

IRREGULAR MIGRANTS UNDER CRIMINAL SANCTIONS: REHABILITATION AND AFTER-CARE PERSPECTIVES IN GREECE

Angelika Pitsela*
Athanasia Antonopoulou**

Abstract

Prisoners' rehabilitation is not explicitly included in the basic principles of Greek Penitentiary Code; though, it is adopted in several articles of this Code, as well as in other relevant national legislation and international binding legal instruments. In a country where the number of the irregular migrants¹ is estimated circa half a million persons and the proportion of aliens in prisons has climbed above 50% of the total number of prison population during the last years, the challenged issue of the rehabilitation effort especially for irregular migrants, during the execution of criminal sanctions and after their release from prisons, becomes a statistically crucial reality that must be managed effectively. We cannot talk about prisoners' rehabilitation, if we are going to ignore and exclude the most numerous group of them out of the whole effort and procedure. Under this perspective, developing the rehabilitation idea and organizing better its elaboration becomes even more difficult but also more imperative for the penitentiary policy of the country.

Keywords: Rehabilitation principle – Foreign prison population – Irregular migrants – Probation – After-care

Introduction

During the last decades, due to the geographical position of the county, the extended coastline and the land boundaries that at the same time are boundaries of the European Union, there is a continuous entry of migrants in Greece in a not regular and legal way (Lianos, 2001, Papadopoulou,

* Associate Professor of Criminology - Penology. Department of Criminal Law and Criminology, Faculty of Law, Aristotle University of Thessaloniki. Contact: pitsela@law.auth.gr

** Senior Researcher on Criminology - Crime Policy in Aristotle University of Thessaloniki, PhD in Law, Contact: 3e.rj.model@gmail.com, nan_antonopoulou@yahoo.gr

¹ The term “irregular migrants” is preferred in the present study instead of the term “illegal migrants” in accordance to the terminology indicated by the Council of Europe; in the Resolution 1509 (2006) “Human rights of irregular migrants”, it is underlined that the Parliamentary Assembly of the Council prefers to use the term “irregular migrant” to other terms as “illegal migrant” or “migrant without papers”, because “...this term is more neutral and does not carry, for example, the stigmatisation of the term “illegal”. It is also the term increasingly favoured by international organisations working on migration issues”.

2004). Hundreds of aliens enter the country illegally every day and their systematic detention puts the border guard stations, police stations, and migration detention centres in a situation of crisis

(Nowak, 2011)². Further, the over-representation of foreign population³ in Greek prisons has already become an urgent statistic reality that affects decisively the penitentiary policy of the country. Crucial issues on the rights and treatment of prisoners in connection to the general purpose of prison and the principle of rehabilitation are developing to real challenges, considering the great number of aliens – either irregular migrants or not⁴- during the execution of criminal sanctions and after their release from prison.

In general, the treatment of aliens is not different from that one of Greek prisoners, nor of course any kind of differentiation as to the purpose of their sentencing is provided on the basis of their nationality. According to this - and to the extent that the principle of rehabilitation is looking hard for a field of implementation on the ground of the difficult actuality of Greek prisons - both Greek and foreign prisoners are prepared themselves with the same means for their return to the community. However, the desirability of rehabilitation is not something that should be taken for granted (Raynor & Robinson, 2009) for the Greek penitentiary policy, especially considering the foreign prisoners that lumps into the category of irregular migrants. The status of their residence seems to be a decisive factor that weakens significantly in practice the exercise of their rehabilitative rights as provided by law. This situation, however, includes one additional risk, as it may affect generally the penitentiary policy of the country in relation to the principle of rehabilitation throughout the entire prison population: if only a narrow margin for the elaboration of the principle of rehabilitation is left for the majority of prisoners, that is the group of foreign prisoners that fall into the category of illegal immigrants (as it is attempted to be explained in this study), then gradually, this principle may be shrunken to a secondary feature of the penitentiary policy, and eventually cease to be one of the main utilitarian purpose of sentencing.

For the above reasons, it becomes absolutely necessary to examine carefully and note down both the obstacles and the perspectives that are coming up in connection to the legal status of irregular migrants, especially after their release from prison, on both theoretical and actual level; this is probably the first step for detecting the best ways and practices for the further elaboration of the principle of rehabilitation for them, as long as we wish to avoid the above risk, the risk of restricting the Greek Penitentiary System to a general legal missal that is self-canceled when it is attempted to be implemented to the greater percentage of the population concerned.

² The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the United Nations, Manfred Nowak, on his mission to Greece, from 10 to 20 October 2010, has emphasized on the particularly overwhelming situation faced by law enforcement officials in Greece, confronted with a major increase of irregular migrants and refugees coming, mostly, via the land border with Turkey.

³ According to article 1 paragraph 1 of Law No 3386/2005 (Government Gazette A' 212) on the “*Entry, residence and social integration of third-country citizens in the Hellenic territory*”, an “alien” (“allodapos”) is any person who has not Greek citizenship or has no citizenship at all; a “third-country citizen” is an alien who is not a citizen of one of the countries of the European Union. When, in this study, we are referred to *foreign population/prison population/prisoners*, we are referring to persons that are not Greek citizens and they are aliens according to the above Law. According to the Greek Code of Citizenship (Law No 3284/2004, Government Gazette A' 217), the acquisition of Greek citizenship is possible either by birth or by recognition or by adoption by Greeks, by enlistment in the Armed Services for the aliens with Greek ethnic origin and by naturalization.

⁴ The main ways in which aliens become irregular migrants vary according to the provisions of No 3386/2005; it could be either by staying in Greece after their permission has expired or their request to stay or to renew their permission has been refused by the competent authorities; or by entering the country illegally (illegal entrants); or by not complying with other conditions provided by the law; or by being expelled after judicial or administrative decision.

Migration trends in Greece and Criminal Justice System scales

Until the 90s, Greece was a rather homogeneous society. The vast majority of the population had Greek as mother tongue, while 98% of them were of the Greek Christian Orthodox religion, 1% Muslims and 1% other (Spinellis & Spinellis, 1999). After 1990, an influx of refugees and migrants, mostly from countries of South-East, Central and Eastern Europe, has rapidly been multiplied. Within few years, Greece has become a country where a considerable number of migrants lives, permanently or temporally, and works. During the first decade of the 21st century, even if neither the relevant legislation nor the required social structure and institutions have yet been prepared for this kind of social change (Akritidou, Antonopoulou & Pitsela, 2006), migration has become an inevitably stable characteristic of the Greek society: in 2001, 797.091 migrants have been officially registered⁵, representing approximately the 8% of the total population of the country according to the official National Census of 2001 carried by the National Statistic Service of Greece⁶, while in 2009, according to estimations of Eurostat, aliens represented 8,3% of total population; of them, only 1,4% were citizens of another member state of the European Union, while 6,8% were citizens of third countries (Eurostat, 2010).

Nowadays, migration trends are still developing towards the same up-going direction. Unofficial estimations raise already the total number of foreign population to 1.500.000⁷. Hence, the exact figure of aliens in Greece is still unknown. The official recorded migration flux does not represent the actual -higher- number of foreign population because of a notably expanded dark figure based on the dichotomy of migrants in regular and irregular ones. In order to manage the problem of unrecorded irregular migrants of the country, several regularisation programmes have been applied by the State for the irregular migrants that had entered the country until 2005⁸.

According to estimations, the figure of irregular migrants in Greece is about 470.000⁹, while according to police statistics, every year, more than 100.000 irregular migrants, in average, are been arrested by the component Greek authorities. The following *Table 1* presents the trend on the arrests of irregular migrants by the Hellenic Police since 2006.

⁵ Of those 750.000 (94%) were citizens from outside the EU. According to a census carried out by the General Secretariat of Repatriated Co-Ethnics in 2000, additionally 155.319 persons were repatriated Greeks from the former Soviet Union who migrated to Greece predominantly during the 1990s. This raises the actual number of migrants in Greece in 2001 to approximately 900.000.

⁶ The results of the National Census of 2011 have not yet been finally announced by the National Statistic Service of Greece (since 2010 Hellenic Statistical Authority)
<http://www.statistics.gr/portal/page/portal/ESYE/PAGE-database>

⁷ The vast majority of foreign population in Greece is from the border Albania, another percentage comes from other Balkan countries as well as from countries of former USSR, as Ukraine or Moldavia, while according to most recent data, a raise of the migrant flux is recorded from Asia (China, Iraq, Pakistan) and Northern African because of the adverse socio-economic conditions of the countries of origin during the last years (Triandafyllidou, Maroufouf & Nikolova, 2009).

⁸ In January of 1998, a legalisation process for irregular migrants was initiated and in June of 1999 approximately 50.000 residence permits (green cards) were granted. Once again, on 2001 a remarkable number of irregular migrants received green cards. During the year 2005, one more effort for a massive legalization of the irregular migrants took place and they were allowed to apply for a green card under a set of conditions provided by the last Aliens Act, while one more broad programme has been applied in 2007 under the Law No 3536/2007 (Government Gazette A' 42).

⁹ According to the estimations of the Hellenic Foundation for European and Foreign Policy, <http://www.eliamep.gr>.

Table 1: Irregular migrants arrested by the Police in Greece between 2006-2011

Year	Arrested irregular migrants (N)
2006	95.239
2007	112.364
2008	146.337
2009	126.145
2010	132.524
2011	99.368

Source: Hellenic Police Statistics

http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=12080&Itemid=429&lang=

On the other hand, the participation of aliens within population of Greek prisons is recorded as disproportionately large in compare to their participation within the general population of the country. Before the 1990s, less than 20% of the prison population was alien. Nowadays, the Greek penitentiary institutions of all types contain more than 55% of foreign prisoners¹⁰, mostly Albanians (Pitsela, 2010), followed by nationals from the former USSR, Iraq, Rumania, Turkey, etc. *Table 2* captures in a characteristic way the rapid augmentative trend in the proportion of foreign prisoners since 1990.

Table 2: Proportion of foreign prisoners in Greek penitentiary institutions between 1990-2010

Year	%
1990	20,9
1996	35,6
2000	48,4
2005	42,5
2010	55,5

Source: Information of the Greek Ministry of Justice, Transparency and Human Rights - Council of Europe Penological Information Bulletin, No. 10 (1987), 28; No. 12 (1988), 22; Nos. 13 & 14 (1989); No. 15 (1990), 16.; No. 16 (1992), 28; No. 17 (1992) 23, No. 18 (1993), 20; No. 21 (1998), 67; No. 22 (2000), 25, 63; No. 23 & 24 (2002), 72 - International Centre for Prison Studies

This over-high percentage becomes even more impressive considering not only the fact that the representation of aliens comprises circa 8-9% of the general population but also the percentage of aliens among total number of the alleged offenders till the middle of the first decade of the third Millennium, according to Police Statistics, as recorded to the following *Table 3*. During the last years, though, the proportion of alien alleged offenders is constantly rising; still it remains smaller in compare to the proportion of prison population (both pre-trial detainees and convicted) of the same period.

¹⁰ According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his mission to Greece, from 10 to 20 October 2010, there were around 12,100 prisoners for a maximum capacity of 9,100 detainees in Greek prisons. 57% of all prisoners in Greece are aliens (Nowak, 2011, 16)

Table 3: Alleged offenders in Greece between 1990-2009

Year	Total number of offenders (N)	Foreign offenders (N)	Foreign offenders (%)
1990	310.569	3.451	1,1
1995	279.552	9.000	3,2
2000	330.261	21.277	6,4
2005	417.554	53.627	12,8
2006	422.508	69.203	16,4
2007	372.722	73.593	19,7
2008	374.582	95.164	25,4
2009	329.627	89.007	27,0

Source: Hellenic Police Statistics

http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=12080&Itemid=429&lang

In addition, the trend is augmentative not only concerning the figure of the foreign population in Greek penitentiary institutions but also the number of the convictions of aliens during recent years. Since the 1990's, the total number of foreign convicted population has also been raised in a quite impressive way (National Centre of Social Studies, 2009)¹¹.

Table 4: Convicted aliens in Greece between 1998-2009

Year	Convicted population in total (N)	Convicted aliens*** (N)	Convicted aliens (%)
1998	63.818	3.742	5,9
1999	62.663	3.332	5,3
2000	58.816	2.619	4,5
2001	59.262	3.128	5,3
2002	66.061	3.426	5,2
2003	73.161	3.927	5,4
2004	74.188	7.070	9,5
2005	56.923	9.544	16,8
2006	50.157	10.423	20,7
2007	44.931	10.656	23,7
2008	46.128	12.643	27,4
2009	45.127	12.542	27,9

*** It is important to underline that from 1998 to 2003 the criterion for the above statistical classification has not been the Greek citizenship but the permanent residence of the convicted. From 2004 to 2008, the criterion has changed to the place of birth. Only since 2009, the criterion is the citizenship of the convicted.

Source: National Statistic Authority of Greece – Statistics of Justice. The above data have been provided for the study after communication with the Authority.

¹¹ Of course, the augmentative trend of foreign prison population can also be placed normally in the frame of the general augmentative prison population trend of the last two decades (Pitsela, 2010). Since the middle of the 90's, despite a legislative expansion of alternative sanctions, the general prison population is gradually and steadily rising.

Nevertheless, no certain answer has still been given for the explanation of the considerable representation of aliens in penitentiary institutions of Greece. Many factors can be invoked: the fact

that the aliens are charged with more serious crimes, the selective attitudes of victims and of law enforcement agencies and generally of the Criminal Justice officials towards the foreign alleged offenders, the fact that the aliens cannot be benefited by the possibility - given by the law under specific conditions - to convert the custodial sanction imposed to them into a pecuniary penalty, because of their bad economic conditions, and the generally degraded advocacy means (such as *ex officio* defence lawyer, lack of defence witnesses) in compare to the ones of the national population that come up with the Criminal Justice System (Pitsela, 2008, Kranidioti, 2003, 160).

The Greek penitentiary policy on foreign prisoners–irregular migrants

According to the Law No 1708/1987 (Government Gazette A' 108) which has ratified the Convention for the Transfer of Sentenced Persons of 1983¹², it is possible for foreign prisoners to be transferred to their own country in order to serve the remainder of their term¹³. Though, foreign prisoners rarely avail themselves of this possibility to a prison of their own country; neither the above Convention nor other transnational agreements with other countries have any significant effect on the formation of the situation concerning foreign prisoners in Greece (Lambropoulou 2010, 541).

Despite the overwhelming percentage of aliens' participation among prison population, no specific institutions are being provided or used especially for migrants - either regular or irregular ones - detained in the framework of Criminal Justice System; aliens are not separated from Greek prisoners. The only exception to the unity of penitentiary institutions is the institution for young offenders at Volos, where only young aliens are detained.

In an *ad hoc* research on all three institutions for young persons in Volos, Avlona and Kassavetia, after communication with the Directors of these institutions on 09.03.2012, out of a total number of 547 young offenders¹⁴, 507 (93%) of them have been older than 18 years old and only 40 (7%) under 18 during detention (Pitsela & Sagel-Grande, 2003); 441 (79%) were aliens and 106 (19%) Greeks; 329 (60%) were remands and 218 (40%) were sentenced prisoners. In the institution of Volos, 145 young offenders were detained in total, all of which were alien; in Kassavetia, 35 and in Avlona 367 young offenders, both Greek and aliens, were detained on that specific day; in all three institutions, there have been young offenders of at least 27 different nationalities (mostly non-EU citizens). According to the above data, it becomes obvious that the over-representation of foreign young offenders in the Greek institutions is much more extended in compare to the general representation of foreign population in Greek prisons. Also, it is remarkable that the vast majority of the young detainees are remand prisoners in higher percentage in compare to the corresponding percentage of remand prisoners of the general prison population.

¹² With the Law No 3351/2005 (Government Gazette A' 147) the additional Protocol of the Convention was also ratified.

¹³ Provided that (a) the country has signed a transfer agreement with Greece or has acceded to their current transfer agreement of the Council of Europe, (b) they are nationals of the country where they request to be transferred, (c) the sentencing judgement is irrevocable or they have waived all legal remedies (appeals, etc.), (d) the sentence they shall continue serving in their country, after their transfer, shall not be greater than the one imposed in Greece, (e) the remainder of their term in Greece must not be less than six month, and (f) their country consent to such transfer.

¹⁴ Young offenders in Young Offenders' Institutions are persons between 15-21 years old; exceptionally, according to Article 12 paragraph 6 of Penitentiary Code, persons up to 25 years old can –according to specific terms- remain in a Young Offenders' Institution, in order to complete an educational or vocational programme.

No records are officially available on foreign prisoners' (both alleged and convicted) legal and residence status. However, the vast majority of foreign prison population can be enlisted in the

category of irregular migrants. The measures of judicial and administrative expulsion of aliens are the reason for this conceptual and legal classification.

On the one hand, until recently the Article 74 of the Greek Penal Code provided that in case of foreign offenders who are sentenced to imprisonment or to confinement in a penitentiary¹⁵, the court may order their expulsion from the country, provided that this is not contrary to the international conventions, after their release from the penitentiary institution, or, in case of conditional release, immediately after their release from prison¹⁶. In case of foreign offenders with a legal residence in the country, there has been a limitation of one penalty not smaller of three months. In case that aliens were expelled according to this measure of judicial expulsion they could only come back to Greece with a decision of the Minister of Justice after a period of at least 3 years; it was also provided that in case of a alien married to a Greek as well as a alien with a Greek origin, this period could be shorter.

Besides, the predominant crime policy in Greece has aimed to reduce the number of convicted aliens in prison through the measure of the judicial expulsion (Pitsela, 2008). According to Article 99 paragraph 2 (1) of the Penal Code: *"if an alien, apart from political refugees, is convicted in a custodial sanction up to five years and with the same court decision his/her expulsion is ordered, the court may also order the suspension of the execution of his/her sanction for a not determined period ..., so that his/her expulsion is immediately implemented"*. In the above provision there is no distinction between migrants who have a legal residence in the country and those who are considered irregular; neither the time of residence nor the degree of family and professional integration of the alien into the host culture is taken into consideration. Further, this provision seems to have an actual impact on foreign prison population: nearly the 80% of the aliens in Greek penitentiary institutions serves a long-term custodial sanction that is imprisonment of more than 5 years.

Very recently, a reform of the measure of judicial expulsion took place under the Article 23 paragraph 1 of Law No 4055/2012 (Government Gazette A' 51) in order to rationalize it, as many critical reservations has been expressed in theory about its previous form (Xatzinikolaou, 2006). Since 2 April of 2012, the judicial expulsion of foreign offenders can be imposed only in case that the sanction imposed is confinement in penitentiary (deprivation of liberty for more than five years), that is the custodial sanction for felonies, provided that this is not contrary to the international conventions and only by judgement that the residence of the alien into the country is no longer compatible to the terms of social life, taking into account the kind of crime, the degree of guilt, the special circumstances of the crime, as well as the period of residence in the

¹⁵ According to the Greek Penal Code the main penalties of deprivation of liberty are the following: a) the penalty of detention that is the deprivation of liberty that involves a minimum of one day and a maximum of six month (Article 55 PC) imposed for contraventions (Article 18 PC), b) the imprisonment that involves a deprivation of liberty of a minimum of ten days and a maximum of five years (Article 53 PC) imposed for misdemeanours (Article 18 PC); this penalty may be suspended or converted into other non-custodial ones (pecuniary penalty or community service); In special cases, the maximum duration of imprisonment can rise up to ten years (Article 94 paragraph 1 PC), c) the confinement in a penitentiary might be either incarceration for life or temporary for a period between five and 20 years (Article 52 PC); this sanction is provided for felonies (Article 18 PC). In special cases, the maximum duration of temporary confinement in a penitentiary can rise up to 25 years (Article 94 paragraph 1 PC). According to the penal law about conditional release (Article 105 PC), confinement in penitentiary for life actually ranges between 16 and 20 years.

¹⁶ Also, the court may order the expulsion from the country of any alien upon whom the security measure custody of offenders in a public therapeutic institution according to Article 69 of Penal Code; in such a case, expulsion may be ordered in lieu of such measure.

country, the legal or illegal status of residence, the conduct of the offender, the professional orientation, the family ties and generally the degree of social integration of the sentenced alien into the Greek society. The amendment seeks to shrink the measure of the expulsion of the

convicted aliens to fewer cases, because after this the measure can no longer be applied for misdemeanors. Social factors are now taken into account within the rehabilitative frame of Criminal Justice and the measure is imposed only if elevated conditions exist. Furthermore, according to the amendment, in case that a judicial expulsion has been imposed, the court shall impose an embargo from re-entrance in the country for a period of ten years or even for an indeterminate period. The judicial council of first degree of the region of court that has imposed the judicial expulsion may permit – after taking into account the opinion of police authority – the re-entrance after a period of three years; in case of aliens married to a Greek as well as aliens with a Greek ethnic origin, the embargo period can be shorter.

On the other hand, regardless to the above court jurisdiction, according to Article 76 paragraph 1 case a of the Law No 3386/2005 (Government Gazette A' 212) on the “*Entry, residence and social integration of third-country nationals in the Hellenic territory*”, the expulsion of aliens (citizens of a third county besides the EU countries) can be imposed after an administrative decision of the local Police Chief, not only in cases that aliens have entered the country without authorization or has committed any other infractions of residence status, but also in cases that they have been convicted to a criminal sanction of at least one year of imprisonment or for having committed one of the offenses enlisted in this specific legal provision regardless to the length of the imposed sanction, such as offences against the state, offences of illicit traffic of products or drugs, sexual offences, resistance to authority, theft, embezzlement and fraud.

Expulsion by judicial decision constitutes a collateral punishment or a security measure imposed by the court, whereas as administrative measure it is imposed by the administration aiming at the protection of society. One way or another, this either security or administrative measure, when it is imposed to convicted migrants, affects decisively their residence status. Foreign offenders cannot easily pass the “Symblegades” of expulsion (especially the administrative one): after conviction to a custodial sanction – even of at least one year of imprisonment either converted to pecuniary penalty or suspended or executed - they usually “downgraded” - institutionally and automatically - in the category of irregular migrants and “undesirable aliens” for the Greek State.

The rehabilitation principle in the Greek Penitentiary System

The first Greek Penitentiary Code (Emergency Law No 127/1967, Government Gazette A' 152) that has been put in force 17 years after the enactment of the Greek Penal Code has provided, in Article 1 that the execution of criminal sanctions aims mainly to the social re-adaption of prisoners through their education and improvement (Bakatsulas, 1968). This first Code was in force until 1989 but the majority of its provisions have never been implemented in practice. According to Article 1 of the (second) Code of Basic Rules for the Treatment of Prisoners (Law No 1851/1989, Government Gazette A' 122), that has been in force from 1990 until 1999, the social rehabilitation of prisoners has been provided *expressis verbis* as the main purpose of the custodial sentences and the Greek Penitentiary System (Pitsela, 1995). During the execution of sentences, in accordance to the above law, the education/treatment of both juveniles and adult prisoners that should aim to their smooth rehabilitation in their family, work and social environment (Article 39) is one of the most important means for the implementation of the rehabilitation principle (Spinellis 1995, Dimopoulos 1991, Lampropoulou 1988). On the contrary, one of the characteristic of the new and current Penitentiary Code (Law No 2776/1999, Government Gazette A' 291) – that has abolished the Code of Basic Rules with Article 87 paragraph 2 apart form chapter 14 of the Code of Basic Rules, concerning issues on prisons staff and their duties - is that it does not include the social rehabilitation of prisoners in the main purposes of custodial sentences system (Chaidou, 2002, 117).

In the explanatory memorandum of the first of the six draft bills on the new Penitentiary Code, that has been planned in the 90s, it has been emphasized that utilitarian theoretical declarations

concerning the purposes of the sentence and treatment of prisoners are going to be deliberately left out of the new legal text, because such declarations: a. can harm the State's reliability when it does not implement these legal provisions, b. make the Penitentiary System a social unfair system because it separates the citizens in two categories: those who need to be improved and rehabilitated and are sent to prisons and those who do not have such a need and are sent home, c. consist a legal attachment of science to the simplified theoretical thesis that crime is due to lack of education and vocational training which the Penitentiary System could cover through sentencing. Reintegration and rehabilitation purposes are been abandoned as they are connected to the State's paternalistic character, while the State's response to crime through custodial sentence should deprive or influence no other individual right of the prisoners than their personal liberty (Alexiadis, 2001).

During the decade of 1990, rehabilitation principle has been the subject of a vivid theoretical discourse between Greek criminologists. According to one of the expressed theoretical approaches of that period, the rehabilitation principle should have been recognized as a constitutional right (Dimopoulos, 1992), while from an other point of view, the rehabilitation of the prisoners should have been included *expressis verbis* in the basic principles of the new Penitentiary Code as it consist the ideal towards which the implementation of the law is tending (Lambropoulou, 1992). Finally, though, as already mentioned above, the declaration of the rehabilitative purpose of the penitentiary policy was not included in the basic principles of the new law (Giovanoglou, 2006). Instead, according to Article 2 paragraph 1 of the Penitentiary Code: "*During the treatment of prisoners, the respect of their human dignity shall be ensured as well as the self-respect and the sense of their social responsibility shall be enhanced*".

However, the rehabilitation principle is not excluded generally from the Greek penitentiary policy. First of all, it is explicitly provided in several binding legal instruments¹⁷. Further, it is silently adopted also in some provisions of the Penitentiary Code. In several Articles of this Law, particular rehabilitation purposes are pursued systematically: education and vocational training, prison work, communication with the outside world (visits, prison leaves) and after-care are some of the institutions adopted by the Greek penitentiary policy towards this direction as offers of the State that may be accepted or not by the prisoners during sentencing (Margaritis & Paraskevopoulos, 2000).

Specific rehabilitation measures and barriers during execution of custodial sanctions

Since almost thirty years, the Committee of Ministers of the Council of Europe, having taken into consideration the great extend of foreign prison population in the member-States, has underlined - through the Recommendation No R (84) 12 - the importance of equal opportunities for the aliens in penitentiary institutions for the facilitation of their rehabilitation in social life after their release. The facilitation of the contacts of prisoners with other prisoners of the same nationalities, language,

¹⁷ According to Article 10 paragraph 3 of the United Nations International Covenant on Civil and Political Rights, that after its late ratification with the Law No 2462/1997 (Government Gazette A' 25) consists an inseparable part of Greek legislation, the main purpose of the treatment of prisoners is their reformation and their social rehabilitation. Moreover, according to Article 40 paragraph 1 of the Convention on the Rights of the Child, ratified with the Law No 2101/1992 (Government Gazette A' 192), every child recognized as having infringed the penal law must be treated in a manner which - *inter alia* - takes into account the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. Additionally, according to Article 1 (b) of the Presidential Degree No 36/2000 about the organizational structure of the Ministry of Justice (Government Gazette A' 29), the design and the implementation of the prison policy under the purpose of the social rehabilitation of the offender is included explicitly as a mission of the Ministry.

religious or culture during work or free time, the access to books, newspapers and magazines in their language, the allowances for educational and vocational training and the providing of regular prison

leaves to foreign as to national prisoners are some of the measures proposed towards the fulfilment of the above purpose.

According to Article 3 paragraph 1 of the Penitentiary Code, foreign prisoners have the same legal position, rights and obligations as national prisoners. Additionally, according to the other relevant provisions of the Penitentiary Code, the Internal Operation Regulation of General Detention Institutions of Type A and B¹⁸ and the Internal Operation Regulation of Special Detention Institutions for Young Persons¹⁹, all prisoners, Greeks and aliens, have the right to participate and co-operate in educational, cultural, athletic, artistic and recreational events and other creative activities during the detention period. Moreover, the prison staff should be afforded with programmes that aim to improve the understanding of the hardships and cultural backgrounds of prisoners in all Greek prisons²⁰. In general, according to Article 35 of the Internal Regulation, the competent authorities of the penitentiary institution must take care so that all prisoners have the opportunity to be integrated to the institutes of prison (e.g. prison work) so that the period of detention to be creatively used by them and the prisoners' bonds with the wider social environment to be encouraged and strengthened, especially when the time for their final or conditional release approaches.

i. Education and work in prison

In the spirit of the rehabilitation principle and a humanistic approach of imprisonment, all prisoners can attend any education unit operating within the detention facilities (primary school; junior high school; so called "second opportunity school"²¹). Also, they can attend schools and Universities or any other vocational training institutes outside the detention facilities by making use of educational leaves²², provided that such institutions are been established in the region of the penitentiary institution. It should be added that in Greece there are good-time regulations for prisoners (Pitsela, 2010, Lambropoulou, 2001, Meurer, 1994, Frangoulis, 1994) who either work or take part in training programmes. The practice of crediting working days is a tool in the individualisation of the sanction is intended to serve the rehabilitation of the offenders²³.

¹⁸ Ministerial Decision No 58819/2003 of the Ministry of Justice (Government Gazette B' 463).

¹⁹ Ministerial Decision No 62367/2005 of the Ministry of Justice (Government Gazette B' 889).

²⁰ In practise, however, extremely rarely special training programme is provided to prison staff, especially considering the treatment of migrants in prisons.

²¹ The so called "Second Opportunity Schools" is an innovative institution for adults' education. The training program is different from that of formal education in content, teaching methodology and assessment of learners. The total duration of the training program is 2 years. After successful qualification equivalent to graduation provided the Gymnasium (junior high school. The "Second Opportunity Schools" were established in Greece by Law No 2525/1997 according to the general principles provided by the European Union. Today, there are 6 Second Opportunity Schools in Greek Prisons (Domokos, Eleona, Korydallos, Trikala, Larissa, Diavata).

²² Article 20 of Internal Regulation and Article 35 of Penitentiary Code about Education, Vocational Training and Work of the prisoners.

²³ The prisoners who perform any kind of work or participate in vocational training or a programme offering occupational qualifications, may have the time worked or studied credited to their total period of detention. More specifically, according to Article 35 sec 8, in conjunction with Article 46 of Penitentiary Code, each day spent on vocational training programme with a minimum duration of three months can be equated to on working day if the prisoner has successfully completed this programme.

Article 35 paragraph 4 of the Penitentiary Code provides specially for the education of the foreign prisoners. According to this Article, if it is possible, special measures for their training can be taken at any penitentiary institution. However, as the total budget for the education and the recreation of the total prison population in Greek prisons is remarkably low, this provision seems to have been left in practice only to the option of NGOs²⁴ which take a part into the everyday program of Greek prisons.

ii. Contacts with the outside world

All prisoners have the right to be informed by watching television and hearing radio programs through devices that belong either to them or to the penitentiary institution, pursuant to Article 19, paragraphs 2-4 of the Internal Regulation. Their right to be informed can also be satisfied by reading daily press and magazines as well as books of their selection (subject to the condition that their content is not indecent) or also by lectures and discussions of specialized scientists and experts.²⁵ A lending library should operate in the penitentiary institutions, constantly enriched at the initiative of the department of social work and the sociologist. In fact, though, in Greek prisons, there are only few books available in foreign languages, certainly not enough to cover the needs of all foreign inmates. However, there are neither newspapers nor magazines available for them. Furthermore, the prisoners can participate, if they wish, in a recreational or artistic event either individually or in a group, which shall be organised by the Prison Council at a suitably shaped indoor or outdoor activity of the institution²⁶. Towards this, some NGO's, such as ARSIS - Social Support of Youth, PRAKSIS, Medicines of the World come into prison and organise recreational activities with the prisoners.

In addition, according to Article 21 of Internal Regulation in accordance with Article 52 of Penitentiary Code, all prisoners are entitled to have visits from spouses and relatives up to the fourth degree at least once a week, with minimum half hour duration. Representatives of social organizations, members of the parliament, and members of scientific societies, cultural, religious or other associations may also visit prisoners upon permission of the Prison Council²⁷. Foreign prisoners shall be granted the means to communicate with the diplomatic or consular representatives of the state of which they are nationals. As already mentioned above, according to law provisions, foreign prisoners have the same rights of visits as Greek inmates. Though, foreign prisoners - especially those of them that are irregular migrants - rarely have relatives living in the country. Thus, they do not actually get visits during their detention in Greek penitentiary institutions, being *de facto* socially isolated inside prisons.

Furthermore, according to Article 24 of Internal Regulation in accordance with Articles 54-58 of Penitentiary Code, all prisoners have the right of one of the most important rehabilitation measures during execution of custodial sanctions: the right of prison leaves, either regular or educational. Theoretically, aliens have the same right as nationals to prison leaves. But pretty few connections

²⁴ Often with the financial support of the European Union.

²⁵ Article 18 of Internal Regulation and Article 37 of Penitentiary Code about Information.

²⁶ Article 19 of Internal Regulation and Article 38 of Penitentiary Code about Recreation.

²⁷ The Prison Council is a three-member council be consisted by the director of the prison, the older social worker of prison and also the older special scientist of prison (psychologist, legal scientist, sociologist, teacher), according to Article 10 paragraph 1 of Penitentiary Code.

between theory and actual practice may be confirmed inside a prison, especially for irregular migrants.

The annual report of the Greek Ombudsman²⁸ for the year 2005 is referred vividly to this specific aspect of rehabilitation principle in Greek prisons. The Ombudsman estimates that the elaboration of the right of prison leaves seems to be developed as one of the most problematic issues for the life of prisoners, taking into account its importance for the creation and maintenance of family and social relationships that not only contribute to harmonious cohabitation inside the penitentiary institution but also to the further rehabilitation purpose. The Ombudsman has found that even if no discrimination issue came up directly in any of the cases examined upon complaint, the conditions provided for the satisfaction of a prisoners' request for leave (e.g. stable residence²⁹ and family ties in the country) have rarely been concurred for migrants, especially the irregular ones. On the contrary, foreign prisoners' ties with a third country made them as suspects of escape in the eyes of the prison and judicial authorities which were component to decide on the prisoners' request. On the other hand, even if according to Article 54 paragraph 5 of the Penitentiary Code, negative decisions on leave requests should be specially justified, in the majority of the cases examined by the Ombudsman, only few of them were based on an adequate and sufficient justification (Ombudsman, 2005).

iii. The actual situation of Greek prisons as a barrier to prisoners' rehabilitative rights

Since the last decade of the 20th century and the beginning of the 21st century, the living conditions of the totally overcrowded Greek prisons (Spinellis, 1998) have been characterized as "explosive": the occupancy levels had been recorded between 140-170%. In 2002, for example, the official occupancy of penitentiary institutions was for 5.284 places, while the actual number of prisoners was 8.507. In 2004 and 2005, with a total occupancy of 5.584 places, the prisoners have been 8.738 and 9.589, respectively (CoE, 2007). Even after the implementation of special legal provisions (e.g. on massive probation or parole) adopted urgently in 2005 (Law No 3346/2005, Government Gazette A' 140), 2008 (Law No 3727/2008, Government Gazette A' 257) and 2010 (Law No 3904/2010, Government Gazette A' 218) as a decongestant policy of the penitentiary institutions, the situation has slightly been changed³⁰.

In general, the actual conditions in Greek penitentiary institutions³¹ are not satisfactory either for national or for foreign inmates who wish to enjoy any of the rehabilitative rights described above.

²⁸ The Greek Ombudsman is a constitutionally established Independent Authority. It was founded in October 1998 and operates under the provisions of Law No 3094/2003. The aim of the Greek Ombudsman is to mediate between public administration and private individuals, in order to protect the citizens' rights, ensuring compliance with the rule of law rights, observing the rule of law and combating maladministration. In addition, the mission of the Greek Ombudsman includes *inter alia* protection and promotion of the rights of migrants.

²⁹ According to Article 56 paragraph 5 of Penitentiary Code, before a prison leave is granted to a prisoner, he must declare the exact address of his residence and prove that the means of living are ensured.

³⁰ To these Laws it should be added also the very recent Law No 4043/2012 (Government Gazette A' 25), for which it is still very early to make estimations on its impact.

³¹ The Greek Penitentiary System includes 34 institutions of various kinds, dispersed all over the country, all run by the Ministry of Justice, Transparency and Human Rights. According to Article 19 of the Greek Penitentiary Code (Law No 2776/1999, Government Gazette A' 291), the Penitentiary System includes general institutions of detention, special institutions and therapeutic institutions. The general institutions are distinguished by type A institutions for pre-trial detention, persons detained for debts and inmates convicted for short-term imprisonment, type B for the rest of the inmates apart from prisoners of type C and type C for prisoners to whom it has been imposed confinement in a penitentiary institution for life or for more than 10 years and additionally, they are considered dangerous for the normal

In recent years, many national institutionally recognised and respectably agencies – such as the Greek Ombudsman³², the Greek National Commission for Human Rights³³, the Maragopoulos Foundation for Human Rights³⁴ - have emphasized on this situation after having visited Greek penitentiary institutions. But also many international ones: the United Nations Committee against Torture³⁵ that examined the 4th periodic report of Greece in 2004, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of United Nations, on a mission to Greece, from 10 to 20 October 2010³⁶, as well as the Council of Europe Human Rights Commissioner that has visited Greece several times and has drafted two reports in 2002³⁷ and in 2005³⁸, all of them have underlined the very serious problem of overpopulation in Greek penitentiary institutions and the characteristic gap between theory and practice. Further, the European Court for Human Rights has convicted Greece several times for violations of Article 3 of the European Convention for Human Rights or/and other rights of detainees by prison or police authorities. Moreover, the Committee of Ministers adopted ResDH(2005)³⁹ regarding detention conditions in Greece asking the Ministry of Public Order (renamed to Ministry for the Protection of Citizens) and the Ministry of Justice (renamed, as many times mentioned above, to Ministry of Justice, Transparency and Human Rights) to intensify their efforts so as the detention conditions to comply with the prescriptions of the Convention and the ECHR judgments and to look into the question of ensuring the availability of effective domestic remedies.

Analytically and indicatively, it is worth mentioning to the approach of the issue by the European Committee for the Prevention of Torture (CPT) that has visited Greek prisons many times during recent years (periodic visits on 2005 and 2009, ad hoc visits on 2007, 2008 and 2011). After having visited Greece lastly, in January 2011⁴⁰, the CPT has noted that overcrowding is already a chronic

running of the penitentiary institutions of the two other types (Article 11 and 19 of Penitentiary Code). Women are kept only in closed prisons for females (Article 13 of Penitentiary Code); they are detained in a separate section of one male institution (in Thessaloniki) and two female prisons. Special institutions include those for juveniles (Article 12 of Penitentiary Code) and the semi-open prisons (Article 19 of Penitentiary Code). A kind of semi-opened prison is considered in Greece the so called ‘agricultural prisons’. In practice, the Ministry of Justice, Transparency and Human Rights uses five categories of penitentiary institutions: agricultural prisons, correctional institutions for minors, closed prisons, therapeutic institutions and judicial prisons.

³² On the Year Report of 2005, <http://www.synigoros.gr>.

³³ On the ‘Decision regarding Detainees’ Rights and Detention Conditions in Greek’ Prisons’ of 2008, http://www.nchr.gr/category.php?category_id=319&page=2.

³⁴ <http://mfhr.gr>

³⁵ CAT/C/61/Add.1, 16 February 2004 and CAT/C/CR/33/2, 10 December 2004.

³⁶ <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>.

³⁷ CommDH(2002)5, Strasbourg 17 July 2002.

³⁸ CommDH(2006)13, Strasbourg 29 March 2006.

³⁹ http://www.coe.int/T/E/Com/press/News/2005/20050408_res_grece.asp.

⁴⁰ After this last visit in Greece, CPT has issued, on 5 of March 2011, a public statement concerning Greece, *inter alia*, because of the steady deterioration in the living conditions and treatment of prisoners over the past decade. Two days earlier, on 3 of March 2011, Greece had finally signed the Optional Protocol on the Convention Against Torture (OPCAT), which is going to be ratified by Greek law in the near future.

feature of the Greek prison system⁴¹. Though, overcrowding is not the only problem afflicting the prison system of Greece. Unsuitable material conditions, absence of any appropriate regime, poor provision of health care, inadequate staffing levels are some of the most serious problems in Greek penitentiary institutions as recoded by CPT's delegation more than once. Further, some serious

structural issues are coming up: the lack of any strategic plan to manage complex institutions such as prisons, the absence of an effective system of reporting and supervision, and inadequate management of staff, exacerbated by low staff-prisoner ratios make clear that is a need for a fundamental reform; according to the CPT, the Ministry of Justice, Transparency and Human Rights must recognise that the prison system as it is currently operating is not able to provide safe and secure custody for inmates, nor fulfil the objectives set down in law. In spite of the clear legal provisions regulating the entitlement of all prisoners to *inter alia* educational and vocational training, work, organised physical exercise, cultural and recreational activities, in none of the prisons visited was there a purposeful regime in place for the majority of prisoners.

Positive steps towards a rehabilitation policy in contemporary Greece

Two of the most important rehabilitative institutions seem to have a common characteristic in the case of Greek penitentiary policy. Probation and after-care services are both based on Laws of the 90's that have not been enacted until the recent years. Also, in terms of time, a symbolic coincidence on their evolution can be detected: in Greece, probation and after-care have been developed parallel to the sharpening problem of overcrowded prisons and the raise of foreign prison population as described above. Even if no official or immediate correlation exists, though, rehabilitation arises lately and begins to be elaborated as an unavoidable need of the Greek society of the 21st century that changes rapidly within the general frame of globalization and affects dynamically the penitentiary actual situation of the country.

i. The Probation Service

For the first time in 1991, the Greek legislation has introduced a special public service competent to assist and supervise prisoners who are conditionally released from penitentiary institutions (Articles 105 et seq of Penal Code), but also for convicted offenders whose the execution of their sentence is suspended under supervision (Article 100 A of Penal Code) and also for convicted offenders whose their sentence is converted in community service (Article 82 of Penal Code). The establishment of this public service should have been, since a lot of years, the most essential tool for the proper operation of the institution of prison release under conditions and the provisions related to it. The implementation of this institution, though, took more than 15 years: the Greek Probation Service has been finally established with the Presidential Decree No 195/2006 (Government Gazette A' 199).

According to Article 1 of the above Presidential Degree, the mission of Probation Service is to assist and supervise persons who have been sentenced to a suspended execution of their sentence under supervision or whose sentence has been converted to a community service and those who have been released from prison under conditions; the Probation Service has also the duty to conduct social research on pre-trial detainees or persons to whom restrictive conditions are imposed pursuant to Article 282 paragraph 2 of the Code of Criminal Procedure. The newly Probation Service is an effort of adaptation of the Greek penitentiary system to the actual circumstances of prison, trying, in a way, to follow the relevant developments of other European countries. It consists a crucial factor for the positive elaboration of the rehabilitation principle as they are part of the criminal justice system trying to assist the judiciary and reinforce the reliability of the alternative non-custodial

⁴¹ Since the CPT's previous visit to Greece in September 2009, the prison population has increased from 10.950 to 12.349, while the official capacity of the prison system was only for 9.000.

institutions, but also they are assistants of the convicted and the released, trying to defend their rights and support them during their effort to be reintegrated into the society (Spinellis, 2010, Mavris, 2008). Though, Probation Service in Greece is rather in an early stage, coping up with a complexity of duties and contradictions or problems, such as the small number of the staff

recruited⁴² and the reluctance towards this new institution; it is up to time to give the results on the effectiveness of this new and, in any case, positive rehabilitative institution of Greece.

It should be noted though that, for juveniles, the institution of probation service has a longer history to tell. The Juvenile Probation Service (Law No 2793/1954, Government Gazette A' 52, Law No 378/1976, Government Gazette A' 171, Presidential Degree No 49/1979, Government Gazette A' 11) is a peripheral public service of the Ministry of Justice, Transparency and Human Rights that operates at the seat of every court of first instance where there is also a Juveniles' Court. It is the main body of non custodial treatment of juveniles who have committed an offense or are in risk of becoming offenders of criminal acts. The Juvenile probation officers deals with juveniles to whom it has been imposed the educative and therapeutic measures Article 122 and 123 of Penal Code, and they also substantially assist the Juveniles' Court to adjudge the relevant cases. They also deal with the juveniles who are in risk of breaking the law due to inappropriate or non-existing family environment or other social circumstances, providing multilateral support to them and their families. Actually, juvenile probation officers, as the adult probation officers, have a tremendous caseload but they are very limited in number (Pitsela, 2011).

ii. After-care services

Only in recent years the Greek penitentiary policy has moved towards the organization of a coordinating body that will have as its main task to provide substantial assistance to prisoners and released prisoners. The basic legislation of this institution is contained in Article 81 paragraph 1 of the Penitentiary Code, providing for the establishment of the body – in the legal form of a non profit Private Law Entity - with the name "EPANODOS", that will operate under the supervision of the Ministry of Justice, Transparency and Human Rights. The overall goal of this organization is "*the vocational training and rehabilitation, the economic support and the gradual reintegration of the released*". However, similar to the case of the public Probation service, the establishment of this body took place with a characteristic delay. The Presidential Decree which was necessary for this establishment was published only in 2003 (Presidential Degree No 300/2003, Government Gazette A' 256). But then, "EPANODOS" could not operate without a further decision required by the Minister of Justice, Transparency and Human Rights for the establishment of the Board of Directors; this decision was issued after four more years, in 1.3.2007, while a restructuring of the Board of Directors held on just 29.10.2007 (Courakis, 2010).

Within the first years of its operation, "EPANODOS" has considered as some of the immediate priorities for the better implementation of its purpose such as to undertake the necessary initiatives to raise awareness and ensure the support of society in its mission and to contribute to the modernization of the function of rehabilitation institutes, such as the Societies for the Protection of the Released, the Committees on Social Support and the Juvenile Protection Societies (Courakis, 2010).

According to Article 61 of the Internal Regulation in accordance with Articles 78 and 79 of Penitentiary Code, upon release from prison, specialised professional personnel of the services

⁴² In December of 2007, only 51 probation officers have been recruited for the whole country (Mavris, 2008).

that offer support after release shall inform the prisoners and they shall be referred accordingly. Such information may also take place after release by the “EPANODOS”. For the majority of the foreign prisoners, though, this kind of information may be insufficient or even useless in practice.

If a foreign prisoner is conditional released according to Article 105 of the Penal Code or according to Article 129 of Penal Code in case of a juvenile who have been sentenced to

detention in a young offenders’ institution, either the administrative or the judicial expulsion imposed according to Article 74 of the Penal Code takes place, unless it is infeasible (Article 105 paragraph 4 or Article 129 paragraph 5 of the Penal Code). In this last case, the released foreign prisoner is not obliged to leave the country but he/she only has to be conformed to the conditions imposed during his/her early release, as the Greek released prisoners.

But even for those of the foreign released prisoners no judicial expulsion has been imposed by the court, according to the above, a new institutional barrier is emerging before any rehabilitative effort towards them: the administrative expulsion from the country. To the vast majority of the convicted aliens such a measure is imposed right after their release from the penitentiary institution. After this decisions the released aliens have no longer the right to stay in the Greek territory; in addition, they are recorded in the list of “undesirable aliens”, according to Article 82 of Law No 3386/2005 and after the implementation of their expulsion, they cannot re-enter the country for a long period of time; thus, they are excluded automatically in a “non-rehabilitative margin”; no state rehabilitative institutions are intended for them. It is characteristic that according to the Annual Report of “EPANODOS” for the 2009, only 6% from the released prisoners who has been asked one of the after-care support services were aliens; of them the majority has mainly asked for legal counseling concerning their residence status in the country as they have come under the category of irregular migrants.

iii. Rehabilitation for drug addicts

“KETHEA - Therapy Center for Depended Individuals⁴³” is the largest rehabilitation and social reintegration network in Greece concerning drug addicts or also persons suffering from other forms of addiction including alcohol, gambling and the Internet. KETHEA is a self-governing legal entity of private law and it operates under the auspices of the Hellenic Ministry of Health and Social Solidarity (Laws No 1729/1987, Government Gazette A’ 144 and No 3204/2003, Government Gazette A’ 296). It provides counselling and drug treatment, family support, health care, education and training, legal support and assistance reintegrating into society and re-entering the world of work. According to the Annual Report of KETHEA, in 2010, twenty counselling programmes and three therapeutic ones were organized in several penitentiary institutions of the country, offering support to approximately 2.000 people. Also, in Athens and Thessaloniki, there have been operated two so called “Centres of Welcoming and Rehabilitation” for released prisoners with drug addiction problems, both for those who have followed a therapeutic program inside the prison as for those who have not. Additionally, “KETHEA MOSAIC” is a unique program specialized for migrants who have problem with drug addiction by offering counselling, psychological and social support. Through an inter-cultural approach and with the volunteer support, this program of KETHEA aims to support also migrants who - even if they have no addiction problems - are facing difficulties of social integration in the Greek society.

Conclusions

⁴³ www.kethea.gr

The rehabilitation principle as well as the need for the enforcement of self-estimation and consciousness of social responsibility – resulting from Article 2 paragraph 1 of the Penitentiary Code – are valid not only for Greek but also for foreign prisoners, while the rules of Greek Penitentiary System forbid any discrimination against aliens. For aliens in prisons, though, the rehabilitation principle is being impeded or annulled by several *de jure* and *de facto* limitations. Specific exceptions of the limited possibilities for exercising their rehabilitative rights during sentencing do come up: the use of language, for example, is a permanent barrier for the foreign prisoners who wish to attend a vocational training programmed but do not speak Greek.

Furthermore, after-care for foreign prisoners is also frustrated because of institutions and provisions concerning their residence status. Things become even more complicated for irregular migrants under custodial sanctions: the utilitarian purpose of the rehabilitation principle (Hudson, 1987) is *de facto* called off as the measure of judicial or administrative expulsion – after suspension or release – seems to nullify the State's responsibility for almost any rehabilitative offer.

In a country, where the number of the irregular migrants is estimated to half a million, while the percentage of the aliens has recently climbed above the 50% of the total number of imprisoned population, the issue of the rehabilitation effort for migrants during the execution of their criminal sanctions and after it, becomes a statistical entrenched and very crucial reality that must be managed successfully. We cannot talk about prisoners' rehabilitation, if we are going to ignore and exclude the most numerous group of them (the migrants, irregular or not) out of the whole effort and procedure.

Mainly, the Greek penitentiary policy should come up with its own contradictions: on the one hand, the Greek penitentiary policy is making some crucial efforts towards the elaboration of the rehabilitative idea; on the other, though, the overpopulation and negative detention conditions hold these efforts back. On the one hand, according to Greek legislation, the rehabilitative rights shall be enjoyed equally by both nationals and aliens; on the other, the lack of precaution for affirmative policies and actions in favor of foreign sentenced population actually negates the legislative equality in practice.

On the late-modern internationalized framework, the rehabilitation principle of the Penitentiary System either as a right of the offenders or as a benefit of potential victims and the (not only Greek) communities (Raynor & Robinson, 2009) is becoming an important field for the rational and humanitarian management of the Criminal Justice System as a whole. As long as the rehabilitation of offenders is legitimated, the necessity to extend its elaboration towards all the categories of offenders, nationals and aliens, without discrimination in both theory and practice constitutes an absolute priority: a fragmented or selective implementation of such an idea could only lead to reversed and incomplete effects that in long-terms may be connected to social injustice and (more) crime.

References

- Akritidou, M., Antonopoulou A. & Pitsela, A. (2006) 'Greece' in A.M. Kalmthout, F.B.A.M. Hofstee-van der meulen & F. Dunkel (Eds.) *Foreigners in European Prisons* (pp. 392-424 and 953-957), Nijmegen: Wolf Legal Publishers.
- Alexiadis, S (2001) *Corrections*, Athens, Thessaloniki: Sakkoulas (in Greek).
- Bakatsoulas, M., (1968) The Greek Code of Prison Rules 1967, *British Journal of Criminology* 8, 211-213.
- Chaidou, A., (2002) *The penitentiary systems- Issues of theory and practice*, Athens: Nomiki Bibliothiki (in Greek).
- CPT (2011) *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 January 2011*.
- Council of Europe (2007) *Annual Penal Statistics, Survey 2005*, SPACE 1, Aebi, M.F. & Stadnic, N., Strasbourg.
- Courakis, N.E. (1994) 'Alternative Penal Sanctions in Greece' *The Journal of Asset Protection and Financial Crime* 2, 257-264.
- Courakis, N.E. (2010) 'Aftercare for the released: the most important condition for reducing recidivism but also for a crime policy with a human phase' in A.G. Pitsela, (Ed), *Criminology: Searching for Answers. Essays in Honour for Professor Stergios Alexiadis* (pp 517-525) Athens, Thessaloniki: Sakkoulas. (in Greek).
- Dimopoulos, Ch. (1991) 'The rehabilitation of prisoners. A contribution to the explanation of the Article 1 of law 1851/1989', *Chronics 1*, 75-102 (in Greek).
- Dimopoulos, Ch. (1992) 'The imminent corrective reform in Greece: Beyond punishment?' *Chronics 5*, 73-84.
- Eurostat (2010) 'Population of foreign citizens in the EU27. Foreign citizens made up 6,4% of the Eu27 population' *Newsrelease 129/2010*, 7 September 2010.
- Frangoulis, S. (1994) *Freiheit durch Arbeit. Die Institution der "wohltätigen" Anrechnung von Arbeitstagen auf die Freiheitsstrafe in Griechenland*. Marburg: N.G. Elwert.
- Giovanoglou, S. (2006) *Institutional problems of social rehabilitation of the released*, Athens, Thessaloniki: Sakkoulas (in Greek).
- Kranidioti, M. (2003) 'The criminality of aliens in Greece, Theory, research and thesis in crime policy' in N.E. Courakis (Ed.), *Crime Policy IV* (pp 147-190), Athens, Komotini: An. Sakkoula.
- Mediterranean Migration Observatory (2004) *Statistic data on Migrants in Greece: An analytical study on the available data and proposals for the adjustment to standards of the European Union. Final Report 15 November 2004*, (http://diversity.commedia.net.gr/files/statistics/statistika_dedomena_gia_metanastes_sthn_ellada.pdf).
- Lampropoulou, E. (1988) 'Contribution to the historical and ideological components of the term "treatment" in the Code of the Basis Rules for the Treatment of Prisoners Bill (1987)', *Penal Chronics* 38, 161-172 (in Greek).
- Lambropoulou, E. (1991) 'The "response" of the Greek penitentiary policy to the penitentiary problem: More of the same or the same is different?' *Greek Criminology Review* 5-10, 117-153 (in Greek).
- Lambropoulou, E. (2001) 'The 'End' of Correctional Policy and the Management of the Correctional 'Problem' in Greece' *European Journal of Crime, Criminal Law and Criminal Justice* 9, 33-55.

- Lambropoulou, E. (2010) 'Penitentiary policy and social control' in A.G. Pitsela (Ed), *Criminology: Searching for Answers. Essays in Honour for Professor Stergios Alexiadis* (pp.535-553), Athens, Thessaloniki: Sakkoulas. (in Greek).
- Lianos, T. (2001) 'Illegal Migrants to Greece and their Choice of Destination' *International Migration*, 39, 2, 3-28.
- Margaritis, L. & Paraskevopoulos, N. (Eds., 2000) *Penitentiary Code and relevant texts*, Athens, Thessaloniki: Sakkoulas (in Greek).
- Mavris, M. (2008) Probation Service: An institution "on probation" in L. Kotsalis et al (Eds.), *Penal Sciences. Theory and Practice. An offer in honour to Anna Benaki-Psarouda* (pp. 1305-1355). Athens- Komotini: Ant. Sakkoulas (in Greek).
- Meurer, D. (1994) 'Freiheit durch Arbeit nach griechischem Strafrecht' in M. Busch, G. Edel, H. Müller-Dietz (Eds.), *Gefängnis und Gesellschaft. Gedächtnisschrift für Albert Krebs* (pp 78-94). Pfaffenweiler: Centaurus.
- National Centre of Social Studies (2009) *Migration and Criminality: Myths and Realities*, Athens: EKKE (in Greek).
- Nowak, M. (2011), *Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Greece* Human Rights Council - Sixteenth Session, Agenda item 3, A/HRC/16/52/Add.4, Distr.:General, 4 March 2011 (advance unedited version)
- Papadopoulou, A. (2004) Smuggling into Europe: Transit Migrants in Greece, *Journal of Refugee Studies*, 17, 2, 167-184.
- Pitsela, A. (1995) Die Rechtsstellung der Gefangenen in der griechischen Rechtsordnung - Vollzugsnormen und Vollzugswirklichkeit in H. Müller-Dietz & M. Walter (Eds.), *Strafvollzug in den 90er Jahren. Perspektiven und Herausforderungen. Festgabe für Karl Peter Rothaus* (pp. 159-179). Pfaffenweiler: Centaurus.
- Pitsela, A. (2008) *The Penal Control of Juvenile Crime*, 6th. Ed., Athens, Thessaloniki: Sakkoulas (in Greek).
- Pitsela, A. (2010) 'Griechenland' in F. Dünkel et al. (Eds.) *Kriminalität, Kriminalpolitik, strafrechtliche Sanktionspraxis und Gefangenraten im europäischen Vergleich*, Vol. 1, Mönchengladbach: Forum.
- Pitsela, A. (2011) 'Youth Justice and Probation' in L. K. Cheliotis and S. Xenakis (Eds.), *Crime and Punishment in Contemporary Greece: International Comparative Perspectives* (pp. 505-527) Oxford: Peter Lang.
- Pitsela, A., Sagel-Grande, I. (2003) Jugendliche Straftäter in deutschen, griechischen und niederländischen Strafanstalten – Ergebnisse einer mündlichen Befragung von Jugendlichen in drei europäischen Ländern. *Zeitschrift für Strafvollzug und Straffälligenhilfe* 52, 352-357.
- Raynor, P. & Robinson, G. (2009) 'Why help offenders? Arguments for rehabilitation as a penal strategy', *European Journal of Probation* 1(1), 3 – 20.
- Spinellis, C.D. (1995) 'Institutional frames, limits and ideological-political axes in the Code of of Basic Rules for the Treatment of Prisoners' in C.D. Spinellis & N.E. Courakis, *Penitentiary legislation* (in Greek).
- Spinellis, C.D. (1998) 'Attacking Prison Overcrowding in Greece: A Task of Sisyphus?' in H.-J. Albrecht et al. (Eds.), *Internationale Perspektiven in Kriminologie und Strafrecht. Festschrift für Günther Kaiser. Vol. II* (pp. 1273-1289). Berlin: Duncker & Humblot.
- Spinellis, C.D. (2010) 'Notes on the role of Probation officers according to PC, CPP, P.D. 195/2006 and recommendations of the Council of Europe' in A.G. Pitsela (Ed.),

Criminology: Searching for Answers. Essays in Honour for Professor Stergios Alexiadis (pp 979-997) Athens, Thessaloniki: Sakkoulas. (in Greek).

Spinellis, C.D., Spinellis, D. (2002) Sanctions imposed, Sanctions executed: Who benefits from the Discrepancy? *Revue Hellélique de Droit International (RHDI)* 55, No. 1, 311-345.

Spinellis, D.D. & Spinellis, C.D. (1999) *Criminal Justice System in Greece*. Helsinki: HEUNI.

Triandafyllidou A., Maroufof, M. & Nikolova, M. (2009) 'Greece: Immigration towards Greece at the Eve of the 21st Century. A Critical Assessment' *IDEA Working Pages* 4, March 2009, http://www.idea6fp.uw.edu.pl/pliki/WP4_Greece.pdf.

Xatzinikolaou, N. (2006) *The expulsion of an alien as a sanction of Penal Law*, Athens, Thessaloniki: Sakkoulas. (in Greek).