

## Treatment of mentally disordered perpetrators of criminal offences in the context of abiding by the ECHR

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### Abstract

The remand and sentenced prisoners shall be treated with dignity while showing respect for their human rights. The mentally disordered, remand and sentenced, prisoners shall be specifically guaranteed an equal, non-discriminatory treatment, while showing respect for their physical integrity and human dignity. Their treatment shall be in line with the health-related standards, being applied even to other categories of of mentally disordered persons. Mental disorders are of different categories: they may totally reduce the capacity to be aware of the relevance of the adopted conduct, thus excluding such person from the criminal liability; they may partially reduce the capacity to be aware of the adopted conduct, thus rendering such person liable for the conduct it has adopted. From this perspective, it is important to determine the way of dealing with these persons, following them committing a criminal offence. This research study aims initially at shedding light on the way of dealing with the mentally disordered, remand or convicted, prisoners, be it for the purposes of re-integration, or for their health-related care, while, on the other hand, showing the way of treating the persons, who, at the moment of committing the criminal offence, were legally insane of being aware of the relevance of their conduct.

**Keywords:** criminal offence, mentally disordered perpetrator, ECHR, Albania.

### Introduction

Based on paragraph 1 of Article 3 of the Law no 44/2012 '*On mental health*', there shall, under mental health, be understood the capacity to think and learn, as well as the capacity of an individual to be capable of coping of their emotions and reactions of others. There shall, in reliance on paragraph 2 of the same Article, under mental health disorders be understood a profound failure of thinking, perception, orientation or memory, thus impairing the conduct, judgement, capacity to recognise the reality or the capacity of the person to meet the living requirements, which renders them mentally sick or retarded, as long as this is associated with pathological aggressive conduct or seriously irresponsible. Regarding the persons with mental health disorders, they can be broken down into two groups: persons with mental health disorders being perpetrators of criminal offences and persons with mental health disorders not having committed any criminal offences. Three categories of persons with mental health disorders appear in the first group, who are perpetrators of criminal offences, thus specifically:

– Persons with mental health disorders who, at the moment of commission of the criminal offence, were unaccountable. Under the first paragraph of Article 17 of the Criminal Code, *no one shall be held criminally liable who at the time of committing the*

offence suffered from psychic or neuropsychiatric disorders ruining his mental balance entirely and, consequently, was unable either to control his actions or omissions, or to be aware of committing a criminal offence. Based on such a provision, we reach the conclusion that these persons shall not be sentenced, or expressed differently; they shall not be criminally liable. However, it is always about persons being in need of health-related care, not only in the aspect of curing the disease they are carrying, but also in the context of prevention to the effect of avoiding the commission of criminal offences in the future.<sup>1</sup>

– Persons with mental health disorders who, at the moment of commission of the criminal offence, were unaccountable. Under the second paragraph of Article 17 of the Criminal Code, *a person, at the time of committing the criminal offence, suffering from psychic or neuropsychiatric disorders, having lowered his mental capacity to be aware and fully control his actions or omissions, shall be liable, however, this circumstance shall be considered by the court in determining the extent and the kind of punishment.* In such a case, it is about imprisoned persons, who, at the moment of the commission of the criminal offence, were suffering under mental health disorders, the latter having reduced the capacity to be aware of their conduct. Even these persons are in deed of health care in the context of serving the sentence for the criminal offence having committed (Hysi, 2015, 121).

– The persons being in the course of serving their sentence and, while doing so, are affected by mental health disorders. Such persons are in need of medical treatment in the context of their right to health care, provided for in Article 33 of the Law no 8328, dated 16/04/1998 *'On the rights and treatment of the remand and sentenced prisoners'*, as amended.

The persons belonging to the second group, being individuals with mental health disorders, who have not committed criminal offences, shall be treated based on the Law no 44/2012 *'On mental health'*. Such persons are entitled to being provided with health care services, which ensure measures for the mental health: The primary health care services is the service being provided by the family doctors and nursery personnel, the latter assuming their activity at the institutions of the primary health care. The primary health care service is based on the basic package of the primary care service and on the referral system, hereunder falling also the obligation to detect, refer and follow up the patients with mental health disorders; Mental health community services offer preventive, curing and rehabilitation activities to the mentally disordered persons. The mental health community services are provided by a multi-disciplinary team and they intend: a) maintaining, developing and rehabilitating the individual capacity to overcome the emergency or chronic needs; b) social integration, psycho-social rehabilitation and social and professional re-integration; Specialised ambulatory services are services being provided by the specialised doctors in their medical discipline of psychiatry, nursery personnel and qualified auxiliary personnel, carrying out their activity in the, public and private, health care institutions; Specialised health care services with beds are specialised

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<sup>1</sup> More about this argument, see E. Gjonaj, Enforcement of judicial decisions involving forced medication in Albania, in the Magazine 'Advocacy', No 18(2), Year V of publication, National Chamber of Advocates, 2016, 67 f.

services within the general hospital or in specialised hospitals, being organised and functioning under the legislation in effect for the hospital services. This type of service is regulated in Articles 19 through 27 of the Law no 44/2012 '*On mental health*'.

Apparently, we are encountering a category of convicted persons, whose treatment and medication should not be problematic, however the real situation does not seem so. In the following, we'll try to explain the way of treatment of categories of mentally disordered persons being perpetrators of criminal offences, in the context of the national legislation, as well as in reliance on the principles enshrined in ECHR.

### **General principles of treating the convicted persons and their right to health care**

Based on Article 3 of the Law no 8331, dated 21.04.1998, '*On enforcement of criminal decisions*', as amended, the enforcement of the decisions containing a sentence restricts just those rights, in terms of extent and time, as determined in the criminal decision, while observing the entire legally recognised rights, unless explicitly provided for by law. The convicted person enjoys, during the entire stages of enforcing the decision, the rights he is entitled to according to this law and, upon such rights not being recognised or being infringed, he may seek them being protected and given effect to in the way provided for in this law.

Under Article 5 of the Law no 8328, dated 16/04/1998 '*On the rights and treatment of the remand and sentenced prisoners*', as amended, the remand and sentenced prisoners shall be treated with dignity while paying respect to their human rights. While under Article 9 of the same law, the treatment of the remand and sentenced prisoners aims at the rehabilitation to the effect of their re-integration into their family, social and economic life. The preparatory measures for re-integration start while in remand imprisonment, continues while serving the sentence and after the release from prison. Under Article 10 of the Law no 8328, dated 16/04/1998 '*On the rights and treatment of the remand and sentenced prisoners*', as amended, the treatment of the remand and sentenced prisoners shall occur under the criterion of individualisation in compliance with the individual situation and characteristics of each single prisoner. The individualisation of the treatment occurs by way of assessing the individual psychological, social, age, gender, health situation, sexual orientation or gender identity, cultural and economic situation needs, the environment where the remand or sentenced prisoner has lived, the risk factors and motivation to be involved in the activity being carried out in the institution. The observation is made at the outset of the treatment and its outcome are verified continuously in the course of enforcement, while making the appropriate adjustments in cooperation with the convicted person. While under Article 11 of this Law, following the process of evaluation, the programming of treatment shall be made, in cooperation with the remand and convicted prisoner. The re-integration plan shall be drafted for each remand prisoner, while regarding the specific categories of remand and convicted prisoners, an individual program of treatment shall be drafted, while taking account of their specific needs. Specific attention shall be paid to the psycho-social treatment of the juvenile remand and convicted prisoners, young people aged between 18 and 210 years old, to the persons

with mental health disorders, inherited or obtained in the course of imprisonment, to persons with disabilities, to persons with a different sexual orientation, persons with chronic diseases or drug dependants, to aged persons, to persons being sentenced to long-term sentences, to persons belonging to ethnic or lingual minorities, to foreign citizens and to persons without citizenship. An individual rehabilitation or re-integration plan is prepared for each remand or convicted minor, which is to take into account their education, psychological evaluation, emotional situation, wishes and possibilities to follow professional courses or to advance in schooling. The observation, programming and implementation of the treatment shall be made by the administration of the institution through their staff, in cooperation with the respective state institutions. The cooperation with the Directorate General of Prisons and the Directorate General of Probation service for drafting, developing and implementing the supervision programs of remand and sentenced prisoners shall be made upon the order issued by the Minister of Justice. The contribution of the non-profit making organisations and specific individuals are encouraged and supported by the prisons administration for implementing the treatment program.

Under Article 33 of the Law no 8328, dated 16/04/1998 '*On the rights and treatment of the remand and sentenced prisoners*', as amended, health service at the penitentiary institutions or organised without any discrimination, regarding the legal status of the person in the institution or for any other consideration which might be prone to discrimination. The treatment of persons with mental health disorders relies on the law on the mental health. The remand and convicted prisoners accommodated in the penitentiary institutions and sustaining mental health disorders are entitled to the right of specific health care treatment at the special medical sections of the institutions or at the hospital centre of prisons. The Directorate General of Prisons makes arrangements for facilitating the provision of the necessary health care services in institutions and, upon this not being possible, at specialised institutions outside the penitentiary system.

### **Accommodation of mentally disordered persons being perpetrators of criminal offences in institutions**

The law provides, for each of the categories of the mentally disordered persons being perpetrators of criminal offences, specific institutions where their medical treatment shall be provided. This is due to the fact that we are looking at persons having different statuses, despite having a common need for health care owing to their mental health disorders.

The persons having committed a criminal offence and, at the moment of commission being unaccountable due to the mental health disorders, shall be subject to the provisions contained in Article 46 of the Criminal Code. Medical measures shall be applied to such persons. According to this Article, the medical measures to the unaccountable persons having committed a criminal offence may be imposed by the court. The medical measures are: a) forced ambulatory medication; b) forced medication in a medical institution. The judicial decision regarding the medical measures is revocable at any time upon the circumstances wherefore it has been

imposed ceasing to exist, however, the court shall, under any circumstances, be obliged, once a year has passed since rendering the decision, to re-examine its decision (Myftari, 2014, 25-29).

The prescription of the medical measures shall occur relying on the provisions of the Criminal Procedure Code. According to Articles 44 and 45 of this Code, upon emerging that the mental situation of the defendant is such that it hinders him in consciously attending the proceedings, the proceeding authority shall decide the suspension of the proceedings, however, as long as no acquittal or termination decision is expected to be made. The proceeding authority shall, upon the suspension decision, assign a special custodian to the defendant, while granting to him the right to make the legal representation. The suspension does not hinder the proceeding authority to take evidence which might lead to the acquittal of the defendant while, upon the delay posing a risk, any other evidence requested by parties. Regarding the measures which might be effected to the person of the defendant, as well as where the defendant is entitled to be present, his special custodian shall be present. The suspension decision shall be revoked upon emerging that the mental situation of the defendant makes possible the conscious involvement of the defendant in proceedings, or where the defendant shall be acquitted or the proceedings terminated. While Article 46 of the Criminal Procedure Code provides that, upon the mental situation of the defendant indicating that he should be subject to medication, the court shall, even *ex officio*, decide the accommodation of the defendant in a psychiatric institution. Upon the forced medical measure being imposed or to be imposed upon the defendant, the court shall order the defendant to be supervised in a psychiatric institution. The prosecutor shall, in the course of preliminary investigations, request the court to decide the accommodation of the defendant in a psychiatric institution and, upon the delay posing a risk, order the temporary accommodation until a decision by the court is made.

The way of enforcing the medical measures is determined in Article 45 of the Law 8331, dated 21.04.1998, 'On enforcement of criminal decisions', as amended. According this Article, the medical measure of forced medication shall be applied at the specialised medical institution according to the determination made by the Ministry of Health upon the request of the prosecutor. Upon the enforcement order, the escorting of the prisoner to the medical institution shall be made by the institution where the prisoner is being accommodated and, upon being under no security measure, by the state police. The medical measure of forced ambulatory medication shall be enforced at the medical institutions of the place of residence of the person subject to such measure. Where the respective specialists are not active there, the person shall be escorted to such institutions to the closest district where such specialists are present. Where the person subject to such measures hinders the enforcement of such measure, the prosecutor shall order the forced enforcement by the State Police and, as appropriate, file a request with the court to change the measure to forced medication in a medical institution.

By way of interpreting the above provisions, we reach the conclusion that this category of persons with mental health disorders shall not be accommodated in psychiatric hospitals for mentally sick persons not having committed criminal offences,

neither in specific institutions where convicted persons with mental disorders are accommodated. These persons are accommodated in specialised medical institutions, being appropriate for the medication of the disease they are sustaining.

The persons who, at the moment of commission of the criminal offence had mental health disorders which have decreased their awareness of their conduct, shall be accommodated in the penitentiary institutions and they shall be provided with health treatment in the context of the law of healthcare. In practice and referring to the data of the Directorate General of Prisons, persons with mental health disorders shall be primarily accommodated in the penitentiary institutions of Kruje. These persons are not excluded from the criminal liability and for this reason the criminal proceedings shall continue, upon which completion the respective sentence shall be pronounced. Where these persons have to be arrested, the court shall, based on Article 239 of the Criminal Procedure Code, instead of remand imprisonment, order the temporary accommodation in a psychiatric institution, while determining the necessary measures for preventing the risk of escape. Upon the completion of the adjudication of the case, upon emerging that the convicted person continues to sustain mental health disorders, the judge shall order his accommodation in the institutions under the provisions of the Law no 8328, dated 16/04/1998 '*On the rights and treatment of the remand and sentenced prisoners*', as amended. A similar discussion pertains to those persons who are serving their sentence and in the course of serving the sentence they are affected by mental health disorders<sup>2</sup>. Thus, for instance, what is going to happen to a convicted person who is serving a sentence and in the course of this period mental health disorders appear. Based on Article 33 of the Law no 8328, dated 16/04/1998 '*On the rights and treatment of the remand and sentenced prisoners*', as amended, the remand and convicted prisoners shall enjoy the right to the medical service. These persons fall automatically under the category of the economically non-active persons, in the sense of the law in effect, and they benefit, free of charge, the entire services offered by the health insurance scheme under such law. The administration of the institution shall provide for the conditions, means and personnel for the protection of the health of convicts. The organisation and provision of the healthcare service is done by the administration of the institution, in cooperation with the hospital of prisons and with the respective state healthcare bodies. The remand and convicted persons may, upon their expense, request being examined by a doctor of their choice. The healthcare service shall provide for: prevention, diagnosing and medication of diseases; provision with medicines and medical equipment in the instances of health emergency, as long as they are not covered by the mandatory insurance scheme of the healthcare; preventive measures to diseases, while being specifically attentive for the infectious diseases; ensuring the hygiene in the premises of the institution and sanitary education of the remand and convicted prisoners. Put into simple words, the state has the obligation to guarantee the right for health care and for this reason the entire measures have to be taken in order not to render itself accountable in the event of complications in various situations. In the event of impairment of health of remand and convicted prisoners or even more worse, occurrence of death as a consequence

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<sup>2</sup> Referring to the data from the Directorate general of Prisons, for 2018 there emerges that approximately 330 remand and convicted persons have been diagnosed with mental health problems.

of complications in their health situation, the state shall have the positive obligation to establish that it has taken the entire necessary measures to cure the health of the convicted persons, but death has occurred as a consequence of causes not connected to such measures. In this context, the emergence of mental health disorders has to be considered, which are nothing else but a need for health care. Consequently, the person shall initially be given the appropriate aid within the institution and upon such aid not being ensured in the premises of the institution, the remand and convicted persons shall be transferred to the hospital of prisons, and upon being necessary, they shall be transferred to the University Hospital Centre, Tirane and to the hospital institutions, at region or district level, as appropriate.

### **The treatment of the persons with mental health disorders and the compliance with the European Convention of Human Rights**

A mentally ill inmate shall be kept and cared of in hospital premises, appropriately equipped and with the adequately trained staff. The premises may be a civil psychiatric hospital or a psychiatric environment specifically equipped within the prison system. On the other hand, it is often claimed that, from the ethical perspective, it is more appropriate for the mentally ill inmates to be hospitalized outside the prison system, in institutions under the responsibility of the public health service. But it can also be commented differently, that the provision of the psychiatric premises within the prison system can guarantee that the care be given in optimal security conditions and that the activities of the medical and social services be intensified within this system. According to the reporting of the Torture Prevention Committee, whichever approach that is chosen, the capacities of beds of the relevant psychiatric environment should be adequate: often, there is a prolonged waiting period before the necessary transfer is conducted<sup>3</sup>. The transfer of the concrete person to the psychiatric premises should be treated as a case of high priority. A patient with mental disorders, who is violent too, should be treated though a close supervision and nursing support, combined, if necessary, with sedatives. The use of the physical restriction instruments is justifiable very rarely and in any case, it should always be instructed explicitly by a doctor or it should be notified to the doctor immediately to receive his approval. The physical restriction instruments should be avoided as soon as possible, they should not be used or their use should not be extended as a punishment. In case the physical restriction instruments are used, a note should be made in the patient's file as well as in an appropriate register, indicating the time when the measure started and ended as well as the circumstances of the case and the reasons for the implementation of these instruments.

With regard to the persons with a medical measure, who will be accommodated in a medical institution upon a court decision, at the moment, there is no document that determines specifically the way how they are treated. We reiterate that these persons

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<sup>3</sup> Report of the European Committee on the Prevention of Torture and Inhuman and Degrading Treatment or Sentence, The services of the health care in prisons, Extract from the 3rd general report, published in 1993.

have not been sentenced as they have been excluded from the punishment due to the mental condition irresponsibility. Consequently, they are not treated as convicts: on the other hand they are persons who have committed a criminal offence and cannot be treated equally with the ones who suffer from mental health disorders and who have not committed a criminal offence. The Criminal Code provides for the medical measures and the cases when they should be applied. In our opinion, this category of persons should enjoy the right of a patient<sup>4</sup> but it should have neither the status of the free persons nor the status of the convicts. This category of persons cannot be treated based on Law No. 8328, dated 16.04.1998 "*On the rights and the treatment of the prisoners and detainees*", as amended, as this law regulates the rights and the treatment of the prisoners and detainees.

In case a person irresponsible due to his mental health, under the medical measure of mandatory medical treatment in a medical institution, was accommodated in an institution of the criminal decision execution, then there would be a violation of article 5 of the European Convention of Human Rights. According to this article, everyone has the right to freedom and security of person. No one shall be deprived of his liberty except for the mandatory cases provided for explicitly by this Convention.<sup>5</sup> Therefore, sending a person with a medical measure to an institution of the criminal decision execution is an unfair deprivation of the personal freedom. According to the data from the General Directorate of Prisons, in 2018, 15 women under medical measures were sent to the women's prison, meanwhile 259 persons under a medical measure are found in the prison of Kruja. This prison has been specified as a special institution. However, the persons with a medical measure cannot be accommodated there. Additionally, the women's prison is an institution for the accommodation of the sentenced women but the ones who have been irresponsible at the moment when the criminal offence was committed, cannot be accommodated there. Apart from the prison of Kruja and the women's prison, persons with a medical measure have been accommodated in the hospital of the prison, too. According to the data from the General Directorate of Prisons, in 2018, 4 women and 2 children with a medical measure result to be in the hospital of the prison. In this case, the accommodation of the persons with a medical measure in the hospital of prison is also a violation of article 5 of the European Convention of Human Rights, as the hospital of the prison has been specified as a normal security prison.<sup>6</sup>

The other category is the one of the convicts or of the detainees with mental health disorders.<sup>7</sup> This category enjoys, firstly, the rights and the treatment of the convicts and

<sup>4</sup> The patient's rights are found at the charter of the patient's rights, approved by the Ministry of Health upon Order No. 657, dated 15.02.2010.

<sup>5</sup> For more information on article 5 of the ECHR, see S. Kurti, The adaption of the Albanian and Italian law with article 5 of the European Convention of Human Rights, on guaranteeing the personal freedom: comparative aspects at the Magazine "*Studime Juridike*", No. 1, 2009, Faculty of Law, (UT), Ekspres, Tirana, 2009, pg. 205-230.

<sup>6</sup> Decision No.18 dated 12.05.2010 of the Criminal College of the High Court.

<sup>7</sup> According to Law No. 8328, dated 16.04.1998 "*On the rights and treatment of the prisoners and detainees*", as amended, all the rights of the detainees and of the prisoners, as well as the patient's rights shall be respected in the specialized medical institutions and the specialized medical sections, according to this law. The Minister of Justice and the Minister of Health shall, upon a joint instruction, determine the mode of the application of the procedures related to the treatment of this

detainees, provided for in Law No. 8328, dated 16.04.1998 “*On the rights and treatment of the prisoners and detainees*”, as amended. On the other hand, article 29 of Law no. 44/2012, “*On mental health*”, the prisoners and the detainees in the institutions of the criminal decision execution, who suffer from mental health disorders, enjoy the right for special medical treatment at these institutions or at the Hospital Centre of Prisons. The treatment and care for mental health shall be provided in a non discriminating way and according to the health standards applied for the other categories of the persons with mental health disorders. The Ministry of Health, through the mental health services shall provide, according to the needs, all the assistance necessary to diagnose, cure and rehabilitate of the persons with mental health disorders. In this framework, a special, effective and efficient health care is necessary to be provided, otherwise the treatment of these convicts may turn into inhuman and degrading treatment, violating article 3 of the European Convention of Human Rights:<sup>8</sup> and if the bad treatment continued, consequently causing a violation to the right to life, this would constitute, simultaneously, a violation of article 2 of the European Convention of Human Rights.<sup>9</sup>

Among the prisoners, there is a higher incidence of the psychiatric symptoms compared to the population in general. Consequently, the health care service in every prison should be provided with a doctor qualified in psychiatry and some of the nurses employed there should have been trained in this field. The completion with medical and nursing staff as well as the premises of the prisons should guarantee that the professional, psychotherapeutical and pharmacological treatment programs<sup>10</sup> are duly carried out.

### **The specialized medical institutions and the specialized medical sections**

According to article 16, Law No. 8328, dated 16.04.1998 “*On the rights and treatment of the prisoners and detainees*”, as amended, *the specialized medical institutions outside the system of the institutions of the criminal decision execution and the specialized medical sections inside the institutions of the criminal decision execution shall serve for the treatment of the detainees and of the convicts with mental health disorders*. According to the interpretation of this article, we conclude that: the specialized medical institutions outside the system of the institutions of the criminal decision execution are hospitals established for the treatment of the prisoners or of the detainees with mental health disorders, who cannot be treated within the system of the institutions of criminal decision category of people.

<sup>8</sup> Article 3 of the European Convention of Human Rights: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

<sup>9</sup> Article 2 of European Convention of Human Rights: Everyone’s right to life shall be protected by law.

<sup>10</sup>The TPC emphasizes the role of the directorates of prisons for potential improvements in the premises accommodating the prisoners who suffer from psychological illnesses (such as depression, reacting condition, etc.). this activity may be encouraged through the appropriate medical training for some of the supervising staff. See The Report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment, The Services of the Health Care in Prisons, an extract from the 3rd general report, published in 1993.

execution; the specialized medical sections within the system of the institutions of criminal decision execution shall serve for the treatment of the prisoners and detainees with mental health disorders, who can receive the assistance within the system of the institutions of criminal decision execution. On the other hand, if we refer to article 28, Law No. 44/2012, *“On mental health”*, the specialized medical institutions are the ones which shall serve for the treatment of the persons with mental health disorders, who have committed a criminal offence, for whom the competent court has rendered the mandatory treatment in a medical institution for the detainees and for the prisoners, who display mental health disorders as they serve the sentence as well as the treatment of the persons for whom the court has decided on a temporary hospitalization in a specialized medical institution, according to article 239 of the Criminal Procedure Code. According to the interpretation of this article we conclude that the specialized medical institutions shall accommodate the prisoners or the detainees who display mental health disorders as they serve the sentence or as they are in detention. This is the case of the institutions outside the system of the institutions of the criminal decision execution.

According to the above interpretation, it remains unclear why the legislator considers them as specialized medical institutions outside the system of the institutions of the criminal decision execution, when these institutions accommodate prisoners or detainees. According to article 12 of Law No. 8328, dated 16.04.1998 *“On the rights and the treatment of the prisoners and detainees”*, as amended, the institutions of the criminal decision execution are: the high security prison, the normal prison, the low security prison, the special institutions, the detention institution. The special institutions mean the institutions for children, the institutions for women, the institutions for the prisoners or the detainees with mental health disorders. Based on this reasoning, we think that all the special medical institutions, which serve for the treatment of the prisoners or of the detainees are institutions within the system of the institutions of the criminal decision execution. Based on the content of paragraph 7 of article 17, Law No. 8328, dated 16.04.1998, *“On the rights and treatment of the prisoners and detainees”*, as amended, the special medical institutions and the special medical sections shall comply with the all the rights of the prisoners and of the detainees, according to this law, as the patient’s rights. In other words, we can say that when it is the case of convicts sentenced with a final decision or when it is the case of the detainees, the special medical institutions are the ones within the system of the institutions of the criminal decision execution.

Furthermore, we also think that the specialized medical institutions outside the system of the ICDE mean those institutions accommodating the persons with mental health disorders, who have been irresponsible as the criminal offence was committed. So, they accommodate the persons with the medical measure of mandatory treatment in a medical institution.

### **Conclusions and recommendations**

At the end of this material, we can reach to some conclusions and we can provide some important recommendations, in the framework of the improvement of the

legislation or of the correct implementation in practice of this legislation<sup>11</sup>. Firstly, we notice that there are problems on the drafting of the legal norms, taking into consideration article 16 of Law No. 8328, dated 16.04.1998 "*On the rights and treatment of the prisoners and detainees*", as amended, article 28 of Law No. 44/2012, "*On mental health*". In practice, there is a confusion in the distinction between the irresponsible persons, who have mental health disorder, and the sentenced persons, who suffer from these mental health disorders: there is a lack of the specialized staff, doctors, nurses, psychologists who shall treat the persons with mental health disorders, in compliance with the domestic laws and the European Convention of Human Rights. In this framework, we recommend some amendments:

- An improvement of the legislation, regarding the category of the persons with mental health disorders, namely Law No. 8328, dated 16.04.1998 "*On the rights and treatment of the prisoners and detainees*" and Law No. 44/2012 "*On mental health*";
- The construction of psychiatric hospitals for the irresponsible persons where the medical measures shall be executed, the construction of the specialized medical institutions accommodating the prisoners or the detainees with mental health disorders. We reiterate that this is the case of the persons with a different status from each other: the first ones do not have a sentence, meanwhile the second ones have been sentenced or a criminal proceeding is being held against them. According to Law No. 8328 dated 16.04.1998 "*On the rights and treatment of prisoners and detainees*", the prisoners do not stay in the same place with the detainees. Furthermore, we can not accommodate in the same institution convicted persons with persons who have not been convicted;
- Increasing the medical staff specialized for the treatment of this category of people.

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<sup>11</sup> S. Kurti, E. Gjonaj, Specialized institutions of the prisoners and detainees with mental health disorders, in the national scientific Conference "Drejtësia penale shqiptare – mes vlerave të traditës meritës së ndryshimeve dhe largpamësisë së ligjit dhe shoqërisë", Faculty of Law (UT), 7<sup>th</sup> December 2018.

amended.

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