minimum prison sentence for a number of criminal offences should be reduced, in order to prevent the execution of prison sentences in favour of alternative sentences. The court may decide to substitute the prison sentence

56 See: Moore, L. D., and Elkavich, A. (2008). Who's using and who's doing time: Incarceration, the war on drugs, and public health. *American Journal of Public Health*, 98(5), 782–786, cited in: Brym, R. J., and Lie, J. *Sociology: Pop Culture to Social Structure*, Belmont: Wadsworth Cengage Learning, 2013, p. 117;

57 See: Gaines, L.K., and Mille, R.L. *Criminal Justice in Action: The Core*. 8th edition. Boston: Cengage Learning. 2013, p. 134-168.

58 See: Lynch, J., and Sabol, W. (2010). *Prisoner Reentry in Perspective*, cited by Siegel, L. *Criminology*. 2012, p. 128, Belmont: Wadsworth, Cengage Learning.

59 See above: Recommendation No. R(99) 2, (para 4).

60 Roberts, A.R., & Springer, D.W. (2007). *Social Work in Juvenile and Criminal Justice Settings*, 3rd edition. Springfield: Charles C Thomas Publisher.

with one of the alternative sentences of semi-liberty, house confinement or community work, when the sentence awarded is between 1 to 2 years, on a case-by-case basis. Should the law prescribe more than 2 years of prison for a certain criminal offence, the court would not be entitled to convert the prison sentence into an alternative one. Although the court is entitled to reduce a sentence to its minimum - pursuant to Article 58 of the Criminal Code – it must be recalled that this right may be exercised only in special cases. For this reason, it is necessary to introduce legal provisions for the overall reduction of the minimum prison sentence for low-risk offenders.

- Particular attention should be attached also to the rationalisation of terms of maximum sentence. In this view, a comprehensive assessment of the criminal offences under the Criminal Code, in order to estimate proportionality between the duration and gravity of sentences. Due consideration should be made of the negative impact of long-term prison sentences on the development of the prison populations in the future<sup>61</sup>, as well as the rising probability of re-offending.
- Re-classification of criminal offences and reduction of minimum and maximum sentence for some of them would contribute to shortening the duration of detention (being that detention deadlines are calculated in proportion with the sentence prescribed for the offence that the suspect is accused of), and consequently would improve the overcrowding situation in the detention institutions.
- Solving the prison overcrowding situation demands the development of a criminal policy which engages primarily in drafting strategies for preventing crime. This process requires, first of all, a comprehensive study of the current situation of criminality in the country, risk factors and their ratio in different regions of the country. To discourage criminal motivation, deep structural reforms are necessary to guarantee a broad and proportionate extension of economic and social measures in different regions of the country.
- When it comes to the determination of the primary objectives of the criminal policy and the related implementing measures, the establishment of a Committee composed of professionals and scholars in the respective field would be valuable. The Committee might perform its task by periodical meetings, in order to discuss on matters of concern. This would provide an effective tool for reviewing current knowledge and suggestions on issues of criminal policy, and at the same time, a mechanism which is disassociated from political influences of one political wing or another.

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<sup>61</sup> See: Aebi, M.F., Linde, A., dhe Delgrande, N. Is There a Relationship Between Imprisonment and Crime in Western Europe?. European Journal of Criminal Policy and Research, 2015, pg. 1-22.

## 2. Juvenile criminal policy

- Punitive practices play a very important role in modifying the behaviour of juvenile offenders, particularly first-time offenders. Measures on juvenile offenders must be adequately imposed and enforced, otherwise those will fuel their criminal tendency. The prison sentence remains the prevalent sanction imposed by courts. It should be noted that such a sentence does not match their needs for education, family support, professional training, employment and social inclusion.
- For juvenile criminal offenders, a stable trend in the application of imprisonment up to two years is noted. The efficiency of imprisonment up to two years appears to be problematic as regards the achievement of objectives in the rehabilitation of non-dangerous convicts. Orientation towards short prison sentences for juvenile offenders, besides aggravating the overcrowding situation, may also negatively influence efforts in remodelling juveniles' behaviour.
- Growing recidivism among juveniles clearly shows that confinement seems to be inefficient in neutralising criminal risk among juveniles.
- Lack of special correctional institutions for juveniles represents a particular problem for juvenile criminal justice. Article 46 of the Criminal Code stipulates that "...correctional sanctions may be applied against juveniles who are exempt from sentences or have not reached the age of criminal responsibility". The Prosecutor General stated that compulsory correctional sanctions against juveniles exempt from sentences remain inapplicable, due to the lack of a proper correctional institution within the penitentiary juvenile structures<sup>62</sup>.
- The lack of juvenile correctional institutions leads inevitably to harsher sanctions against juveniles, although circumstances allow for milder forms of sentences.

## Recommendations

- The juvenile punishment policy must be geared towards a "minimum intervention" perspective which allows imprisonment or custodial measures only when absolutely necessary. The actors of juvenile justice must balance the need to fulfil public security goals with the goals of juvenile re-integration plans, particularly their needs for education, sheltering, family supervision, employment, medical treatment and social inclusion.

62 Yearly report of the Albanian General Prosecutor "On the situation of criminality in 2013". [http://www.pp.gov.al/web/raporti\\_2013\\_855.pdf](http://www.pp.gov.al/web/raporti_2013_855.pdf)

- Application of alternatives to imprisonment opens up opportunities to meet these goals through control measures that are effective and equality demanding towards their behaviour. Non-custodial sanctions create a more effective education and enabling natural environment, and therefore have better premise of transmitting the message of responsible conduct to juveniles.
- The best solution for juveniles exempt from sentences would be to accommodate them in attendance centres, where they would obtain services tailored to their needs. For this reason, Article 46 of the Criminal Code must be reformulated in this way: "...juveniles who are exempt from sentences or have not reached the age of criminal responsibility may be obliged to attend a compulsory programme in attendance centres
- Placement in a specific programme at the attendance centres – instead of correctional institutions – would ensure thorough assistance to juveniles in conflict with the law, and would go beyond their correctional goals. Juvenile special care centres would provide - besides the educational programmes - psycho-social assistance for problems like difficulties in socialisation, anger management etc.

### 3. *Application of alternatives to prison sentences*

#### **Conclusions**

- Application of alternative sentences would shift the focus of criminal justice from the offender's behaviour, toward creating the opportunities that allow offenders to demonstrate their skills (competent behaviour) and build links with the community.
- Application of alternatives to imprisonment has seen a rising trend on a year-by-year basis, but their number remains low compared to the total number of persons convicted each year. Courts continue to apply the prison sentence predominantly, contributing to further increase of the prison population.
- The low rate of application of alternative sentences is due to the lack of adequate support infrastructure, scepticism of the court in relation to the effectiveness of these sanctions in the rehabilitation of the offender, and the high discretion that courts enjoy in delivering such sentences based on the actual legal provisions.
- The low application of the "stay at home" sentence has been a consequence of the low practical application of the electronic surveillance measure. Since this measure began being applied in 2013, only 23 cases of persons put

under electronic surveillance are accounted for, whereas the system has a capacity of covering the surveillance of 300 persons<sup>63</sup>. Even in cases when this measure has been applied, all subjects put under surveillance have been under binding measures, according to article 232 of the Criminal Procedure Code, but not convicted subjects, on which the court has decided the substitution of the prison sentence with the stay-at-home alternative sentence.

- According to the opinion of the High Level Experts Group of the Justice Reform, the issues concerning this kind of special surveillance lie in the fact that the Criminal Procedure Code has not provided for a special application criterion<sup>64</sup>. Moreover, the lack of provision of criteria for when to apply electronic surveillance is not in accordance with Principle 58 of Recommendation CM/Rec (2010) 1 of the Committee of Ministers of the Council of Europe (CoE) "Council of Europe Rules and Recommendations on Probation", which states that "The level of technological surveillance shall not be greater than is required in an individual case, taking into consideration the seriousness of the offence committed and the risk posed to community safety."
- Another procedural element influencing the practice of applying alternative sentences remains the lack of regulation of the legal status of the Probation Service in the Criminal Procedure Code. As the High Level Experts Group for the Justice Reform has also found, the law has not determined clear criteria concerning cases when the drafting of an evaluation report by the Probation Service is necessary, be that for the prosecution or the court, and that it is nowhere provided for the value of these reports in the criminal process<sup>65</sup>.

## Recommendations

- *The elaboration of effective control mechanisms on court provisions regarding alternative sentences*

The present formulation of provisions on the alternatives to prison sentences leaves space to more judicial discretion as regards the evaluation of the possibility of their implementation. Thus, the general expression used in these provisions is that the court, in the presence of several circumstances related to the personal qualities or conditions of the offender or the act committed by him/her, **may** rule for the suspension of the execution of the imprisonment ruling and have the convict serve an alternative sentence.

<sup>63</sup> Data taken officially by the Probation Service

<sup>64</sup> See: Ad Hoc Parliamentary Committee on Justice Reform, High Level Experts Group, "Analysis of the Justice System in Albania", June, 2015, p. 163. Source: <http://shqiptarja.com/>.

<sup>65</sup> For more, see: "Analysis of the Justice System in Albania", Ad Hoc Parliamentary Committee on Justice Reform, High Level Experts Group, June, 2015, p. 174. Source: <http://shqiptarja.com>



In these conditions, it is left to the judge's personal evaluation whether he/she will take into consideration the possibility of implementing an alternative sentence to imprisonment. Furthermore, the judge, in the final ruling for the issuance of the sentence, is not obliged to reason on the fact of the refusal of the demand for the issuance of an alternative sentence.

This makes impossible the possibility of appealing a court ruling, in cases when the object of the demand of appeal is only the review of the court's position on the refusal of issuing an alternative sentence. The lack of effective appeal possibilities in cases of the court's rejection of demands for the implementation of alternative sentences has a considerable impact on the reduction of practical possibilities for the implementation of alternative sentences. Moreover, the lack of accountability mechanisms for the judiciary on the cases of refusing to issue alternative sentences may also affect the reduction of the courts' predisposition towards implementing these sentences.

- To reduce judicial discretion in the award of alternative sentences, it would be necessary to reformulate the wording of the relevant provisions as follows: "the court **shall take into consideration** the possibility of suspending the execution of the prison sentence and issuing an alternative sentence". In these circumstances, in all cases when the offender and offense present low risk, the court would be obliged to take into consideration the possibility of issuing an alternative sentence instead of a prison sentence and, in case of rejection, explain the reasons for refusing to suspend the execution of the prison sentence.
- This would give the convicted person the possibility to exercise the right of appeal against a court ruling regarding provisions on the inapplicability of the alternative sentence.
- The increase of pressure to evaluate the implementation of alternative sentences and to guarantee control mechanisms for the activities of the court in implementing these sentences would also have a direct impact on the reduction of general passivity witnessed among the judiciary as regards these practices. This passivity, besides the skepticism in relation to the effectiveness of alternative sentences, is also caused by the more comfortable position the award of a prison sentence results in as compared to the procedure of issuing an alternative sentence, which requires bigger investment in time and energy on the side of judges.
- More effort must be made to establish appropriate monitoring structures for the alternative sentence of semi-liberty, so that this alternative to imprisonment can be used more extensively for the category of offenders who present low threat to society.



### PART III

#### CONCLUSIONS AND RECOMMENDATIONS

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- The implementation of this measure would also constitute an efficient solution for the rehabilitation of juvenile offenders, who are orphans or who have a history of domestic violence. The alternative of house confinement cannot be applied for this category and, if efficient mechanisms for placing them in the semi-liberty regime are absent, the court would see their imprisonment as the only available alternative.
- In order to guarantee a sustainable infrastructure for the employment of convicts in works of interest to the public it is necessary to broaden the cooperation framework between the Probation Service and public agencies and private organizations and, when possible, this cooperation must be grounded on written agreements, where each of the parties takes on long-term commitments and responsibility.
- The expansion of institutional capacities in the implementation of alternative sentences to imprisonment, would give judges and prosecutors more confidence in the effectiveness of the application of alternative sentences in the community, and would, thereby, increase availability for their application to short prison sentences<sup>66</sup>.
- It is necessary that in the C.Pr.C be clarified further the procedural position of the Probation Service so that the opinion of probation officers be retrieved in every stage of criminal proceedings.
- To expand the application of electronic monitoring, it is necessary that relevant provisions be added in the Code of Criminal Procedure so that to make clear the conditions, and the limits of the application of electronic monitoring.
- Raising awareness and increasing prosecutors' and judges' trust in the efficiency of alternative sentences, as well as training them on circumstances of the application of the electronic surveillance measure.
- In practical terms, a specific contribution would represent the drafting of a manual for judges and prosecutors as regards the circumstances of application of the electronic monitoring measure.

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<sup>66</sup> Recommendation No. R(99) 2 of the The Committee of Ministers of Council of Europe 'concerning prison overcrowding and prison population inflation', (para. 22), <http://pjp-eu.coe.int/>, accessed on 1 June 2015.

#### 4. *Risk assessment of offenders and the type of sentence or place where the sentence will be served*

### Recommendations

- For a more rational and more efficient management of resources of the penitentiary system it is necessary to establish a Risk Assessment and Management System for prisoners, including assessment tools for juveniles and young adults. Instruments of risk assessment and management are already considered an integral part of the response of the criminal justice system against crime<sup>67</sup>. Consolidation of such a system would increase the confidence of the court on the accuracy of assessment made regarding the level of threat of the perpetrators, and as a result, will reduce the tendency to apply imprisonment sentences, only in cases where the risk posed by the offender does not justify another more lenient measure. This is due to the fact that the processing of evaluation instruments greatly assists the court in building a much clearer profile of offenders, thanks to a preliminary review of well-structured reports containing complete data on personality traits and lifestyle of the offender<sup>68</sup>. Such report is divided into separate sections containing usually these categories of data: a) environment in the family, social relationships, living conditions; b) education, employment and vocational training; c) the use or not of alcohol and drugs; d) physical and psychological conditions; e) motivation for committing the offence / offenses and his attitude towards the illegal action. All information collected in these special sections, is then processed to come up with a general conclusion on the offender's risk level and his inclination to be involved again in criminal behaviour. For this purpose, the establishment of a risk assessment system for offenders seems more than necessary. This system should be administered by the Probation Service.
- It would be appropriate that the Risk Assessment and Management System be administered by the General Directorate of Prisons in cooperation with other professional structures, which could be engaged in a common frame of cooperation based on mutual agreements with the Ministry of Social Welfare and the Ministry of Health, as well as with NGO-s which are able to provide the related services.
- On the other hand, when the court renders an imprisonment sentence, the risk assessment system is a very important mechanism for determining the type of the penitentiary institution where the convict will serve the sentence. This helps in a more equitable distribution of convicts in institutions with different levels of security according to the real danger that each convict presents.
- According to the current legal framework, the court determines the type of institution where the convict will serve the sentence on the basis of the court decision and the criteria set forth in the law "On the rights and treatment

67 Roesch, R., Zapf, P., dhe Hart, S.D. *Forensic Psychology and Law*. Hoboken: John Wiley & Sons, 2010, p. 274.

68 See: Soothill, K., Rogers, P., dhe Dolan, M. *Handbook of Forensic Mental Health*. Willian Publishing, 2008, f. 206.

of imprisoned persons”<sup>69</sup>. Due to the lack of appropriate assessment mechanisms, the decision regarding the Institution where the inmate will be placed is not preceded by a thorough study of the personality of the offender. The principle of fair administration of criminal justice requires that the regime of serving the imprisonment sentence corresponds to the real degree of danger posed by the convict. The interests of justice and the rights of the convicted person would be better guaranteed if the decision related to which penitentiary institution the convicted person will serve the sentence is taken through close cooperation among the Court, the Prosecutor’s Office and the General Directorate of Prisons. This also helps in a fairer distribution of prisoners in the penitentiary system and improves the situation of overcrowding within the special institutions where sentences are served.

- The establishment of risk assessment and management mechanisms would be in line with the requirements of CoE Recommendation CM/Rec (2014)3 ‘On dangerous offenders’<sup>70</sup>, clearly expressing the importance of these mechanisms so that the criminal justice bodies can properly address this category of offenders and their follow-up treatment. Besides acknowledging the importance of these risk assessment of dangerous offenders this recommendation gives particular attention to the instruments of risk management, as well. Risk management is described as the process of selecting and implementing a series of intervention measures in penitentiary institutions or community centres in order to reduce the risk of committing serious crimes by offenders who are considered to be dangerous.
- Risk management programs should facilitate effective communication and should support overall cooperation between the prison administration, probation officers, social and healthcare services and law-enforcement agencies.<sup>71</sup>
- It is worth mentioning that the risk assessment process should be projected as an ongoing process, which does not end when the prosecutor determines in which penitentiary institution the convict will be accommodated. The assessment of the prisoners shall be made on a periodic basis, because in the course of detention, certain criminogenic factors may cease to exist or, otherwise, new factors may appear, and as a result, the danger posed by the defendant may not respond to the security parameters of the institution where they are currently serving their sentence. Thus, circumstances may require that a prisoner be transferred from a high-security prison to an

69 See article 22 of Law No. 8331, dated 21 April 1998, “On the execution of criminal rulings”, amended.

70 Recommendation CM/Rec(2014)3 of the Committee of Ministers to member States concerning dangerous offenders. <https://wcd.coe.int>

71 Recommendation CM/Rec(2014)3 of the Committee of Ministers to member States concerning dangerous offenders. <https://wcd.coe.int>

institution of a lower level of security, or vice-versa.

- The effective implementation of a continuous risk management system also means designing programs with specific measures oriented towards a gradual improvement of the prisoners in order to reduce their risk. This requires coordination and cooperation among different agencies in providing assistance and special services that facilitate their rehabilitation.

## **5.** *Application of compulsory medical treatment in medical institutions*

- Currently, 117 mentally ill persons, for whom the court has ordered the measure of compulsory treatment, are placed in the penitentiary institution in Kruja<sup>72</sup>. About 290 convicted or detained persons, with mental health problems, are in the prison hospital. In its most recent report, the Helsinki Albanian Committee has underlined that the situation of the execution of the court decisions with medical measures in a psychiatric institution, set forth in article 46 of the Criminal Code, continues to be applied contrary to the law, even though it is a constant concern since 1997<sup>73</sup>.
- The separate section for the mentally ill, within the penitentiary institution in Kruja does not meet the standards of a healthcare institution where mentally ill persons can receive appropriate medical care for their specific needs. This is contrary to the provisions of Article 46 of the Criminal Code which reads that “the medical measure consists in placing irresponsible persons in a medical institution”.
- Moreover, keeping them in a Penitentiary Institution, even though in a separate section, is against the obligations set forth by the UNO convention “On the rights of persons with disabilities”, for a non-discriminatory treatment for them<sup>74</sup>. Article 5, named ‘Equality and non-discrimination’ reads that ‘to the purpose of encouraging equality and eliminate discrimination, Member States must take all the proper steps to ensure reasonable accommodation is offered’. The accommodation of mentally ill persons in the premises of a penitentiary institution constitutes a form of discrimination because the services offered in these premises do not sufficiently meet their needs for special medical care.
- Many researchers are of the opinion that the confinement of prisoners with mental health problems in separate institutions within the penitentiary system constitutes a serious violation of their rights, because, in a way, it

<sup>72</sup> Source: General Directorate of Prisons, Statistical data – August 2015.

<sup>73</sup> “Study report on rulings of the prosecution on non-initiation and termination of criminal proceedings and proceedings for the execution of criminal rulings”, the Albanian Helsinki Committee, Tirana 2014, p.80. <http://ahc.org.al/>, accessed on 26 September 2015.

<sup>74</sup> Law no. 108/2012 “On the ratification of the UN Convention” “On the rights of persons with disabilities”,

puts them in a form of lifelong deprivation of freedom<sup>75</sup>. This is because the state of mental irresponsibility in the chronically mentally ill can last throughout their lives, and therefore, the isolation in the institution would be for life.

## Recommendations

- It is necessary to intervene quickly to transfer irresponsible persons, who have committed offenses, from the penitentiary system under the care and attention of the health and social care.
- A convenient solution for providing the necessary health services to these people will be the establishment of legal psychiatric treatment centres (Forensic Psychiatric Centres), as structures under the Ministry of Health. These centres would function as separate units to provide comprehensive assessment, treatment and rehabilitation programs for mentally ill prisoners.
- To ensure that the treatment provides for the needs of the mentally ill, programs offered in these centres should focus on two main lines of action: a) the provision of specialized medical and clinical assistance; b) the provision of community-based treatments that enable them to place such persons in monitored semi-open environments.

## 6. *Application of restorative justice instruments*

### Conclusions

- The implementation of restorative justice in criminal cases remains low. We speak here of the notion of restorative justice as a process that brings together all the parties affected by the damage stemming from the illegal act, such as offenders and their families, victims and their families, community and state agencies' representatives and agencies such as the police.<sup>76</sup> These entities enter into negotiations with a view to finding a solution suitable for the restoration of damages caused. Although the legal framework that regulates mediation in criminal cases<sup>77</sup> is in force since several years now, the number of cases resolved through mediation continues to be low.
- The prevailing perception about criminal offenses is that they are committed against the state and that they violate the norms that dominate in the society. Primary importance is given to the damage that the violation of the

75 Albrecht, H.J. Plenary speech – Works of the second annual Max Planck Partner Group Conference on Balkan Criminology, 'Imprisonment in the Balkans', 17-19 September 2015, Sarajevo, Bosnia and Herzegovina

76 See: Braithwaite, J., & Strang, H. (2001). *Restorative Justice and Civil Society*. Cambridge: Cambridge University Press

77 See: law no. 10385, dated 24.2.2011 "On Mediation in Solving Disputes".

criminal norms brings on society as a whole, not on the private interests of individuals or a small community, which may be affected by the illegal act. This makes it difficult to implement efficient mediation mechanisms considering that the interests of the victim or affected third parties in a criminal case are not given due weight when assessing the impact of the consequences of the crime.

## Recommendations

- Policymakers should take seriously into account the role of restorative justice in criminal matters, and the impact that mediation can have in managing the problem of overcrowding in prisons. It is time to think about a shift in the focus of the criminal justice system from some criminal conducts that are less harmful, and so that part of conflicts in the community or between private parties be resolved through mediation mechanisms.
- For purposes of expanding the application of mediation in criminal cases, it is necessary to raise awareness of the state agencies and private parties on the circumstances for the effective use and implementation of restorative justice instruments. In this sense, experts say that it is necessary that efforts focus on continuous training activities, at various levels, oriented towards legal practitioners such as judges, prosecutors, judicial police officers, social workers or non-governmental organization staff, and to undertake outreach campaigns for the general public<sup>78</sup>.
- It is necessary that the law provides for a wider range of criminal cases that can be handled by mediation. i.e. offences like driving the car while inebriated or intoxicated, leaving the scene of a car accident etc., might be subject to mediation.
- More work should be done to expand the use of restorative justice for criminal offences committed by juveniles.

## 7. *Restructuring of the penitentiary system*

### Conclusions

- Law no. 40/2014 represents a positive development in ensuring increased standards of treatment of inmates, which comply with the recommendations of the European Community.

<sup>78</sup> See: Restorative Justice and Crime Prevention: Presenting a theoretical exploration, an empirical analysis and the policy perspective. (2015, p. 181). Final report of the European project 'Restorative Justice and Crime Prevention'. Department of Juvenile Justice-Italian Ministry of Justice, [23.02.2015].

- However, we have reservations regarding the alternative of opening private prisons. The shift of some prisons into private ownership, which for the specific economic conditions of their operation are primarily oriented towards maximization of profits, could have an escalating effect in increasing the prisons population. When evaluating the opening of such institutions should be seriously considered the risk of depersonalization of convicts and of their estimation as subject promising an economic profit only, which as a result, would increase pressures towards a more punitive criminal policy.
- there are also very serious challenges involved in creating a structure of collaboration and accountability among public and private actors for the guaranteeing the efficient operation of private prisons schemes.

## Recommendations

- *Establishment of open regime prisons*
- The establishment of open-regime prisons. The establishment of open prisons would help facilitate the situation of prison overcrowding, as the internal facilities of the institutions would only be used as sleeping facilities. This increases the possibility of affording an increased capacity of prisoners within the same physical space. In these prisons, convicts move freely within the prison space, not being limited to their cells, whereas during the night they are accommodated in joint bedrooms under monitoring by prison staff.
- The establishment of these prisons would also create the infrastructure necessary for the implementation of the semi-liberty alternative sentence, which, in the present conditions, due to the lack of proper institutions and limited human resources, remains inapplicable.
- The establishment of open institutions where sentence are served also constitutes a proper solution for the accommodation of juvenile offenders who have no family (orphans) or who have violence records in their family and, as a result, are not able to have effective or healthy control by their families.
- *Establishment of attendance centres*
- First, these centres would serve as centres, for the offering of basic services and programmes to minors excluded by the sentence, as well as for leading to programmes and services directly related to their needs.
- Second, attendance centres could serve as facilities for the accomplishment of community sanctions for those convicts placed on probation or under semi-release measures.

- Programmes offered in these centres constitute a group of compulsory and volunteer activities (rehabilitation sessions) for the convicts, and there are defined objectives to be fulfilled for each activity.
- This would create the infrastructure necessary for the offering of community-based programmes, facilitate the convicts' process of reintegration into society and promote their responsible conduct.

## **8.** *Implementation of security measures in relation to personal freedom*

- More convincing efforts must be made for a closer approach of prosecutors and judges towards security measures in relation to freedom. We must be reminded that Recommendation No.R(99)2 of the Committee of Ministers of the EU emphasises that “The issuance of the imprisonment security measure must be regarded as the last measure to be taken, especially when the gravity of the crime would visibly make any other measure inappropriate”.<sup>79</sup>.
- It is necessary to change the practice, observed lately, of issuing the imprisonment for low-risk offenses, such as driving under influence or without licence, or theft of low material value.
- In this sense, ensuring the proper training of employees of law-enforcement agencies on the circumstances of the implementation of the imprisonment measure takes on great importance, as this would also serve to avoid situations of violation of human rights as a result of the improper implementation of legal provisions.
- The question of excessive use of pre-custodial measures needs further addressing by the competent bodies. The arrest warrant should not be perceived and applied as a standard measure.
- Co-operation should be improved among agencies in the justice sector in order to reduce the time taken to produce a judgement in criminal cases, and as a result, to reduce the pre-detention period, for remand prisoners, especially juveniles, and prevent their further arbitrary detention.

## **9.** *Addressing recidivism*

- Important institutional and operational measures must be taken to support the reintegration of former-convicts' into society so as to reduce recidivism. Due to isolation in prison, former-convicts are more prone to experience psychological troubles in re-establishing contacts with the outside world

<sup>79</sup> See: Recommendation No. R(99) 2 of the The Committee of Ministers of Council of Europe ‘concerning prison overcrowding and prison population inflation’(para 1), <http://pjp-eu.coe.int/>, accessed on 1 June 2015.



## PART III

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### CONCLUSIONS AND RECOMMENDATIONS

and adapting to life in society. Moreover, stigmatisation, low levels of employment, and low income may further increase the stress levels in these persons and become a strong stimulus towards re-involvement in crime.

- To this end, it is necessary to promote support programmes for former-convicts, programmes aiming at supporting these persons with the necessary technical and professional assistance to overcome potential obstacles during their reintegration into society.
  
- Furthermore, a friendly environment of collaboration with local agencies and organisations must be established in order to facilitate employment of former-convicts and, if possible, offer financial stimuli for employers who employ a former-convict.

## References:

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### Books and articles

- Aebi, M.F., Linde, A., dhe Delgrande, N. Is There a Relationship Between Imprisonment and Crime in Western Europe?. *European Journal of Criminal Policy and Research*, 2015, fq. 1-22.
- Albrecht, H.J. (2015). Criminal Sanctions and Crime Control: Past, Presence and Future in Europe. Libri i punimeve tw simpoziumit shkencor 'Criminal Justice System and the Social Welfare', Tiranë: Shtypshkronja 'Mileniumi i Ri'.
- Braithwaite, J., & Strang, H. (2001). *Restorative Justice and Civil Society*. Cambridge: Cambridge University Press.
- Brym, R. J., dhe Lie, J. *Sociology: Pop Culture to Social Structure*, Belmont: Wadsworth Cengage Learning, 2013, f. 117; si dhe Shahidullah, SH.M. *Crime Policy in America: Law, Institutions and Programs*. Lanham, University Press of America, 2008.
- Clarke, R.V. Situational Prevention, Criminology and Social Values., in Von Hirsch, A., Garland, D., & Wakefield, A. (2000). *Ethical and Social Perspectives on Situational Crime Prevention*. Portland: Hart Publishing.
- D.A. Andrews and James Bonta, *The Psychology of Criminal Conduct* (Oxon: Routledge, 2015).
- Erebara, Gj. (2015). *Albania Ombudsman Slams Jail Overcrowding*. <http://www.balkaninsight.com/> [10 Qershor 2015].
- Gaines, L.K., dhe Mille, R.L. *Criminal Justice in Action: The Core*. 8th edition. Boston: Cengage Learning, 2013, fq. 134-168.
- Joan Petersilia and Kevin R. Reitz, *The Oxford Handbook of Sentencing and Corrections* (Oxford: Oxford University Press, 2012).
- Lynch, J., dhe Sabol, W. (2010). Prisoner Reentry in Perspective', cituar nga Siegel, L. *Criminology*. 2012, f. 128, Belmont: Wadsworth, Cengage Learning.
- Marion Vacharet, *Private Family Visits in Canada, Between Rehabilitation and Stricter Control: Portrait of a System*, <https://champpenal.revues.org/2322> [28 Maj 2015].
- Moore, L. D., dhe Elkavich, A. (2008). Who's using and who's doing time: Incarceration, the war on drugs, and public health. *American Journal of Public Health*, 98(5), 782-786, cituar në: Brym, R. J., dhe Lie, J. *Sociology: Pop Culture to Social Structure*, Belmont: Wadsworth Cengage Learning, 2013.
- Paula Smith, M.A. Claire Goggin, and M.A. Paul Gendreau, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences* (2002).
- Philip Feldman, *The Psychology of Crime: A Social Science Textbook*, (Cambridge: Cambridge University Press, 1993).
- Robert.M Freeman, *Correctional Organization and Management. Public Policy Challenges, Behavior, and Structure* (Woburn: Butterworth-Heinemann, 1999).
- Roberts, A.R., & Springer, D.W. (2007). *Social Work in Juvenile and Criminal Justice Settings, 3rd edition*. Springfield: Charles C Thomas Publisher.
- Roesch, R., Zapf, P., dhe Hart, S.D. *Forensic Psychology and Law*. Hoboken: John Wiley & Sons, 2010.
- Smith, P., Goggin, C., dhe Gendreau, P. *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences* (2002), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ffcts-prsn-sntncs/ffcts-prsn-sntncs-eng.pdf> [15.06. 2013].
- Soothill, K., Rogers, P., dhe Dolan, M. *Handbook of Forensic Mental Health*. Éillian Publishing, 2008.
- Sunčica Vujić, *Econometric studies to the economic and social factors of crime*, (Tinbergen Institute research series, no.454, 2009).

*The Effects of Prison Overcrowding*. John Howard Society of Alberta (1996). <http://www.johnhoward.ab.ca/pub/C42.htm> [20 Qershor 2015].

## Documents, reports, recommendations

*“Raport mbi Situatën e të Drejtave të Njeriut të Personave të Privuar nga Liria në Drejtoritë dhe Komisaritet e Policisë dhe Institucionet e Paraburgimit dhe të Ekzekutimit të Vendimeve Penale”,* Komiteti Shqiptar i Helsinkit, Tiranë 2014.

*‘OSCE media freedom representative, on official visit to Denmark, urges for full decriminalization of defamation, blasphemy.’* <http://www.osce.org/fom/108769>, [1 korrik 2015].

Aktiviteti i Avokatit të Popullit të Shqipërisë në rolin e Mekanizmit Kombëtar për Parandalimin e Torturës. Raporti i Posaçëm, 2014.

Analizë vjetore e Drejtorisë së Përgjithshme të Burgjeve, 2013.

Dokumenti *“Fact Finding for Institutional Self Assessment, Sector: Fundamental Rights, Penitentiary System”*, f. 1., Drejtoria e Përgjithshme e Burgjeve, 2015

Komentari i Rregullit 18 të Rregullave Evropiane të Burgjeve (European Prison Rules).

Komisioni i Posaçëm Parlamentar për Reformën në Sistemin e Drejtësisë, Grupi i Ekspertëve të Nivelit të Lartë, *“Analizë e Sistemit të Drejtësisë në Shqipëri”*, qershor, 2015. Burimi: <http://shqiptarja.com/>.

*Prison Overcrowding and Prison Population Inflation: Recommendation No. R (99) 22*, Adopted by the Committee of Ministers of the Council of Europe on 30 September 1999 and Report. (Council of Europe Pub., 2000).

Raport i Avokatit të Popullit, dt. 06.01.2015, Mbi situatën e mbipopullimit në Institucionet e Ekzekutimit të Vendimeve Penale.

Raportet të Prokurorit të Përgjithshëm për gjendjen e kriminalitetit në Shqipëri për vitet 2012, 2013. <http://www.pp.gov.al/>

*Raporti i studimit të fizibilitetit për programin e reformës në sektorin e drejtësisë në Shqipëri*, përgatitur nga Grupi i Punës i Zinxhirit të Drejtësisë (Policia Suedeze, Autoriteti Suedez i Prokurorisë, Administrata Suedeze e Gjykatave Kombëtare dhe Shërbimi Suedez i Burgjeve dhe Provës), 2015.

Recommendation CM/Rec(2014)3 of the Committee of Ministers to member States concerning dangerous offenders. <https://wcd.coe.int>

Recommendation No. R(99) 2 of the The Committee of Ministers of Council of Europe *‘concerning prison overcrowding and prison population inflation’*, (para. 22), <http://pjp-eu.coe.int/>, aksesuar 1 korrik 2015.

Rekomandime për Prokurorin e Përgjithshëm *‘Në luftën kundër Kriminalitetit për vitin 2015’*, Ministria e Drejtësisë <http://www.drejtësia.gov.al/>

*Restorative Justice and Crime Prevention: Presenting a theoretical exploration, an empirical analysis and the policy perspective*. (2015, f. 181). Final report of the European project ‘Restorative Justice and Crime Prevention’. Department of Juvenile Justice-Italian Ministry of Justice, [23.02.2015].

United Nations Office on Drugs And Crime (2013). *Custodial and Non-Custodial Measures: The Prison System*, [http://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/1\\_Prison\\_%20System.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/1_Prison_%20System.pdf), aksesuar 30 qershor 2015.

United Nations Office on Drugs And Crime (2013). Handbook on strategies to reduce overcrowding in prisons overcrowding in prisons. *Foreword by the International Committee of the Red Cross (ICRC)*, <http://www.unodc.org/> [20 Maj 2015].

United Nations Office on Drugs And Crime, *Custodial and Non-Custodial Measures, Social Reintegration*, (2006),1, <https://www.unodc.org> 23 qershor 2015.

## **Legislation**

Ligji nr.7895 datë:27.1.1995 “Kodi Penal i Republikës së Shqipërisë”

Ligji nr. 144/2013 “Për disa shtesa dhe ndryshime në ligjin nr.7895 datë:27.1.1995 “Kodi Penal i Republikës së Shqipërisë”

Ligji nr.7905 datë 21.3.1995 “Kodi i Proçedurës Penale i Republikës së Shqipërisë”

Ligji nr. 8328, datë 16.4.1998, “Për të drejtat dhe trajtimin e të dënuarve me burgim dhe të paraburgosurve” i ndryshuar

Ligji nr. 8331, datë 21.4.1998 “Për ekzekutimin e vendimeve penale” i ndryshuar

Ligj nr.10 494, dt 22.12.2011 “Për mbikëqyrjen elektronike të personave, të cilëve u kufizohet lëvizja me vendim gjyqësor”.

Ligj nr. 44/2012 “Për Shëndetin Mendor”

Ligji nr. 10385, datë 24.2.2011 “Për Ndërmjetësimin në Zgjidhjen e Mosmarrëveshjeve”.

Ligji nr. 108/2012 ‘Për Ratifikimin e Konventës së OKB-së për të drejtat e personave me aftësi të kufizuara’



