



Comparative Analysis of Legal Status of Women Sentenced to Deprivation of Freedom in Russia and in the USA

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Purpose:

The purpose of this research is elaboration of scientifically based recommendations aimed at perfection of lawmaking in the sphere of execution of sentence. The work is based on complex analysis of regulatory control of legal status of women sentenced to deprivation of freedom in Russia and in the USA and on the revealing of peculiarities of exercising of rights.

Design/Methods/Approach:

In this research the author uses comparative law methods, formal logical and structured system methods. The methodology also includes sociological methods: the study of documents, survey (questionnaire poll); and statistical methods.

Findings:

During the examination of issues of legal status of women sentenced to deprivation of freedom the distinctive features of women and their special needs in the period of serving the sentence in correctional institutions of Russia and the USA were found and taken into account. The author also gives scientifically based recommendations concerning improvement of lawmaking both in Russia and in the USA concerning legal status of women incarcerated in places of deprivation of freedom.

Practical implications:

Conclusions and suggestions of this article can be taken into account in practical activity of correctional facilities for women. It also can be used as a basis for methodological recommendations concerning correctional influence on different types of sentenced people. The research can be useful for training of personnel in correctional facilities; it can give a profound knowledge about problems of legal status of women in places of deprivation of freedom.

Originality/Value:

This research is useful for further improvement of lawmaking and its practical use in the sphere of execution of punishment in the form of deprivation of freedom regarding sentenced women.





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Keywords: sentenced women, places of deprivation of freedom, comparison of rights

Primerjalna analiza pravnega statusa žensk, obsojenih na odvzem prostosti - primerjava med Rusijo in ZDA

Namen prispevka:

Namen te raziskave je izdelava znanstveno utemeljenih priporočil za izboljšavo pripravljanja zakonodaje na področju izvrševanja kazni. Delo temelji na kompleksnih analizah regulatornega nadzora pravnega statusa žensk, obsojenih na odvzem prostosti v Rusiji in v ZDA ter izpostavljanju nekaterih posebnosti uveljavljanja pravic.

Metode:

Avtorica v raziskavi uporablja metode primerjalnega prava, formalno logično in strukturiran sistem metod. Metodologija vključuje tudi določene sociološke metode: proučevanje gradiva, ankete (s pomočjo vprašalnika) in statistične metode.

Ugotovitve:

Med preučevanjem vprašanj pravnega statusa žensk, obsojenih na odvzem prostosti v ZDA in Rusiji, je bilo ugotovljenih in upoštevanih več značilnih razlik. Avtorica ponuja znanstveno utemeljena priporočila za izboljšavo priprave zakonodaje, ki ureja pravni status žensk, ki jim je bila izrečena kazen odvzema prostosti. Priporočila so izdelana tako za Rusijo kot za ZDA.

Praktična uporabnost:

Ugotovitve in predloge tega članka je mogoče upoštevati pri aktivnih dejavnostih prevzgojnih institucij za ženske. Prav tako se lahko uporablja kot osnova za metodološka priporočila glede prevzgojnega vpliva na različne vrste obsojenih oseb. Raziskava je lahko koristna pri usposabljanju osebja v prevzgojnih institucijah, ponuja poglobljeno znanje o problemih pravnega statusa žensk, ki jim je bila odvzeta svoboda.

Izvirnost/pomembnost prispevka:

Raziskava je koristna za nadaljnje izboljšanje zakonodaje. Praktična uporaba spoznanj prispevka se kaže na področju izvrševanja kazni v obliki odvzema svobode pri ženskah.

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Ključne besede: obsojenke, ženske, odvzem prostosti, zapori, primerjava pravic

1 INTRODUCTION

Governmental tendencies are oriented now to the humanization of system of criminal sanctions, the way of its execution and to the increase of amount of





punishments alternative to the deprivation of freedom. However, deprivation of freedom is the most widespread type of punishment nowadays.

The use of comparative method in contemporary legal research is an objective necessity and not the simple illustration of the author's awareness about the state of relevant foreign legislative analogy (Zvetcharovsky & Lisenko, 2002). The timeliness of the study of American experience consists in the fact that objective conditions and peculiarities of places of deprivation of freedom are similar in Russia and in the USA. Their characteristics are following:

1. A large amount of incarcerated people. According to the information of the International Center of Prison Research under the King's College in London nowadays there are 2.2 million criminals incarcerated in the USA what is more than in any other country in the world. Imprisonment rate (number on prisoners per 100.000 inhabitants) in the USA is 751. The only large and industrially developed country, approaching these figures, is Russia where the imprisonment rate amounts 627 prisoners. In other industrially developed countries these figures are much lower. In Great Britain imprisonment rate is 151, in Germany – 88, in Japan – 63 prisoners.
2. Social-psychological regularities of processes of execution and serving of sentence in penal institutions (Shcherbakov & Shcherbakova, 2008). For example, incarcerated people have different levels of adaptation to prison subculture depending on prison values. For instance, criminologist Sykes had found an interesting fact in his research: in prison the interests of administration and prison leaders can coincide in order to control prisoners (Sykes & Mitza, 1957).
3. Multinational structure of people serving the sentence in places of deprivation of freedom.

The practice of realization of legitimate interests of women sentenced to deprivation of freedom has the same difficulties in the process of its correction both in Russia and in the USA. It has a great effect on the result of influence of this type of punishment on sentenced women. The issue of legal status of women in places of deprivation of freedom needs not only a theoretical interpretation of their peculiarities and specific demands, it is also a necessity of further improvement of lawmaking in this sphere.

2 COMPARATIVE ANALYSIS OF LEGAL STATUS OF WOMEN SENTENCED TO DEPRIVATION OF FREEDOM IN RUSSIA AND IN THE USA

2.1 Statistical Characteristics of the Issue

Women form rather a small part of the total amount of prisoners in the world. Women usually form from 2 to 9% of all prisoners of the country but in some cases this indicator can be higher (Walmsley, 2006). However, along with the increase of number of prisoners in many countries there is also not just a simple increase





of number of imprisoned women but according to the research in some countries this increase has a faster rate than the increase of amount of imprisoned men. For example, in the USA the amount of women incarcerated for more than one year had increased to 757% since 1977 to 2004 what is practically twice as much as 388% growth of the amount of men (Frost, Green, & Pranis, 2006). In Australia since 1984 to 2003 the amount of incarcerated men had increased to 74%, the amount of incarcerated women had significantly increased to 209%. This tendency in 1994-2003 was also in Mexico, in Bolivia, in Colombia, in Kenya, in New Zealand and in Kirghizstan and in some European governments such as Cyprus, Estonia, Finland, Greece and Netherlands (Bastick, 2008).

In Russia on the first of May, 2011, there were 806.1 people incarcerated in institutions of Penal Enforcement System including 682.6 thousand people in 753 correctional colonies, 3.5 thousand people in 62 juvenile correctional facilities. There are 54.7 thousand women in correctional colonies where there are 13 children's homes with 866 children. Medical treatment of sentenced people and suspects is executed by 133 hospitals of different profiles. There are also medical units or health posts in every institution, 59 medical correctional institutions for TBC patients, 9 medical correctional institutions for drug addicts (Federal Service for the Execution of Sentences, 2011).

In Russia the analysis of crimes (Kazakova & Stepanov, 2011) for which women are sentenced to deprivation of freedom showed that among the most widespread crimes there are crimes against person (murder and intended bodily injury), four crimes against property (theft, fraud, robbery and plundering) and two crimes in the sphere of illegal drug trafficking. In the aggregate, 94.4% of women are sentenced for these crimes. The murder is the most widespread criminal act after illegal drug trafficking committed by women incarcerated in penal institutions. 20% of women are sentenced for that crime what is much more than 10 years ago. There are 12.8% of women sentenced for intended bodily injury. It can be explained by predominance of family motives connected with long family conflicts with husbands and cohabiters.

The toughening of penal justice in 1980-s has influenced to a large measure the growth of female population in the prisons of the USA. The most of women are sentenced for thefts and crimes connected with drugs. Besides, rather a big amount of women were sentenced for murders of husbands and cohabitants who committed regarding them acts of violence (Shcherbakov & Shcherbakova, 2008).

In the USA only general principles function on the level of federal penal legislation, in every state there is its own correctional law regulated by the state's House of Assembly. From 1977 to 2007 the number of imprisoned women has increased to 832% (Maruschak, 2008). According to the information published in the Bureau of Justice Statistics (BJS) in 2004, 4% of women in state prisons and 3% of women in federal prisons were pregnant during the admittance (Maruschak, 2008). In 1999 BJS wrote that 6% of women in local prisons were pregnant during the admittance (Greenfeld & Snell, 1999). The report of the Institute of women's problems and penal justice shows that the percent of imprisoned women in the USA sharply passes ahead the growth of number of masculine prisoners in all of





the 50 states. These tendencies have serious consequences for families and women (Frost et al., 2006).

Statistical figures prove that a great part of the population of the USA is criminalized and in great majority consists of non-white poor people and more and more of women what consequently leads to the overload of prisons.

The analysis of statistics permits to make a conclusion that incarcerated women both in Russia and in the USA are sentenced for illegal drug trafficking or for crimes against the person.

2.2 Places of Deprivation of Freedom in Russia and in the USA

According to the article 74 of Correctional Code of the Russian Federation (1997-2008) penal institutions in Russia are correctional facilities, juvenile correctional facilities, prisons and medical correctional facilities. Isolated areas with different types of regulation can be created in one correctional facility. Since 2004 women sentenced to deprivation of freedom can't be incarcerated in correctional facilities of maximum security after amendment in the Correctional Code of the Russian Federation, they serve the sentence for grave and especially grave crimes, including any repeated relapse into crime in correctional facilities of minimum security (Correctional Code of the Russian Federation, 1997-2008).

In Russia exists a problem of farness of penal correctional facilities from the previous place of living of sentenced women. European prison rules (Council of Europe, 2006) recommend in the paragraph 17.1 to expedite prisoners to correctional facilities situated close to their homes or places of social rehabilitation. According to the first paragraph of article 73 of Correctional Code of the Russian Federation (1997-2008) people sentenced to deprivation of freedom serve the sentence in correctional facilities situated within the bounds of constituent entity of the Russian Federation where they used to live or were sentenced. According to the second paragraph of the same article sentenced people can be expedited to the correctional facilities of "other nearest entity of the Russian Federation". However, in 2007 there was an amendment to the second paragraph of article 73 of Correctional Code of the Russian Federation (1997-2008) concerning involuntary expedition of sentenced people not to "other nearest" but simply to "other" constituent entity of the Russian Federation. In relation with that fact, taking into account enormous territories of the Russian Federation, the amendment permits to expedite sentenced people for thousands of kilometers from their homes what obviously violates their right to family relationship and rehabilitation (Report of plenipotentiary of human rights of the Russian Federation, 2011). This fact negatively influences the reformation of sentenced women because the absence of useful relations with close relatives and children limits the possibility to exercise the right to communicate with the accused.

The execution of sentence in the form of deprivation of liberty in the USA is carried out in executive institutions among which are federal prisons, state prisons and local district and municipal prisons. There is a progressive and widely used system of serving the sentence in the USA when prisoners incarcerated in





reformatories are divided into three groups related with different conditions of keeping (Malinin, 2003), like in Russia. Federal penitentiary system of the USA consists of four types of institutions: with minimum security, with average security, with maximum security and with excess security.

As the number of women sentenced to deprivation of freedom in the world is not big, and building of specialized correctional institutions demands financial means, women serve sentences either in premises situated near correctional institutions for men and closer to their places of living or in correctional institutions for women that are often much farer from their places of living. The serving of sentence in annexes to correctional institutions for men is risky for female prisoners; in this case special needs of women could be not taken into consideration, because the regime in correctional institutions is formed according to the needs of men. In the USA there is a practice of combination of correctional institutions for women with separate blocks for women in correctional institution for men what means for a lot of women incarceration in prisons far from their places of living and absence of the opportunity to communicate with members of their families.

By virtue of this information we can make a conclusion that there is a significant difference in places of deprivation of freedom for women in Russia and in the USA. Thus, in Russia women are incarcerated in correctional facilities of minimum security in detachments from 50 to 100 people. In the USA women are incarcerated in prisons, in cells. But the problem of farness of places of deprivation of freedom from the previous place of living has the same extremely negative influence on women and violates their right to social relations with relatives and children. It should be mentioned that there is a similarity of approaches to the system of serving a sentence in Russia and in the USA: both countries use a progressive system of serving a sentence.

2.3 Legal Analysis of the Exercising of Rights of Sentenced Women

In contemporary penal policy it is possible to emphasize the absence of integrated, scientifically based conception in the sphere of legal status of women incarcerated in penal institutions. In major theoretical points (e.g.: right to appeal with offers, statements, complaints to the penal institutions, procurator's office, the court and other competent government bodies (Correctional Code of the Russian Federation, 1997-2008: article 12, paragraph 4); right to health protection including the first medical-sanitary help and specialized medical help (ibid.: article 12, paragraph 6); right to psychological help (ibid.: article 12, paragraph 6.1) the contemporary Correctional Code of Russian Federation corresponds with the international standards, in particular to Standard Minimum Rules for the Treatment of Prisoners (1995) (e.g.: every prisoner must have an opportunity to appeal to central prison administration, legal authorities or other competent government bodies with statements and complaints (ibid.: paragraph 36); a doctor must care about physical and psychical health of prisoners, he must receive or visit sick people every day, especially those who complains about illness and those at whom a special attention





was paid (ibid.: paragraphs 22-25), but the practical realization of prescribed regulations faces serious problems.

The biggest quantity of information about sentenced people is contained in materials of special enumeration of prisoners, held in 1970, 1979, 1989, 1994, 1999, 2009 (Mihlin, 2001) and in the statistical report of the Federal Service for Execution of Punishment of the Russian Federation and Russian Ministry of Justice. Some statistical information about women incarcerated in correctional facilities of minimum security, given in this article, was obtained (Minster, 2009) during personal author's research concerning exercising the right to labor, medical and psychological help, meetings with relatives, preparation for liberation of sentenced women from the places of deprivation of freedom and others.

Nowadays the issue of exercising of women's rights and legitimate interests, of protecting of their psychical and physical health in conditions of deprivation of freedom is very crucial. Violation of the rights of prisoners in Russia is confirmed by the Report of Plenipotentiary on Human Rights in the Russian Federation (2011). In 2010 the amount of complaints concerning violations of the right to dignity has increased, their part is 19.9%. The violation of this right is connected with unsatisfactory living conditions in penal institutions. According to the results of verification held by General Prosecutor's Office of the Russian Federation more than 90% of incarcerated people suffer from various diseases, among which more than 43% are socially important: TBC, hepatitis, HIV infection. The statistics of appeals to Plenipotentiary on Human Rights in the Russian Federation made by the author (Minster, 2009) speaks about deplorable situation in this sphere, in the current year each tenth complaint concerned unsatisfactorily living conditions including problems with medical and sanitary treatment in institutions of Penal Enforcement System (Report of plenipotentiary of human rights of the Russian Federation, 2011).

The results of the research, connected with the exercising of the right to health protection of women sentenced to deprivation of freedom in correctional facilities of minimum security, made by the author of the article, have showed the discrepancy between this right fixed in Correctional Code and its practical exercising. Thus, 37.1% of women to the question "is there a dispensary observation for gynecological patients?" gave the answer – "yes", when 62.9% answered – "no" (Minster, 2009).

According to the results of the survey (Minster, 2009) made by the author of the article 42.4% of women always have the opportunity to have a medical treatment in a colony, sometimes this opportunity have 38% of women and 19.6% of women don't have such opportunity at all. As for the question about timeliness and quality of medical treatment in a colony, 41.7% of women answered satisfactorily and 58.3% – unsatisfactorily. Prophylactic measures devoted to prevention of gynecological diseases and complex checkups are not regular. Thus, 52.2% of women answered that there were not such measures at all (Minster, 2009).

The administration of correctional facilities must see to the observation of sanitary-hygienic standards, rules of accident prevention during the labor activity of sentenced women, fitting correctional facilities out of necessary medicaments and timely placement of sick people to medical correctional facilities, what is not always done (Minazeva, 2005).





The research with the object of women's legal status was made in the USA with the invitation of government. The commission went into Washington DC and into following states: New York, Connecticut, New Jersey, Georgia, California, Michigan and Minnesota. During the visitation of federal prisons and correctional institutions the meetings with the governing body of the following institutions were organized in: correctional institution "Bayview" and prison "Varick Street" (New York), the correctional institution "Bedford Hills" (New York), federal correctional institution "Danbury" (Connecticut), prison "Elizabeth" (New Jersey) state prison "Pulaski", state prison "Washington" and state prison "Metro" in Atlanta (southern Georgia) and others.

The legal status of women sentenced to deprivation of freedom in prisons of the USA is extremely unequal. In practice in some states masculine employees are allowed to guard prisoners in women's prisons, to make a personal examination and to survey them in cells and washhouses (Report of special speaker Mrs Gadika Kumarasvami ..., 2002). Despite the fact that Standard minimum rules for the treatment of prisoners (1955: rule 53, paragraph 2) stipulate: "masculine employees are admitted to the women's section only while escorted by feminine employees", paragraph 3 "care about imprisoned women and their surveillance should be entrusted only to feminine employees" these rules are violated. The Human Rights Committee of the UN expresses concern about the fact that in American prisons women are still guarded by masculine employees.

The unsatisfactory state of health of sentenced women is proved by the results of the following research: the information about number of HIV positive women in correctional institutions of the United States. In 2004 the average level of HIV positive among masculine prisoners was 1.7%, among women it was 2.4%, but in some states, for instance, in New York the level of spread of HIV was 14.2% among women and 6.7% among men (Maruschak, 2008).

When it comes to pregnant women sentenced to deprivation of liberty, rule 33 (Standard minimum rules for the treatment of prisoners, 1955), is violated here. This rule stipulates that such means of suppression as handcuffs, restraint jackets or chains should never be used as a punishment. Never the less, in practice women in labor are transported to hospitals in fetters, and it is put again just after the childbirth. The use of this means of suppression violates international standards and is a cruel and groundless treatment with incarcerated women. In some states, in Minnesota in particular, they have refused from the use of fetters and handcuffs and in place of it they use "a chair" with a restraint jacket. This mean also can be used groundlessly and the organization "Amnesty International" reports the cases of such abuse.

Imprisoned women are in at-risk group from the aspect of reproductive health. In most prisons a gynecologist comes to prison only once a week, what is not enough in women's opinion. There were cases when women were refused to have an abortion in the states where abortion is not forbidden. Among all prisons special programs for violated women were carried out only in "Danbury" (Connecticut). In California there is an unequal treatment with patients suffering from fatal illnesses. There are cases when people with AIDS were held in hospital beds or armchairs in fetters (Report of special speaker Mrs Gadika Kumarasvami ..., 2002).





To solve key problems of the legal status of women sentenced to deprivation of freedom all aspects concerning women in places of deprivation of freedom must be coordinated in interaction with interested governmental and non-governmental organizations. These aspects are health protection, special programs, social relations and care for children.

2.4 Rights of Imprisoned Women with Children

The problem of maternal rights is one of the most important problems in Russian correctional facilities for women. The Resolution of the General Assembly of Human Rights of the UN points out the necessity to pay a higher attention to the status of women in prisons including problems concerning women's children in prisons in order to identify main problems and solutions (United Nations Office on Drugs and Crime, 2008). Convention on the Rights of the Child (General Assembly of the United Nations, 1989) guarantees: "A child needs love and understanding for full and harmonious development. He needs, if it is possible, to grow in care of parents, in the atmosphere of love and prosperity. A minor child shouldn't be separated from his mother despite situations with exceptional circumstances".

Article 100 of Correctional Code of the Russian Federation (1997-2008) permits children to live in colonies till three years and to stay until mother's release if she has to serve the sentence for not more than one year. Moreover, a very important norm concerning mother's right to communicate with her children in off-duty time with no restrictions has appeared in the Correctional Code of the Russian Federation. The innovation concerning cohabitation of mother and child was included into Correctional Code of the Russian Federation (1997-2008) in cautious edition: "Cohabitation of mother and children can be allowed". However, the implementation of this norm in practice demands investments to create necessary conditions.

"The experiment of cohabitation of sentenced women and their children in children's house" took place in correctional facility for women no. 2 in the township Yavas in the Republic of Mordovia in 2002. This experiment was made to arouse maternal feelings in women, to cultivate in them the skills of care about their children, to strengthen relations between mother and child. According to the conclusion of specialists, the experiment has proved its value. During all the years of the experiment there were no cases of mother's refusal from a child living with her (Vasiliev, 2005). The researches show the reasonability of such cohabitation. Firstly, it can give more attention to a child during twenty-four hours. Secondly, while always being with a child, mother gets accustomed to him in a large measure, learns to look after him, acquires skills that will be useful to her after discharge and, finally, gets attached to a child. The cohabitation makes less possible the leaving of a child in the colony after the discharge what unfortunately happens rather often. According to this experiment 80% of sentenced women in Russia are mothers.

In the USA despite the fact that the overwhelming majority of incarcerated women are mothers, there is no consistent approach to this problem neither in states nor in correctional facilities. For example, in Georgia the relationship between





mother and her child is not encouraged because, in the opinion of functionaries, such relationship doesn't correspond to the best interests of a child. In California and Michigan there no creative programs meant to improve relationship between mother and child (Report of special speaker Mrs Gadika Kumarasvami ..., 2002).

Never the less there some programs and projects in the USA both on federal and state level that exist to improve legal status of women in places of deprivation of freedom. There are currently seven states that allow women to keep their infants with them inside a correctional facility after the baby's birth: Illinois, Indiana, Ohio, Nebraska, New York, South Dakota, and Washington (Institute on Women and Criminal Justice, 2009). The Child center in correctional facility "Bedford Hills" in American state New York there is a nursery where children of prisoners, taking part in programs developed for them, stay until they reach the age of one year. This period is prolonged for half of a year when it is obvious that a mother and a child will be able to live together. The Center works both with children that live with their mothers in correctional facilities and with children that live outside of this facility; it also helps women to feel like real mothers. The aim of this program is to "learn to be a mother" and a special attention is paid to psychological needs of a women. The support of family relations, return to society and parental duties are also in the center of attention of this program (United Nations, 2008).

To solve all these problems it is important to:

- Pay a special attention to the organization of high-quality gender oriented help; the amount of houses of mother and child must be increased in correctional facilities and prisons with a tendency to cohabitation of mother and child;
- Carry out consultations with interested governmental and non-governmental organizations to improve living conditions, taking into account children's age and to ensure the retraining of the employees that work in correctional facilities for sentenced women according to relevant programs.

3 CONCLUSION

During the examination of issues of legal status of women sentenced to deprivation of freedom the distinctive features of women and their special needs during the period of serving the sentence in correctional institutions of Russia and the USA were found and taken into account.

On the grounds of the comparative research of the legal status of women sentenced to deprivation of freedom in Russia and in the USA we can make the following conclusions: correctional institutions for sentenced women in Russia are correctional facilities of minimum security, in the USA – prisons. Women mostly serve sentences for crimes connected with drug trafficking both in Russia and in the USA. There are Children's houses for women with minor children in correctional facilities of the Russian Federation. Pregnant women and women with children who are younger than three years are sent to serve the sentence in such facilities. In the USA there is no provision of cohabitation of women with minor children. At the same time, programs intended to help incarcerated women situated far from their children to solve this problem are a positive experience and example for Russia.



The problem of fairness of previous place of living from the place of deprivation of freedom influences badly the maintenance of socially useful relations both in Russia and in the USA; it violates the right to have relations with relatives and children. The legal groundwork for the rights of women sentenced for deprivation of freedom in countries under investigation has problems with its exercising in practice.

In that way, taking into consideration international standards and numerous appeals of the UN to member-nations, it is necessary to take into account special needs of sentenced women and interests of children who follow mothers in places of deprivation of freedom and to liquidate gender inequality while serving sentences.

Table 1:
Comparative
analysis of
status of women
sentenced to
deprivation
of freedom in
Russia and in
the USA

Aspect	The Russian Federation	The USA	Result
Type of a crime	Illegal drug trafficking, crimes against a person, crimes against a property	Illegal drug trafficking, crimes against a person, crimes against a property	Women commit the same crimes in Russia and in the USA
Place of deprivation of freedom	Correctional facilities (detachments)	Prisons (cells)	Fairness of place of deprivation of freedom from the previous place of living
System of serving a sentence	In correctional facilities a progressive system of serving a sentence is used	In prisons a progressive system of serving a sentence is used	Similar system of serving a sentence
Exercising of rights	Right to health protection	Right to health protection	The right is violated
Women and children	Women live with children who are younger than 3 years. Special programs are to be integrated by 2020	Women are separated from children while serving a sentence. Special programs to support social relations.	Conditions are not equal

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