Research Article

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High Security and Special Regime in the Albanian Penitentiary System

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Abstract

The Albanian penitentiary system underwent significant transformation in 2020, increasingly reflecting the implementation of a progressive treatment approach aligned with the social risk posed by the convicted individual and aimed at their re-education for the purpose of rehabilitation and reintegration into society. Through this paper, we aim to present an overview of the Albanian penitentiary system according to the provisions of Law No. 81/2020 "On the Rights and Treatment of Convicted Prisoners and Detainees," with a broad focus on the analysis of legal provisions regulating high-security penitentiary institutions and the implementation of the special regime in high-security institutions. This regime, similar to the 41 bis regime provided by Italian legislation, is closely linked to the penal policy pursued by the Albanian state in the context of combating and preventing organized crime. The adoption of this regime aims to maintain order and security by fundamentally preventing leaders and members of organized crime from having contact with their organization and other criminal organizations operating in Albanian territory, thereby inhibiting them from issuing orders from the penitentiary institution where they are held.

Keywords: *Penitentiary system, High security, Special regime, Court for Corruption and Organized Crime, ECtHR*

1. Introduction

The penitentiary system is a crucial component of the criminal justice system. It is the place where imprisonment sentences are executed, and pretrial detainees are held. In these institutions, through the re-education of convicts, a form of prevention known by criminologists as specific prevention of

crime is realized[1]. This type of prevention is related to the treatment of convicts with the aim that after serving their sentence, they will be beneficial to society and not cause harm to it. On one hand, human rights must be respected in these institutions, and on the other hand, re-education must be achieved for the rehabilitation and reintegration of convicts into society.

Before the 2020 penitentiary reform, Albanian penal legislation exhibited significant shortcomings in two main areas: ambiguity in the provisions regulating the initial placement of convicts in institutions, and ambiguity in provisions allowing for changes in security levels after a portion of the sentence had been served. For instance, the legislation was unclear about whether a convict sentenced for premeditated murder should serve their sentence in a high-security institution or a regular-security institution. This was left to the discretion of the judge, which, in many cases, could lead to potential abuse. Additionally, the provisions concerning the possibility of changing the security level for convicts after serving part of their sentence were not clearly defined; for example, the process of transitioning from a high-security institution to a regular-security one was not properly outlined. Furthermore, the penitentiary system did not include open institutions that could guarantee the execution of sentences under semi-freedom or offer convicts the possibility of serving their sentences under more favorable conditions, facilitating quicker reintegration into society. A major issue in the Albanian penitentiary system was also the lack of specialized institutions for the treatment of individuals who committed criminal offenses due to mental health conditions and were deemed legally irresponsible.

According to Article 15 of Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees", the execution of imprisonment sentences is carried out in specially designated places, specifically in Penal Enforcement Institutions. Based on the categories of individuals against whom penal decisions are executed, these institutions are divided into: institutions for adult convicts; institutions for juvenile convicts; institutions for women; pretrial detention institutions; and healthcare institutions for prisoners. Additionally, based on the level of security, penal enforcement institutions or sections within them are categorized into: high-security institutions; standard security institutions; low-security institutions; and open institutions. Penal enforcement institutions may be divided into sections as needed for administrative purposes. The creation, classification, and closure of penal enforcement institutions or specific sections within these institutions are done by order of the Minister of Justice.

The placement of a convict in a penitentiary institution is based on a dual decision-making process that respects the implementation of the re-educative function of the sentence. The initial decision belongs to the court, specifically the judge who issues the sentence. Subsequently, specialized bodies within the penal enforcement institution are involved in the decision-making process. The judge who imposes the imprisonment sentence is responsible for determining the specific type of institution where the convict will serve their sentence[2].

The penitentiary reform of 2020 established that healthcare institutions[3] for individuals for whom the court has mandated compulsory medical measures[4] are also part of the penitentiary

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[1] *Kurti, S. (2022). Criminology & Penology. (1st ed.). Tirana: Wisdom.*

[2] *Hysi, V. (2012). Penology. Tirana: Kristalina-KH.*

[3] *Supreme Court of Albania. (2021, July 15).* Decision No. 70007-00188-00-2016 of the Basic Register, No. 00-2021-643 of the Decision (18).

[4] *Article 46 of the Penal Code states: "Medical measures may be imposed by the court on individuals who are deemed irresponsible and have committed a criminal offense. The medical measures are: compulsory outpatient treatment; compulsory treatment in a medical institution".*

Article 56 of Law No. 79/2020 "On the Execution of Penal Decisions" states: "For an irresponsible person who has committed a criminal offense, the compulsory medical treatment measure is executed according to the court's decision in the specialized medical institution designated by the ministry responsible for health".

system. These institutions are administered by the ministry responsible for health in accordance with the current mental health legislation regarding the provision of services, while the security measures for these institutions are provided by the Ministry of Justice[5]. According to the jurisprudence of the Supreme Court, the prison hospital near the University Hospital Center of Tirana is considered a standard security prison, not a medical institution. In cases where the court assigns a compulsory medical treatment measure in a medical institution (a deficiency not attributable to the court) and it is executed in the prison hospital, the unjustly affected individual is deprived of their liberty, living under prison conditions despite not being a convict[6].

Convicts placed in the penitentiary system must be re-educated with the aim of achieving their full rehabilitation, regardless of whether they are placed in a high-security, standard security, low-security, or open institution. In the context of fulfilling the re-educative function of the sentence, the manner of executing penal sentences is of great importance. The imposition of the sentence by the court and its execution by the competent authorities must focus on the re-education of the perpetrator of the criminal offense. Only if this re-education is not achieved should the focus shift to the deterrence or neutralization of these individuals to make it very difficult or impossible for them to commit further offenses. According to some doctrinal views, the punishment should have an auxiliary character (*ultima ratio*), meaning it should be used only if no other method, punitive or otherwise, is capable of providing equally effective protection[7].

2. High-Security Penal Enforcement Institutions

High-security penal enforcement institutions are the facilities where imprisonment sentences are executed for the following: for any criminal offense committed by a structured criminal group, criminal organization, terrorist organization, or armed gang, as defined by the Penal Code[8]; for criminal offenses for which the Penal Code prescribes life imprisonment; for criminal offenses committed by repeat offenders, for which the court has imposed a sentence of no less than fifteen years of imprisonment; for crimes against life, for which the court has imposed a sentence of no less than twenty years of imprisonment; for sexual crimes against minors, as defined by the Penal Code.

In addition to the provisions mentioned above, high-security penal enforcement institutions also execute sentences for other convicts who, either during the commission of the criminal offense or during the execution of their sentence, have exhibited attitudes or behaviors that make it impossible for them to remain in other categories of prisons. This includes two additional categories of convicts who may be placed in high-security institutions and are notably distinct from each other. Thus, convicts who, during the commission of the criminal offense, have exhibited attitudes or behaviors that make it impossible for them to remain in other categories of prisons, are placed in high-security institutions by the court at the time of sentencing. The legislator has given the court

[5] *Kurti, S., & Gjonaj, E. (2018). Special institutions for convicts and pretrial detainees with mental health disorders. National Scientific Conference "Albanian Criminal Justice between the Values of Tradition, the Merit of Changes, and the Foresight of Law and Society", Faculty of Law - University of Tirana, Tirana, p. 175.*

[6] *Supreme Court of Albania. (2010, May 12).* Decision No. 70007-00480-00-2010 of the Basic Register and No. 00-2010-832 of the Decision (18).

[7] *Kurti, S. (2012, November 21). The re-educative function of punishment and its limitations. National Scientific Conference "The Evolution of Penal Law from the Declaration of Independence to the Present Day", Faculty of Law, University of Tirana, on the occasion of the 100th anniversary of the declaration of independence.*

[8] *Gjonaj, E. (2018). The limitation of rights for convicts for crimes committed within the framework of organized crime or terrorist organizations: A necessity in the fight against this type of crime. National Scientific Conference "Albanian Criminal Justice between the Values of Tradition, the Merit of Changes, and the Foresight of Law and Society", Faculty of Law - University of Tirana, Tirana, p. 367.*

the discretion, in accordance with the convict's personality and the danger posed by the criminal offense, to decide that the sentence should be executed in a high-security institution.

If the court has decided that the sentence should be executed in a standard security institution and more than 48 hours have passed, it is no longer possible for the court to decide that the sentence should be executed in a high-security institution due to the convict's attitudes or behaviors that make it impossible for them to remain in other categories of prisons. In such a case, a transfer from a standard security institution to a high-security institution may be requested due to the convict's attitudes or behaviors that make it impossible for them to remain in other categories of prisons. Therefore, in this case, it is assessed how much the re-educative function of the sentence has been realized and whether the execution of the sentence in a standard security institution is compatible with the convict's personality.

The initial assignment of the convict to high-security penal enforcement institutions is determined by the court that issued the imprisonment sentence. In cases where the court has not specified the category of the penal enforcement institution in the decision and the convict, during the commission of the criminal offense, has exhibited attitudes and behaviors that make it impossible for them to remain in standard security institutions, the prosecutor may request that the court designate a high-security institution for the execution of the sentence. In these cases, the prosecutor must submit the request for the designation of the high-security penal enforcement institution immediately and, in any case, no later than 48 hours after becoming aware of the court's decision[9].

The reclassification of security levels for convicts serving sentences in high-security institutions and for those who, during the execution of their sentence, have exhibited attitudes or behaviors that make it impossible for them to remain in other categories of institutions and therefore need to be transferred to a high-security institution, is conducted by the court based on a request from the convict, their defense attorney, or the prosecutor. The prosecutor acts upon the request of the institution's director. The court requests the Risk Assessment Commission[10] to submit a risk assessment report based on the security risk evaluation prepared by the institution where the convict is serving their sentence. During the court's examination of the case, the convict remains in the high-security penal enforcement institution.

3. Special Regime in High-Security Institutions

According to the last paragraph of Article 16 of Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees," restrictions on the rights of convicts may be imposed in high-security penal enforcement institutions, in the cases and according to the criteria specified in this law.

In accordance with the provisions of this statute, the legislator has stipulated in Article 17 of

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[9] *Kurti, S., & Buçpapaj, A. (2017). The limitation of rights of convicts in high-security prisons. International Scientific Conference "Criminal Law between Tradition and Challenges of Actuality", Faculty of Law, University of Tirana, p. 588 and onwards.*

[10] *Kurti, S. (2022). Criminology & Penology. (1st ed.). Tirana: Wisdom.*

The Risk Assessment Commission for Convicts is part of the General Directorate of Prisons and comprises 5 members: one representative from the security service, one representative from the legal sector, one representative from the social affairs sector, one representative from the health service, and the specialist from the social care sector who deals with the convict within the institution. The appointment of the 4 members, excluding the social care specialist, is made by order of the General Director of Prisons and changes once a year. The Risk Assessment Commission for Convicts decides on the reclassification of the convict's security level, transferring them from a standard security institution to a low-security institution and vice versa. The Risk Assessment Commission for Convicts also decides on transferring the convict from a low-security institution to an open institution and vice versa, in accordance with Article 20 of the Law on the Rights and Treatment of Convicts and Pretrial Detainees.

Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees" the establishment of a special regime in high-security penal enforcement institutions.

The regulation of such a regime in our legislation is closely linked to the ongoing emergency situation in the fight against organized crime in Albania. Given the reality in Albania, and considering the responsibilities assigned to Albania by European partners and the U.S. Department of State in the fight against organized crime, we believe this phenomenon constitutes an emergency situation. For this reason, we hold the view that if a person is arrested and prosecuted for one of the criminal offenses for which the special regime can be applied, and if the grounds for implementing this regime exist, they should be immediately placed under such a regime with restricted rights to prevent the disruption of order and security.

The implementation of such regimes has also been scrutinized by the European Court of Human Rights (ECHR), which, as a result, has issued a series of rulings against states that have applied special regimes restricting human rights and freedoms in the penitentiary system, or specifically the 41-bis regime, as is the case with Italy, whose model has been adopted by Albania. The Strasbourg Court has emphasized that special regimes in prisons are not in violation of Article 3 of the European Convention on Human Rights (ECHR), which absolutely prohibits torture, inhuman, or degrading treatment or punishment, provided that the state ensures that the individual is held under conditions that respect human dignity, that the manner in which the sentence is executed does not subject the individual to distress or hardship exceeding the inevitable level of suffering inherent in imprisonment or pre-trial detention, and that, considering the practical necessities of imprisonment, the individual's health and well-being are appropriately safeguarded[11].

3.1 Criminal Offenses for Which the Special Regime May Be Applied

According to the first paragraph of Article 17 of Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees", in specific cases, a special regime of exercising rights may be applied to convicts in high-security penal enforcement institutions and pretrial detainees who are under investigation or trial for the criminal offenses stipulated in Articles 79 letter "ç", 79/a, 79/b, 230, 230/a, 230/b, 230/c, 230/ç, 231, 232, 232/a, 234, 234/a, 234/b, 265/a, 265/b, 283 paragraph 3, 283/a paragraph 3, 284 paragraph 3, 284/a, 284/c paragraph 3, 284/ç paragraph 3, 333, 333/a, and 334 of the Penal Code, committed within the framework of participation in a structured criminal group, criminal organization, armed gang, terrorist organization, or for offenses with terrorist purposes.

In interpreting this provision, we believe that this regime should be applied to all prisoners who, regardless of the criminal offense committed, have acted within the framework of participation in a structured criminal group, criminal organization, armed gang, or terrorist organization. Although the legislator has not been very clear on this point, we base our opinion on the purpose for which the special regime is applied.

Thus, according to the fourth paragraph of Article 17 of Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees", the implementation of the special regime of exercising

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[11] European Court of Human Rights. (1999). Messina v. Italy; European Court of Human Rights. (1999). Rinzivillo v. Italy; European Court of Human Rights. (1999). Di Giovine v. Italy; European Court of Human Rights. (1999). Marincola v. Italy; European Court of Human Rights. (2000). Vincenti v. Italy; European Court of Human Rights. (2000). Labita v. Italy; European Court of Human Rights. (2001). Natoli v. Italy; European Court of Human Rights. (2001). Indelicato v. Italy; European Court of Human Rights. (2005). Gallico v. Italy; European Court of Human Rights. (2005). Argenti v. Italy; European Court of Human Rights. (2006). Viola v. Italy; European Court of Human Rights. (2006). Campisi v. Italy; European Court of Human Rights. (2008). Bagarella v. Italy; European Court of Human Rights. (2009). Enea v. Italy; European Court of Human Rights. (2015). Alfano v. Italy; European Court of Human Rights. (2015). Paolello v. Italy; European Court of Human Rights. (2018). Provenzano v. Italy.

rights in high-security penal enforcement institutions is solely based on maintaining order and security and/or preventing communication with the criminal organization they belong to or with other organizations referred to in the first paragraph of this article, through the adoption of internal and external high-security measures, which are primarily related to the need to prevent: a) Contacts with the criminal organization they belong to or with other organizations they collaborate with; b) Potential conflicts with elements of other organizations; c) Interaction with other prisoners who belong to the same organization or other organizations they collaborate with; ç) Communication or exchange of items between prisoners belonging to different groups.

Regardless of what has been stipulated and reasoned above, the special regime can also be applied to prisoners who pose a high risk due to their connections with members of criminal organizations, terrorist organizations, armed gangs, or structured criminal groups. The content of this provision, as outlined in the second paragraph of Article 17 of Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees", creates confusion by excessively broadening the category of prisoners to whom this regime may apply.

For example, a convict serving a sentence for murder in a standard security institution may be found to have connections with members of various criminal organizations. Under this provision, the special regime could be applied to this convict. However, we believe that the implementation of this regime should be limited to those convicts already serving their sentences in a high-security institution and should not be extended to convicts serving in other categories of institutions. In such a case, if it is found that this convict maintains contacts with organized crime or is part of a criminal organization, they could be charged with participation in a criminal organization. Only then could the special regime be applied to this convict.

3.2 Competent Authority for Placing Inmates Under the Special Regime

If there is evidence that a prisoner, convicted or under investigation for one of the aforementioned criminal offenses, maintains contacts with the criminal organization they belong to or with other organizations their organization collaborates with while in the institution, the Head of the Special Prosecution Office submits a reasoned request to the Minister of Justice for the application of the special regime to this prisoner.

Upon receiving such a request, the Minister of Justice seeks data and information on the specific case from the General Director of the State Police, the State Intelligence Service, the General Director of Prisons, and specialized bodies in the fight against organized crime and terrorism, according to their areas of responsibility. To make such a decision, the Minister of Justice is also required to consult with the Minister of the Interior. It is unclear whether this consultation with the Minister of the Interior should occur as soon as the request from the Head of the Special Prosecution Office is received or after obtaining information from the aforementioned bodies. In our opinion, the consultation between the Minister of Justice and the Minister of the Interior should take place only after the necessary data and information have been obtained from the designated bodies, as only at this point will the consultation be significant for deciding whether to implement such a regime.

Upon completing the tasks outlined in the third paragraph of Article 17 of Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees", the Minister of Justice decides whether or not to implement the special regime for the prisoner specified in the request from the Head of the Special Prosecution Office.

3.3 Content of the Special Regime

All prisoners placed under the special regime are subjected to a different regime with restricted rights compared to the standard treatment of prisoners. In the Albanian penitentiary system, the special regime is only implemented in two institutions: for convicts in the high-security institution in Peqin and for pretrial detainees in the Jordan Misja pretrial detention center. The compliance with the rights of

prisoners placed under the special regime is monitored by the People's Advocate (Ombudsman).

The admission of prisoners into the special regime is conducted by the admission committee within official hours, or by 4 PM from Monday to Friday. The main duty of the admission committee is to inform the prisoner about: visits with family members, permitted personal belongings, telephone communication with family, inspection of correspondence, requests and complaints, schedule of activities, outdoor time, dietary regimen, medical visits, uniform (clothing), meetings with the lawyer, the right to appeal according to the law, disciplinary procedures, benefits from positive behavior, and issues that may arise from negative behavior and attitudes.

Prisoners who are to remain under such a regime are placed in single rooms with a minimum area of 6 m^2 and a volume of 9 m^3. The rooms must have lighting, artificial light, and heating. The room's furnishings include a fixed bed, mattress, blanket, sheet, a fixed table, and a fixed chair. The bathroom contains a toilet, a sink, and a faucet, which dispense a limited amount of water each day. The light switch is controlled from outside the room, and the lighting fixture is protected by a grill and is unreachable by the prisoner. Inside the room, there is a bell for notifying staff in case of need. Cleaning supplies, including a bucket, cloth, and broom, are kept in the living area, while detergents for washing and cleaning are provided by staff when necessary and removed from the room after cleaning is completed.

Prisoners are provided with seasonal uniforms, which include underwear, pants, jacket, sweater, shirt, shoes, and a towel. Prisoners are allowed to keep the following personal items in their room: toothpaste and toothbrush; toiletries, razor, shaving soap; educational books, which are removed from the room after reading; paper and writing instruments, provided to the prisoners upon request and removed after use.

These prisoners have the right to one visit per month with family members, which takes place at regular intervals in designated areas where the entry of other persons or items is prohibited, and the visit is subject to audio and video recording. Meetings with individuals other than family members are allowed for convicted prisoners upon the recommendation of the institution's director and with the approval of the General Director of Prisons. For pretrial detainees, meetings with individuals other than family members are allowed only with the prosecutor's approval. Under no circumstances can meetings with the defense lawyer be restricted, regardless of the prisoner being under such a regime.

Another important right is the allowance for prisoners to have one phone call per month, with a maximum duration of ten minutes, which is recorded. For convicted prisoners, the phone call is authorized by a reasoned decision from the General Director of Prisons following a proposal from the institution's director. For pretrial detainees, the phone call is authorized by a reasoned decision from the prosecutor. The provisions of this clause do not apply to phone calls made to the Ombudsman institution or to domestic or international organizations working in the field of human rights.

Prisoners under the special regime are prohibited from using monetary values, items, and objects they may receive from outside. Their outdoor time is limited to up to 2 hours, but not less than 1 hour per day. These prisoners are excluded from the representative bodies of prisoners.

The monitoring of correspondence for these prisoners is mandatory, except for correspondence with the entities specified in point 1 of Article 51 of Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees"[12], or with international organizations that operate in the field of human rights protection.

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[12] *Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees." (2020). Article 51. Retrieved from albanian-legislation (euralius.eu)*
Penal enforcement institutions may be visited without authorization by: the President of the Republic, the Speaker of the Parliament, the Prime Minister, the Chair of the Constitutional Court, the Deputy Speaker of the Parliament, the Deputy Prime Minister, the Minister of Justice, the Chair of the High Court, the General Prosecutor, the Head of the Special Prosecution Office, members of parliament, the Deputy Minister of Justice, the Ombudsman, the commissioners and deputy commissioners of the Ombudsman, the Commissioner for Protection from

3.4 Duration of the Special Regime

A prisoner placed under the special regime cannot remain in this regime for more than one year, but this period can be extended for additional one-year terms. The extension of this regime is decided when it is determined that the conditions still exist for the prisoner to maintain connections with the criminal organization, structured criminal group, armed gang, or terrorist organization. The extension must also take into account the prisoner's criminal profile, the role they play in the criminal organization, the length of time they have been involved in the criminal organization, any new charges that have not yet been examined, their behavior in the penal enforcement institution, and the living standards of their family members.

No later than 30 days before the end of each one-year period, the Head of the Special Prosecution Office may propose to the Minister of Justice the extension of this regime. Based on the proposal from the Head of the Special Prosecution Office, the Minister of Justice reassesses whether the conditions for continuing the special regime of exercising rights towards the convict or pretrial detainee are met. In cases where the Minister of Justice decides not to approve the extension of the special regime, the General Director of Prisons orders the transfer of the convict back to the institution where they were serving their sentence or the pretrial detainee back to the institution where they were held before being placed under the special regime.

3.5 The Role of the Court in Implementing the Special Regime

Against the decision of the Minister of Justice to impose or extend the special regime, the prisoner, their defender, or the Head of the Special Prosecution Office may file an appeal within 20 days from the notification of the decision. The appeal is filed in the First Instance Court for Corruption and Organized Crime, which is the competent court for adjudicating this case. The court's review of the case does not suspend the decision of the Minister of Justice. If the court accepts the appeal against the decision of the Minister of Justice, the Minister of Justice must comply with the court's decision.
According to the jurisprudence of the Supreme Court, when a prisoner placed under the special regime in a high-security institution challenges the validity of the prosecutor's order for the execution of the penal decision, arguing that it is contrary to the law, the competent court for reviewing this request is not the First Instance Court for Corruption and Organized Crime but the court of the location where the institution executing the sentence is situated[13].

According to this jurisprudence, the provisions of Article 17 of Law No. 81/2020 "On the Rights and Treatment of Convicts and Pretrial Detainees" do not apply in this case because the dispute is not about challenging the minister's order but the prosecutor's execution order. The challenge to the prosecutor's execution order is a request related to the phase of executing the penal decision, and the competence for reviewing such requests lies with the court of the place of execution, according to Article 470 of the Code of Criminal Procedure, which stipulates that the court of the place of execution is competent for reviewing requests and claims related to its execution.

Discrimination, the General Director of Prisons and their deputies, the Director of Prison Police, the director and inspectors of internal prison control, members of the penal enforcement commission, judges and prosecutors in the exercise of their duties, the prisoners' defenders, and delegated Judicial Police officers.

[13] *Supreme Court of Albania. (2022, July 14). Decision No. 70007-432-00-2022 Basic Register, No. 00-2022-893.*
Article 470 of the Code of Criminal Procedure (KPP) states: "The court of the place of execution is competent for the examination of requests and claims related to its execution". This provision regulates the territorial jurisdiction of the court that examines requests or claims of the parties related to the execution of judicial decisions. In the specific case, the court of the place of execution is the court that includes within its jurisdiction the penal enforcement institution "Jordan Misja" in Tirana, specifically the Tirana Judicial District Court.

Another important issue, also addressed by the jurisprudence of the Supreme Court, concerns the parties' right to access the documents based on which the Minister's order for placing the applicant under the special regime was issued, as these documents are classified as "Secret" and "Restricted." According to the Supreme Court's jurisprudence[14], regarding the documents used to assess the prisoner for subjection to the special regime under the Minister's Order and classified as "Secret" and "Restricted", the court has an obligation to evaluate, for each individual case, the necessity of maintaining state secrecy in relation to the need for objective judgment and uncovering the truth during the trial, especially when this has significant and irreversible consequences for individuals.

In certain cases, the court must consider the possibility of obtaining classified information, even partially, to the extent necessary to assess the impact of state actions on the individual's private sphere, while respecting the obligation to maintain the confidentiality of the information it manages (See the German Federal Administrative Court decision BVerGE 66, 233, pg. 236). In such cases, the court fundamentally evaluates the information or data of the classified document and forms its internal conviction regarding the legality of the administrative actions of the Minister of Justice, while appropriately maintaining secrecy. The court always keeps in mind the fair and reasonable balance between state actions and individual freedom.

The right of parties in the trial to access written documents, evidence, and facts administered in the process is a prerequisite for a fair legal process. Restrictions on this right can only be made if they do not undermine the right to defense to such an extent that it becomes ineffective (See the German Federal Constitutional Court decision BverfGE 101, 106, on the right of access to state documents). Additionally, the Grand Chamber of the European Court of Human Rights has acknowledged that the access of national courts to review classified material can constitute the primary guarantee for respecting the procedural rights of parties who do not have the opportunity to access this information[15].

4. Conclusions and Recommendations

The Albanian penitentiary system has been reformed through Law No. 81/2020 "On the Rights and Treatment of Convicted Prisoners and Detainees". A significant regulation through this law has impacted high-security penal execution institutions. In these institutions, the following categories of convicted individuals are placed to serve their sentences:

- Convicted individuals for organized crime, regardless of the type of criminal offense they have committed;
- Convicted individuals serving life imprisonment;

[14] *Supreme Court of Albania. (2021, May 25). Decision No. 88000-00340-2021 Basic Register, No. 00-2021-360, dated 25.05.2021.*

[15] *European Court of Human Rights. (2017). Regner v. Czech Republic, paragraph 161. Retrieved from Regner v. the Czech Republic (no. 35289/11) - ECHR - ECHR / CEDH (coe.int)*

In response to the applicant's claims that the principles of adversarial proceedings and equality of arms were violated, the Court assessed that the decision-making procedure met the requirements of a fair trial, adversarial proceedings, and equality of arms "as far as possible," and consequently, there was no violation of Article 6/1 of the Convention. The Court reached this conclusion by considering, among other things, that the domestic courts had unrestricted access to all classified documents on which the authority relied to justify its decision and that the courts were able to conduct a thorough examination of the reasons the authority used to withhold the classified documents. The Court found that, taking into account the procedures as a whole, the nature of the dispute, and the margin of appreciation enjoyed by national authorities, the limitations faced by the applicant regarding the principles of adversarial proceedings and equality of arms were compensated in such a way that maintained the balance between the parties, without infringing the applicant's right to a fair trial.

- Repeat offenders who have been sentenced to no less than fifteen years of imprisonment;
- Convicted individuals for murder who have been sentenced to no less than twenty years of imprisonment;
- Convicted individuals for sexual crimes against minors;
- Other convicted individuals who have demonstrated a high social risk in committing the criminal offense and for whom the court has decided that they must serve their sentence in a high-security institution;
- Convicted individuals who, during the execution of their sentence, have exhibited attitudes or behaviors that make it impossible for them to remain in a standard security institution.

The court of the place of execution of the penal decision is competent for changing the security classification for convicted individuals serving their sentence in a high-security institution and who request to be transferred to a standard security institution. Additionally, the same court is also competent for transferring convicted individuals from a standard security institution to a high-security institution for those who, during the execution of their sentence, have exhibited attitudes or behaviors that make it impossible for them to remain in a standard security institution. The court requests the risk assessment commission to submit a risk assessment report based on the security risk assessment report prepared by the institution executing the penal decision where the convicted individual is serving their sentence. During the court's examination of the case, the convicted individual remains in the high-security penal execution institution.

Another innovation of the 2020 penitentiary reform is related to the regulation of serving sentences under the special regime created within the high-security institution. This is a regime with characteristics similar to the 41-bis special regime provided in the Italian penitentiary legislation. A significant difference between the Albanian special regime and the 41-bis regime provided by the Italian penitentiary legislation lies in the fact that in Italy, there is a considerable number of institutions that implement this regime, whereas in Albania, this regime is implemented only in special sections within the high-security institution. This is also due to the low number of prisoners to whom this regime is applied in Albania.

The special regime for exercising rights in Albanian law, similar to Italian law, involves the imposition of certain restrictions on individuals subjected to it (convicts or detainees). From a comparative perspective, Albanian law shows some less stringent and more humane tendencies regarding certain rights but contains ambiguities in adhering to important ECHR standards, such as the requirement for judicial authorization in cases of searches, wiretapping, or monitoring of correspondence, telephone conversations, or family visits. For example, under Albanian law, the restrictions are less severe in terms of exercising the right to family visits and telephone conversations, which can be exercised cumulatively and are not conditioned upon one another, as is stipulated in Italian legislation.

Both laws do not impose restrictions on rights concerning recordings or monitoring of meetings with lawyers. Unlike Italian law, the Albanian law does not set limitations on the number of meetings or phone calls with lawyers.

The provisions regarding the duration of the 41-bis regime in Italian law present a stricter and more restrictive tendency compared to Albanian law, as it can be applied for up to 4 years, unlike the Albanian law, which stipulates a 1-year period. Italian law also allows for extensions of 2 years each, whereas Albanian law allows for extensions of only 1 year.

Among the key recommendations, we want to highlight the necessity of improving the living conditions in the sections where prisoners under the special regime are held, in order to ensure that the execution of the sentence in this manner is in accordance with the principles sanctioned by the jurisprudence of the European Court of Human Rights (ECHR) and the recommendations of the CPT (Committee for the Prevention of Torture).

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