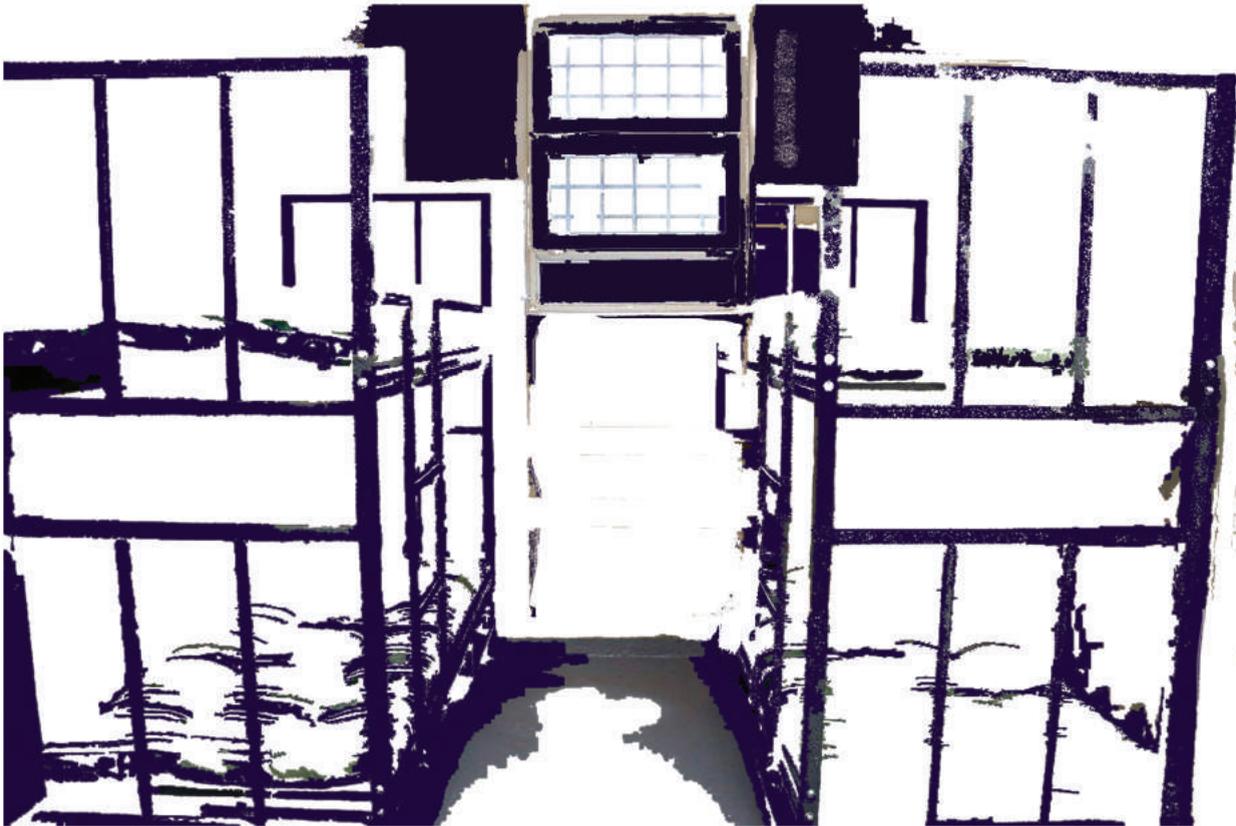




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საქართველოსთვის
The European Union for Georgia



REPORT ON MONITORING PENITENTIARY ESTABLISHMENTS IN GEORGIA



2019



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REPORT ON MONITORING PENITENTIARY ESTABLISHMENTS

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The following report was prepared by Human Rights Center. The report presents results of the monitoring carried out in the penitentiary establishments in December 2018 and relevant recommendations. The monitoring visits were carried out by the representatives of following non-governmental organizations – Human Rights Center, Penal Reform International and Initiative for Rehabilitation of Vulnerable Groups – within the mandate of National Preventive Mechanism of Public Defender of Georgia. The monitoring was carried out within the frameworks of the project “Monitoring Government’s Commitments and Promoting Reforms in Penal Sector through the Engagement of CSOs”, financially supported by the European Union. The author takes full responsibility on the content of the document. The opinions expressed in the text shall not be interpreted as a position of donor, Penal Reform International or its partner organizations.

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INTRODUCTION

The following report presents the results of the monitoring conducted in the penitentiary establishments in Georgia in December 2018 and relevant recommendations.

The monitoring visits were made by the representatives of the NGOs – Human Rights Center, Penal Reform International and Initiative for Rehabilitation of Vulnerable Groups within the frameworks of the National Preventive Mechanism (NPM) under Office of Public Defender of Georgia, according to the rules of cooperation between the NPM and non-governmental organizations. The monitoring visits were made to Kutaisi N2, Batumi N3, Rustavi N16 and Rustavi N17 penitentiary establishments on following issues – risk assessment and classification, disciplinary responsibility, rehabilitation and re-socialization of prisoners, working conditions of prison personnel.

The monitoring was carried out within the frameworks of the project “Monitoring Government’s Commitments and Promoting Reforms in Penal Sector through the Engagement of CSOs”, financially supported by the European Union.

METHODOLOGY:

Before starting the monitoring visits, the monitoring group was divided into several thematic subgroups. Each subgroup studied the abovementioned issues for different penitentiary establishments.

The members of the monitoring group used special questionnaires elaborated with the Department of National Preventive Mechanism of Public Defender of Georgia. The interviews were conducted with prisoners as well as high, middle and low level staff of penitentiary establishments using special questionnaires. The monitoring group also studied the documentation within the frameworks of the monitoring and inspected the physical environment in the prison.

During the monitoring, the members of the monitoring group freely moved inside the territory of the penitentiary establishments. The prison personnel cooperated with the members of the monitoring group and ensured provision of the requested information and documentation, as well as gave verbal explanations regarding various issues. However, there was one occasion during the thematic visit when the chief doctor of N17 penitentiary establishment refused the members of the monitoring group (mandated by the Public Defender of Georgia) to get acquainted with the journal regarding traumas. As doctor stated, the information regarding the prisoner and his/her bodily injuries is confidential, considering the protection of personal data. It should be noted that later, according to the indication received

from the special penitentiary service, the chief doctor offered the trustees of the Office of Public Defender to get acquainted with the journal under the following condition – if they made the notes on the paper and signed it, indicating that the notes are made by them and would not be revealed to the third parties. According to the statement of the chief doctor, the signed copy of this document would be sent to the medical department of special penitentiary service. It should be noted that Organic Law of Georgia on the Public Defender of Georgia explains that “Public Defender of Georgia fulfills the functions envisaged by the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment”¹. This optional protocol singlehandedly indicates that the representatives of the National Preventive Mechanism have right to get acquainted with the state of the individuals² deprived of liberty without any restriction, as well as documentation regarding them and use information related to the treatment of these individuals and the conditions of detention³. Also, it should be noted that the work of the National Preventive Mechanism implies the principle of confidentiality⁴.

PENITENTIARY ESTABLISHMENTS

N2 Imprisonment and Closed-type Penitentiary Establishment (Kutaisi)

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During the monitoring period (on December 10, 2018), there were 1165 prisoners in N2 penitentiary establishment, including 756 convicts, including 7 women and 3 juvenile male prisoners, 409 defendants, including 1 male juvenile defendant. 16 prisoners were placed in separate cell, according to their request.

The defendants are placed in A, B and C units of the prison N2. The juveniles – on one floor of B unit. In E unit – mainly women. Two cells are allocated for the persons with disabilities. Wheelchair user prisoner is placed in one of the cells. Unit D is allocated for the convicts. There are prisoners with mental health problems in the facility. It is planned to transfer one of these prisoners to N18 penitentiary establishment due to worsened mental state.

N3 Imprisonment and High Risk Penitentiary Establishment (Batumi)

There were 50 adult male prisoners placed in N3 penitentiary establishment, including, 47 prisoners and 3 defendants. The prisoners with the status of the

¹ Organic Law of Georgia on Public Defender of Georgia, Article 3¹.

² Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4, Paragraph 1.

³ *Ibid*, Article 20, Subparagraph B.

⁴ *Ibid*, Article 21, Paragraph 2.

defendant were placed in separation from the convicts. There was 1 prisoner on a hunger strike in the facility. In most of the cases, there was one prisoner in one cell.

N16 Low Risk Penitentiary Establishment (Rustavi)

There were 173 prisoners placed in N16 penitentiary establishment during the monitoring period, including 17 convicts participating in the program for preparation for release, 11 out of which leave the facility temporarily on the weekend and during the holidays.

The limit of prisoners is 1044 in N16 penitentiary establishment. However, one unit was separated from the facility. It is planned to open N12 penitentiary establishment in this unit. The space left in N16 penitentiary establishment consisted of 2 units (A and B) during the visit and was calculated for 856 prisoners. It should be noted that the resource of the facility is not fully used in this regard.

The yards of A and B units are divided by the wall. There are mainly prisoners in preparation for release in unit B. The cells in unit B are allocated for different activities. There are working rooms on the first floor, instead of living cells. There was a board and chairs for the training in one of the cells. There is a room for social service in the second floor where psychologist works. There is no videocamera in this room. The prisoners from both of these cells go to one church which is located in the yard of the facility.

N17 Semi-open and Closed Type Penitentiary Establishment (Rustavi)

There were 1864 male prisoners in N17 penitentiary establishment during the monitoring who are placed in 4 residential units and 1 medical unit: 505 prisoners – in unit I, 444 prisoners – in units II and III, 875 prisoners – in unit IV and two prisoners – in medical unit.

The problem of overcrowding was revealed during the monitoring. Also, there was a wheel-chair user prisoner in the penitentiary establishment which is not adapted for persons with disabilities.

1. RISK ASSESSMENT AND CLASSIFICATION

Mechanism for risk assessment of offenders remains to be significant challenge in the penitentiary system. The monitoring group revealed several gaps in this area, including the lack of legal guarantees in the process of risk assessment, as well as problems related to the reassessment of the risks, practice of transfer to another type of facility due to the risk factor and decreasing risks.

1.1 LACK OF LEGAL GUARANTEES FOR PRISONERS

In order to ensure legal guarantees for the prisoners, international standards envisage that the prisoner must be involved in the process of risk assessment, have access to the information regarding the process and final conclusion⁵.

The interviews with the prisoners revealed that they were not informed regarding the process of the risk assessment. The circumstances and criteria which determined the concrete risk type were often unknown for the prisoners, as well as reasons for reassessing the risks earlier than the established term. The prisoners did not know what type of behavior or actions could influence the determination of risk type positively or negatively. Also, they did not have information regarding the possibility of appealing against the decision concerning the determination of risk type and relevant procedures.

According to international standards, the offender must be able to address the specific risk factors and other characteristics that contribute to their current classification as a dangerous offender⁶. Therefore, it is important to inform the prisoner regarding the system of the risk assessment upon their placement in the penitentiary establishment⁷, as well as to include him/her in the process of the determination of the risk type and timely inform regarding the final decision. Besides, it is important to inform the prisoner regarding the actions which may have positive or negative influence for the determination of the risk type. This will on the one hand facilitate the decrease of the risk levels and on the other hand, will ensure the legal guarantees and protection of rights of prisoners.

⁵ Council of Europe, Committee of Ministers Recommendation CM/Rec (2014)3 concerning dangerous offenders, February 19, 2014, Paragraph 32.

⁶ *Ibid*, paragraph 20.

⁷ Currently, according to Georgian legislation, the prison administration does not have obligation to inform the prisoner regarding the system of the risk assessment upon their placement in the penitentiary establishment.

RECOMMENDATIONS

To Ministry of Justice:

- Determine by legislation the obligation of the penitentiary establishments to inform the prisoners regarding the criteria and procedures for the assessment of the risk of harm upon their placement in the penitentiary establishment and commencement of the risk assessment process;
- Determine by legislation and ensure in the practice the right of the prisoner to be involved in the process of the risk assessment, to introduce his/her position regarding the factors which determine the risk type, to have information regarding the process and final decision.

1.2 DECREASING RISK OF HARM

According to international standards, alongside with the assessment of the risks, the needs of the offenders must be assessed and the relevant possibilities ensured in order to solve specific problems related to the risks and change the attitudes and behavior of the offender⁸. It is important to ensure specific risk-related criminogenic needs of the dangerous offenders during the whole period of the imprisonment and allocate sufficient resources in order to effectively meet concrete needs⁹.

While interviewing the offenders and studying concrete cases during the process of monitoring, it was revealed that during the risk assessment, the individual needs of the prisoners are not studied and plans are not made for taking measures in order to decrease risks. There is no unified system for assessing risks and needs of the prisoners or approach which would facilitate decreasing risk of harm coming from the offender. Therefore, the risks and needs are not envisaged in parallel to one another in the penitentiary establishments of Georgia, in order to eradicate the risk-factors.

Low Risk Penitentiary Establishment

According to legislation of Georgia, low risk offenders are placed in the low risk penitentiary establishments, according to their written consent; in the letter of consent, it is indicated that the prisoner agrees to fulfill the obligations envisaged

⁸ Council of Europe, Committee of Ministers Recommendation CM/Rec (2014)3 concerning dangerous offenders, February 19, 2014, Paragraph 31.

⁹ *Ibid*, paragraph 9.

in the low risk penitentiary establishment¹⁰. It should be noted that N16 low risk penitentiary establishment can place 856 prisoners. However, there are only 175 prisoners currently in this penitentiary establishment. The resource of the penitentiary establishment is not fully used in this regard. There are several artificial reasons which hinder the use of the resource of the facility as well as some natural reasons.

During monitoring it was revealed that there are several rules in the penitentiary establishment which cause dissatisfaction of the offenders and demotivate other offenders to move to this facility.

According to the acting rule in the penitentiary establishment, the offenders have to walk to the dining room from the cells in two lines, in matching speed. It is obligatory for all convicts to go to the dining room in certain hours, notwithstanding whether or not they want to eat. The convicts in N16 penitentiary establishment expressed dissatisfaction with this rule. They noted that it should not be obligatory and they should not be forced to go to the dining room. As the director of N16 penitentiary establishment stated, the only exception when the prisoner has a right not to go to the dining room is when he/she is sick. However, according to one of the prisoners, although he had a notification from the doctor that he was sick and due to that could not go to the dining room, his refusal was considered to be a violation of order and he was imposed disciplinary sanction. In the substantiation of the sanction, it was indicated that “the convict refused to go to the dining room”. According to the convicts, according to the internal regulations established by the prison director, they have to go to the dining room three times a day as a group in two lines, always at the same time. The members of the monitoring group saw this process themselves. Specifically, when the prisoners finished the dinner, they were gathered at the entrance of the dining room and then were taken back to the residential unit, along with the prison employee who supervised the group of the convicts and this process. It should be noted that according to the Imprisonment Code of Georgia and Regulation of N16 Penitentiary Establishment, the prisoners can move independently in the establishment, according to the rule established by the daily schedule¹¹. Also, according to the regulation, when going to the dining room, the convict is obliged to keep the order

¹⁰ May 8, 2019, Order N395 of Minister of Justice concerning the rule on types of risks of offenders, criteria for risk assessment and reassessment, rules and conditions for transfer of offender to the same or another type of penitentiary establishment, as well as work of the risk assessment team and their authority, Article 5 (2) and 15 (6).

¹¹ Imprisonment Code of Georgia, Articles 10¹(3)-10²(3); Order N71 of July 15, 2015 of Minister of Penitentiary and Probation of Georgia concerning Adoption of Regulation of N16 Penitentiary Establishment, Article 15 (4).

and obey the request of the authorized prison personnel¹². The regulation does not impose obligation on the prisoner to go to the dining room. Therefore, it can be concluded that above-mentioned practice takes place according to the internal regulation adopted by the decision of the prison director. According to the statement of the prison director, it is important to adhere to this internal regulation, because otherwise there are risks that any prisoner can turn into a leader who would not go to the dining room with certain prisoner. The director explains this rule by the need of prevention of unequal treatment of prisoners and considers that existing rule is important so as everybody obeys the same rule.

Besides, according to the regulation of the N16 penitentiary establishment, the convicts are obliged not only to keep personal hygiene and clean own clothes, bed and their room, but the hall of the residential building, corridor, staircase area and other common spaces¹³. The director of the penitentiary establishment stated that it is obligatory for every prisoner to clean common spaces. The only exception to this rule is common bathroom which is cleaned by the maid. The part of the convicts expressed dissatisfaction for this obligation.

It should be noted that the prisoners who represent criminal subculture consider cleaning in the penitentiary establishment derogatory. According to the statement of the convicts, this rule hinders many prisoners in other penitentiary establishments who do not represent criminal subculture to transfer to N16 penitentiary establishment as they fear conflict with the representatives of criminal subculture. According to the information of several convicts, many convicts would like to transfer to low risk penitentiary establishment, but they refrain as it is considered to be derogatory due to the influence from the criminal subculture.

Also, the convicts stated that if the prisoner commits violation after the transfer to N16 penitentiary establishment, he/she will be transferred to another prison where he/she will be placed in the maintenance unit and will become member of the group of prisoners who are responsible for cleaning. Besides, part of the convicts in the semi-open penitentiary establishment note that in compared to the low risk facility, the regime is less strict in the semi-open penitentiary establishment. Therefore, according to their statement, it is not worth for them to transfer to another facility if the regime is not more free. Some convicts who have been transferred to N16 low risk penitentiary establishment have refused to stay in this facility as the rules existing there were not acceptable for them. The convicts

¹² Order N71 of July 15, 2015 of Minister of Penitentiary and Probation of Georgia concerning Adoption of Regulation of N16 Penitentiary Establishment, Article 18 (4).

¹³ Order N71 of July 15, 2015 of Minister of Penitentiary and Probation of Georgia concerning Adoption of Regulation of N16 Penitentiary Establishment, Article 32 (3)(D).

would like to get involved in education, work and rehabilitation activities but some of them do not want to clean the facility. They think that it should be the administration who ensures the cleanliness of the common space. According to the deputy director of the prison when the convicts want to transfer to another penitentiary establishment, it does not happen based on their request. Therefore, they commit various violations in order to increase the risk of harm and then they are transferred to another facility. However, the deputy director noted that the administration tries its best to create environment where the convicts will not desire to transfer to another facility. According to him, in order to increase the motivation of the convicts and keep them in this facility, they select activities according to their interests. The prison director confirmed that some convicts do not like the rule concerning the cleaning of the common spaces. He noted that there were some convicts in the facility who were transferred to another penitentiary establishment because they refused to clean common spaces. It should be noted that the prison director stated to the monitoring group that in case of revoking this rule, many prisoners will enter the facility that is prevented by this rule in certain way. This reveals that the rule creates certain artificial barrier which hinders convicts to agree to transfer to N16 penitentiary establishment or to stay there. Considering above mentioned, it can be concluded that existing practice is not oriented towards risk reduction and rehabilitation for the convicts. It shows that the risk assessment is a formal process and is mainly performed for ensuring security. Formal attitude is demonstrated by the fact that there is no unified system for assessing risks as well as needs of prisoners, as well as steps which reduce the motivation of the prisoners to transfer to the low risk facility instead of increasing it.

RECOMMENDATIONS

To Minister of Justice

- Elaborate and establish unified system for assessing risks and needs of prisoners and homogenous practice;
- Develop the internal regulation of the N16 low risk penitentiary establishment so as to ensure more freedom during transfer to the dining room;
- Revoke the obligation of the prisoners to clean the common spaces in the penitentiary establishment by introducing changes in its regulation; the cleaning should be done by the person hired from the civil sector or by the prisoner who has a desire to perform such work.

1.3 REASSESSMENT OF RISKS OF PRISONERS

According to the legislation, the director of special penitentiary service is authorized to transfer the prisoner to the closed type penitentiary establishment temporarily but no longer than 20 working days, in order to reassess the risk, if it is not feasible to leave him in the same penitentiary establishment for certain reason¹⁴. In this term, the risk assessment team must ensure reassessment of the risk of the prisoner¹⁵.

When studying the cases of prisoners, the monitoring group of N2 penitentiary establishment revealed that as a result of secret address of prison director, based on the order of the director of special penitentiary service, several prisoners were transferred from N14 semi open penitentiary establishment to N2 closed type penitentiary establishment in 2018. The reason of transfer was supposedly indicated in the secret letter of the prison director to which the monitoring group did not have access. The monitoring group revealed that despite the passing of 20 days envisaged by the legislation, in most of these cases, the risk assessment team had not revised the decision regarding the determination of the risk type. Therefore, the prisoners continued serving the sentence in the closed type penitentiary establishment after passing of the term envisaged by the law where the rights and obligations related to the closed type of penitentiary establishment are applied notwithstanding the type of the risk.

Similarly, prisoners were transferred from N17 semi-open/closed type penitentiary establishment to N8 closed type penitentiary establishment under the reasons of security. After studying the part of the cases of these prisoners, it was revealed that the reassessment of the risks of the prisoners transferred to N8 penitentiary establishment was performed in approximately 3 to 11 months. Therefore, in this case as well the prisoners were placed in the closed type penitentiary establishment longer than the term established by the legislation.

As a result of studying the documentation in N2 penitentiary establishment it was also revealed that after transfer of 12 prisoners from N14 to N2 penitentiary establishment, the prison director addressed the risk assessment team and requested early reassessment of the risks of these prisoners. As a result of the early reassessment, the risk type of the prisoners was increased. It should be noted that according to the legislation of Georgia, it is admissible to reassess the risk early in

¹⁴ May 8, 2019, Order N395 of Minister of Justice concerning the rule on types of risks of offenders, criteria for risk assessment and reassessment, rules and conditions for transfer of offender to the same or another type of penitentiary establishment, as well as work of the risk assessment team and their authority, Article 15

¹⁵ *ibid*

special circumstances if the behavior of the prisoner drastically changed or it is inadmissible to leave the prisoner in the same type of the penitentiary establishment¹⁶. In case of such special circumstance, the risk assessment team reassesses the risk according to the substantiated letter of the director of the penitentiary establishment where the director describes those circumstances which gave rise the request¹⁷. As a result of studying the written address of the director of the penitentiary establishment to the risk assessment team, it was revealed that the director did not indicate as to which circumstances gave rise to the request of the early reassessment of the risk of the prisoners. It should be also noted that as a result of studying the personal cases of these prisoners, it was determined that their behaviour was positively assessed by the multidisciplinary team. The prisoners duly performed the rights and obligations established in the penitentiary establishment. Part of them was involved in the rehabilitation programs and several were commended by the director of the penitentiary establishment.

For the protection of the rights of the convicts, in order to reassess the risk, including for the reasons of security, in case of transfer of prisoner from the semi-open penitentiary establishment to the closed type penitentiary establishment, the reassessment of the risk of the prisoner must be performed in 20 working days and the prisoner must be transferred to the relevant type of penitentiary establishment. Also, when requesting early reassessment of the risk, the prison director must substantiate as to what circumstances gave risk to the reassessment of the risk of the prisoner and change.

RECOMMENDATIONS

To Ministry of Justice:

- Ensure practical realization of the requests of Paragraph 5, Article 15 of the Order N395 of Minister of Justice of May 8, 2019 concerning the rule on types of risks of offenders, criteria for risk assessment and reassessment, rules and conditions for transfer of offender to the same or another type of penitentiary establishment, as well as work of the risk assessment team and their authority which implies that in case of transfer of one convict from one to another facility under the reason of security, the risk reassessment must be done no later than 20 days;

¹⁶ May 8, 2019, Order N395 of Minister of Justice concerning the rule on types of risks of offenders, criteria for risk assessment and reassessment, rules and conditions for transfer of offender to the same or another type of penitentiary establishment, as well as work of the risk assessment team and their authority, Article 17.

¹⁷ *Ibid*, Article 17 (5)

- Ensure practical realization of request of Paragraph 5, Article 17 of Order N395 which implies that in case of requesting early reassessment of the risks, the prison director must substantiate as to which circumstances give ground to such request.

High Risk and High Risk Penitentiary Establishment

According to international standards, considering that the risk of harm is not of constant nature, risk reassessment should be performed after certain intervals in order to comply with the requirements of the planning of the sentence¹⁸. A careful appraisal should be made by the prison administration to determine whether individual prisoners pose risks to themselves and others. The range of risks assessed should include harm to self, to other prisoners, to persons working in or visiting the prison, or to the community, and the likelihood of escape, or of committing another serious offence on prison leave or release¹⁹. According to the international standards, a clear distinction should be made between the offender's risks to the outside community and inside prison. These two risks should be evaluated separately²⁰. The legislation of Georgia also envisages periodic reassessment of the risk of harm according to which "in order to determine the possible change of the risk of harm, the risk assessment team ensures periodic reassessment of already assessed prisoners"²¹. The reassessment of the high risk takes place no later than 12 months since its initial assessment²².

The general practice of the risk assessment existing in N3 penitentiary establishment when the positive behavioral change of prisoner, non-existence of the violations and obedience to the rules is taken into account when assessing the risks and represent basis for decreasing high risk, complies with the international standards. However, after studying the personal cases of the prisoners and interviewing them, the monitoring group revealed several instances of prisoners placed in N3 penitentiary establishment who have high risk, obey the prison regime and existing rules, have positive evaluations, have not committed violations, have not been imposed disciplinary sanctions, do not have problematic behavior, do not

¹⁸ Council of Europe, Committee of Ministers Recommendation (2003) 23 on the Management of Life-Sentence and Other Long-Term Prisoners, Paragraph 16.

¹⁹ *Ibid*, Paragraph 12.

²⁰ Council of Europe, Recommendation CM/Rec (2014)3 of the Committee of Ministers to member States concerning dangerous offenders, paragraph 33.

²¹ May 8, 2019, Order N395 of Minister of Justice concerning the rule on types of risks of offenders, criteria for risk assessment and reassessment, rules and conditions for transfer of offender to the same or another type of penitentiary establishment, as well as work of the risk assessment team and their authority, Article 17 (1).

²² *Ibid*, Article 17 (2).

have self-injuries, but, despite this, have been given high risk after the risk reassessment. These are the prisoners who have been convicted of terrorism.

The practice of the risk assessment towards these prisoners is different from the general practice existing in N3 penitentiary establishment. In case of the prisoners convicted of terrorism, the same criteria are not taken into account when reassessing their risks. Despite positive behavior, non-existence of the violations and involvement in different rehabilitation programs and activities, the high risk of these prisoners does not change. The assessment of their risk is mainly based on the gravity of the crime. According to the convicts, during the risk reassessment, the risk assessment team only considers the articles of Criminal Code of Georgia according to which they have been tried.

During the risk reassessment, it is important to consider not only the gravity of the crime committed by the prisoner, but the results achieved in terms of their rehabilitation and re-socialization.

RECOMMENDATIONS

To Ministry of Justice:

- The risk assessment of prisoners must be conducted considering the harm that the prisoner poses to those around him/her, society, state or/and law enforcement bodies;
- The crime committed by the prisoner should not be the basis for the determination of the risk type; different criteria envisaged by the Georgian legislation and international standards should be taken into account when assessing the risk.

2. DISCIPLINARY RESPONSIBILITY

2.1 PREVENTION OF DISCIPLINARY VIOLATIONS

The existence of constructive relations between the prisoners and the prison personnel is one of the significant factors for the prevention of disciplinary violations²³. Developing constructive and positive relations helps decreasing the tension inside the penitentiary establishment, as well as decreases the likelihood of the incidents of violence and risk of ill-treatment and as a result, increases the level of security²⁴.

Considering this, attention was given to studying the relations between the prison personnel and prisoners during the monitoring. The members of the monitoring group interviewed both the employees of the prison as well as prisoners. It should be noted that the information received from them is sometimes contradictory.

According to the employees of Kutaisi N2 and Batumi N3 penitentiary establishments, their goal is to have good relations with the prisoners as it ensures the order. According to their statement, they try to keep the order and prevent the disciplinary violations. When the prisoner violates order, unlike old approach, only that prisoner is punished and not all the prisoners placed in the cell with him. Also, if the prisoner violates the order, the prison employees at first call on the prisoner to stop this action and impose disciplinary sanction only if he/she does not obey the request and continues the same behavior. According to the prison employees, in order to achieve good relations with the prisoners, they try to fulfill all their lawful requests and reach the result through talking with them.

According to the information received from the Rustavi N17 prison administration, the prison employees treat the prisoners with utmost attention – they move in the prison territory and the residential buildings during 24 hours, get involved in the situation when there is confrontation among the prisoners.

Besides, the employees of N2 and N3 penitentiary establishments noted that in the first place, rights of the employees must be protected and ensured and after that the – rights of the prisoners. According to them, if the employees are not able to fulfill their work, then rights of the prisoners will not be protected sufficiently. After specifying the question regarding the preventive measures, the employees of department of legal regime explained that according to their observation, one of the most successful methods for the prevention is disciplinary punishment of

²³ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) Standards, page 32, paragraph 26.

²⁴ Ibid, page 23, paragraph 45.

prisoner. According to the employees of N3 penitentiary establishment, the prisoners try to establish their rules in the penitentiary establishment and they often violate order which is natural for high risk facility. At the same time, in case of conflict between the prisoner and employee, they talk to the prisoner and if the culpability of the employee is revealed, they will send the prisoner back to the residential building and the employee will be reprimanded, without making note in the personal case.

According to the information received from the N3 penitentiary establishment, one of the best ways for prevention of disciplinary sanctions is inclusion of other prisoners in the process – when the prisoner is irritated, a cellmate talks to him/her. If the prisoner does not calm down, then the prison employees get involved. The representatives of administration of N17 penitentiary establishment excluded the possibility of resolution of conflict between the prisoners by other prisoners. However, according to the prisoners, there is category of the privileged prisoners in N17 penitentiary establishment who will not allow serious confrontation among the prisoners. The part of the prisoners in N2 penitentiary establishment also talks about the criminal subculture existing in the penitentiary establishment. According to one of the prisoners, the prisoners are divided into categories in N2 penitentiary establishment depending on what kind of influence they can exert on other prisoners. There are prisoners who “dominate” on others and prisoners who are isolated. According to information received from some prisoners, the prisoners make decision as to which category new prisoner belongs to. The employees of N2 penitentiary establishment also noted that the criminal subculture existing in the prison establishment is a significant challenge. However, they said that they have not developed concrete ways for solving this problem.

According to the information received from the interviewed prisoners, there are two types of the employees in the N2 penitentiary establishment: employees who have good relationship with the prisoners and the employees who have bad relationship with the prisoners. Also, the prisoners noted that concrete employees have good relationship with the certain group of prisoners, but are revengeful towards other prisoners and that some employees do not like a certain prisoner.

According to the information received from the part of the prisoners interviewed in N2 penitentiary establishment, there is no work conducted for the prevention of disciplinary violations. The employees of the penitentiary establishment are often negligent to various lawful requests of the prisoners. For instance, according to the prisoners, they often have to repeat their request to leave the cell for using phone and it often became the reason of conflict. The prisoners also stated that placing another prisoner in the cell without checking and agreeing prior also becomes the reason of conflict as these prisoners might not be getting along. Also, according to

prisoners, some prison employees require especially careful treatment and understanding of their character. Otherwise, they will be irritated and will provoke the conflict that will be followed by the disciplinary sanction. The prisoners also talk about the cynical attitude from some prison employees. Also, the prison employees do not ensure some rights of prisoners if they do not request it several times and express complaint. According to some prisoners, the prison employees sometimes groundlessly impose disciplinary sanctions on them in order to “distort” their case file and make it hard for them to be eligible for early release

During the monitoring, case files of 8 prisoners were studied which showed the trend that the disciplinary sanctions are imposed on prisoners when their case examination for consideration of early release is approaching. The existence of disciplinary sanctions in the case file becomes the basis for refusal of early release.

The contradictory information received during the monitoring reveals that the prisoners and prison employees have different views and understanding regarding their relationship. Although the prison employees consider that they have constructive relationship and attitude towards the prisoners, monitoring revealed that big part of prisoners do not think so. The prisoners talk about psychological pressure, unfair approaches and unequal treatment. This practice may amount to degrading treatment. Therefore, it is essential to additionally study it in depth.

In order to prevent disciplinary violations, in parallel with the protection of security and order, the prison personnel must adhere to the principles of fairness and inadmissibility of discrimination.

Also, in order to prevent the violations and solve the conflicts between the prisoners, the prison administrations must use mediation, conflict prevention and other alternative mechanisms²⁵ for the conflict resolution whenever possible. The prison employees must go through various trainings related to their concrete obligations, including regarding the issues, such as dynamic security, usage of means of force and constraint and prevent the conflict through mediation²⁶.

RECOMMENDATIONS

To Ministry of Justice

- Develop unified mechanism that will ensure prevention of disciplinary violations, through establishing constructive relationship between the prison employees and prisoners;

²⁵ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rule 38 (1).

²⁶ Nelson Mandela Rules, Articles 75 (2) and 76 (1) (g).

- The prison administration must ensure necessary environment and conditions for constructive relations between the prison personnel and prisoners;
- Develop unified mechanism that will ensure conflict prevention between the prisoners and solving existing conflicts;
- The training should be conducted for the prison employees on the following topic – dynamic security, management of violent offenders, conflict prevention and resolution using negotiations and mediation.

The monitoring revealed various violations in the practice of disciplinary proceedings in the penitentiary establishments.

According to the information received from the part of the prisoners interviewed in N2 and N3 penitentiary establishments, during the disciplinary proceeding the prisoner is not given possibility to present his/her explanation. The prisoners are not asked about the reasons which gave rise to the violation. According to some prisoners, they were not given information regarding the disciplinary proceeding and imposed sanction. Some were informed only after the decision about imposing disciplinary sanction was made. The prisoners are not informed regarding the right to provide explanation and make remarks and present evidence. For majority of prisoners, the right to appeal the decision on disciplinary sanctions was also not known.

The situation is similar in N17 penitentiary establishment where the disciplinary sanctions were imposed on part of the prisoners without giving them any information. According to some prisoners, they accidentally found out (mainly, in the form of the warning or reprimand) that they were given disciplinary sanction after requesting their case files in order to send the case to the Council on Early Release. According to several prisoners, they were not involved in the process of disciplinary proceeding and found out about the imposed sanction only after the decision was made. While talking to the monitors, one of the prisoners stated that he did not have information that he was imposed with a disciplinary sanction in 2018. Also, he did not have information that this sanction was revoked as a form of reward.

According to the foreign prisoner interviewed in N16 penitentiary establishment, he was not asked for the explanation during the disciplinary proceeding. According to the prisoner, he signed the documents regarding the disciplinary proceeding without knowing their content as he does not know Georgian language. According to the prisoner, he was not provided a translator. One of the prisoners told the

members of the monitoring group that he knew about the disciplinary proceeding, that the prison employees approached him and offered to choose whether he preferred to verbally express his position to the director regarding the violation or give written explanation. The prisoner stated that he preferred to share his position to the director in verbal form. According to the prison employees, he signed the protocol regarding the refusal to give written explanation. According to the prisoner, without hearing any explanation from his side, in 15 minutes he was given the protocol regarding imposition of disciplinary sanction in his cell.

According to the information received from the leadership of N16 penitentiary establishment, when there is a disciplinary violation, the authorized representative of the penitentiary establishment makes relevant explanation and afterwards writes a service report. Then the rights are explained to the prisoner and he is given the possibility to make an explanation. However, according to the respondent, there has never been a case that the issue was decided in favor of the prisoner after he provided explanation.

After interviewing the leadership of N17 penitentiary establishment, it was revealed that they have not understood the significance of the explanation given by the prisoner. According to one of the officials holding managerial position in the prison, as the prisoner is informed regarding his/her rights, it is not necessary to hear his/her explanation in case of violation; the prison employee determines whether or not the prisoner committed violation. The imposition of the disciplinary sanction does not require additional examination.

It should be noted that the cases of appealing disciplinary sanctions in the court are very rare. The prisoners are naming several factors for this. In the first place, as it was noted above, the majority of them are not aware of the right to make an appeal against the decision on imposition of disciplinary sanction. In some cases, the prisoners do not even know that they have been imposed with a disciplinary sanction. When they find out about this, the deadline for the appeal is already expired. If the deadline is not expired, the part of the prisoners thinks that appeal has no meaning because they do not have expect fair hearing. Also, it should be noted that in case of appealing the decision, it is necessary to pay fee in the amount of 100 GEL. There was a prisoner in N16 penitentiary establishment who wanted to appeal the imposed disciplinary sanction; however he could not pay the fee.

The existing system of disciplinary proceeding does not ensure the protection of order and rights of the prisoners. The decisions on the violations of the regime requirements and other violations are not substantiated by the evidence. The disciplinary proceeding is conducted mainly without verbal hearing and is based

only on the reports of the prison employees and their explanations. The prisoners are not involved in the process and sometimes they are not even informed. This practice violates national legislation as well as international standards.

According to international standards, every prisoner must be notified preliminary, in a written form regarding the rules, requirements and the disciplinary sanctions²⁷. Before imposition of the disciplinary sanction, the administration is obliged to give information to the prisoner regarding the supposed violation and imposed charge and give possibility to defend himself/herself, give adequate time and means for preparing defense and possibility to use the translator²⁸.

Georgian legislation envisages similar provisions. According to the Imprisonment Code, the defendant/convict accused of the disciplinary violation has right to be informed regarding the content of the charge and use the help of the translator for free if he/she does not know the language of the proceeding; have enough time and means to prepare for the defense in case of verbal hearing; give explanation or remarks; present evidence and requests; make an appeal against the decree regarding the use of disciplinary measure²⁹.

After studying the documentation in N2, N3, N16 and N17 penitentiary establishments, it was revealed that the information is not provided comprehensively in the decrees regarding the disciplinary violation and related measures. Specifically, the decrees do not reflect concrete details and circumstances related to the disciplinary violations. The main witnesses are usually the employees of the penitentiary establishment. Also, there is little information presented as to what fact took place and which requirement/rule was violated by the prisoner. The evidences regarding the violation are also not presented in the documentation related to the disciplinary proceeding. In the protocol of explanation of the person accused of disciplinary violation, only prisoner's personal information is noted and explanation regarding the disciplinary violation is not presented. Often, these protocols do not include the signature of the prisoners or there is a remark that the prisoner did not sign it. According to international standard, the administration of the penitentiary establishment should keep journal regarding any disciplinary sanction³⁰. Keeping journal and noting complete information regarding the sanctions in a certain way ensures that the practice of imposition of disciplinary sanctions is more substantiated with the evidence.

²⁷ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rule 54 (C); Council of Europe, Committee of Ministers, Recommendation REC (2006)2 to member states on European Prison Rules – Rule 30.1.

²⁸ Nelson Mandela Rules, Rule 41.2; European Prison Rules, Rule 57.2 (A) and (B).

²⁹ Imprisonment Code of Georgia, Articles 83, 84 and 86.

³⁰ Nelson Mandela Rules, Rule 39.2

It should be noted that there is no journal or note/documentation in N2 penitentiary establishment regarding the solitary cell. According to the statement of the representative of the department of legal regime, “this is usual working process”. According to the representatives of the leadership and administration of N2 penitentiary establishment, if various prohibitions have already been used against the prisoner and he/she still continues the violations, the solitary cell is used against him/her. If the prisoner realizes what he/she violated and repents, then the administration used only warning or reprimand. According to the leadership of the penitentiary establishment, the solitary cell is used as an extreme measure as usual. According to the information provided by the leadership and representatives of the N2 penitentiary establishment, the disciplinary proceeding, as usual takes place in accordance with the information presented in the report of the prison employee. According to them, the disciplinary proceeding takes place in the penitentiary establishment according to existing verbal practice and they do not have written rules regarding this. It is also problematic that the legislation does not envisage the obligation to use the disciplinary sanction as an ultimate measure.

The frequent use of the solitary cells is a problem in certain penitentiary establishments. Also, according to the information provided by the prisoners, the practice of placing mentally ill prisoners in the solitary cells still exists. According to international standards, placement of mentally ill prisoner in the solitary cell may worsen his/her condition³¹. Also, it should be noted that before imposing disciplinary sanction, the prison administration must assess whether the mental state of the prisoner could affect his behavior and action which gave rise to the disciplinary sanction. Prison administrations shall not sanction any conduct of a prisoner “that is considered to be the direct result of his or her mental illness or intellectual disability”³².

Besides, according to international standards, the actions considered to amount to disciplinary violations must be determined by legislation, as well as the types of the sanctions, terms and the body authorized to use the measure of disciplinary responsibility³³. Also, the imposed sanction should be proportional to the disciplinary violation³⁴. According to the Imprisonment Code, the disciplinary sanction used against the disciplinary violation should be proportionate of the action³⁵. However, Georgian legislation does not categorize the disciplinary

³¹ Nelson Mandela Rules, Rule 45 (2).

³² *Ibid*, Rule 39 (3).

³³ Nelson Mandela Rules, Rule 37, UN Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules), Paragraph 68.

³⁴ Nelson Mandela Rules, Rule 39 (2); European Prison Rules, Rule 60.2.

³⁵ Imprisonment Code, Article 81.

sanctions according to the gravity and does not determine which sanction would be proportionate to which violation. Therefore, there is risk that the disciplinary sanction used by the prison administration is not proportionate to the action. This gap also creates possibility that different defendants/convicts are imposed different sanctions for the same violation that promotes unequal treatment.

RECOMMENDATIONS

To Parliament of Georgia

- The changes should be made in the Imprisonment Code of Georgia according to which different types of disciplinary violations should be specified (less grave, grave and especially grave) and the relevant sanctions should be established for each of the violation

To Ministry of Justice of Georgia

- Every defendant/convict shall be informed in written form regarding the rules of discipline in the penitentiary establishments, requirements and acting disciplinary sanctions upon the placement in the penitentiary establishment;
- The defendant/convict should be explained the rights of providing explanation regarding the disciplinary violation, presenting the requests and evidence, use of translator and use of disciplinary measure;
- Before the imposition of disciplinary sanction, the defendant/convict should be provided information in understandable language, as well as the information regarding the alleged disciplinary violation and imposed charge and must be given the possibility for defense, as well as adequate time and means to prepare for the defense, including for providing the evidence;
- The prisoner should be given right to make complaint against the imposed sanction in the court, as well as use the help of translator;
- The rule regarding verbal hearing on disciplinary proceedings shall be introduced in practice;
- The guiding principles regarding imposition of disciplinary sanctions shall be developed;
- The journal must be kept regarding the imposed disciplinary sanctions and the detailed information must be included in the journal, including regarding the action for which the sanction was applied.

2.2. DE-ESCALATION ROOM

According to the provisions of the penitentiary establishments, if the defendant/convict creates danger for his/her or somebody else's life and health, the prison administration may place him/her in the relevantly equipped de-escalation room³⁶, as long as the criteria for applying this measure is still present. The placement in the de-escalation room must happen under constant access of the medical personnel and 24-hour visual surveillance by the security³⁷. According to the legislation, it is inadmissible to move the prisoner to the de-escalation room in order to punish him/her³⁸.

During the monitoring it was revealed that in certain penitentiary establishments, the practice of placement in the de-escalation rooms contradicts the requirements of the legislation. For instance, according to the prisoners placed in Batumi N3 penitentiary establishment, the de-escalation room is used even when there is no need for this and often placement in this room has punitive nature. One of the prisoners noted that such practice existed in the past. Two prisoners with mental illnesses spoke about the placement in the de-escalation room in 2018 and assessed it to be a punitive action. According to the prisoners, before placement in the de-escalation room the situation is not assessed sufficiently and the multidisciplinary team is not involved for the minimization and eradication of the risks. Also, the frequency and nature of the cases of placement in the de-escalation rooms were analyzed according to the registration journal in N2 penitentiary establishment. As it can be found out from the registration journal of N2 penitentiary establishment, during November 14, 2017 – December 10, 2018, there were 135 cases of placement of prisoners in the de-escalation rooms. Out of these cases, since November to December 10, 2018, the number of the prisoners placed in the de-escalation rooms amounted to 13 individuals. As a result of the monitoring it was revealed that the form of the journal which is currently used in the penitentiary establishment is not adequate for properly describing the practice of the placement in the de-escalation rooms. Specifically, the registration journals are often not filled fully. For instance, it is indicated in the order that the prisoner was placed in the de-escalation room and later released; however, the reason for the placement in the de-escalation room is often not indicated. Although the regulation of the penitentiary establishment envisages composition of the protocol when the prisoner is placed in the de-escalation room, incomplete information

³⁶ August 27, 2015, Order N109 of Ministry of Penitentiary and Probation concerning the Adoption of Regulation of N3 Penitentiary Establishment, Articles 26 (1) and (2).

³⁷ *Ibid*

³⁸ *Ibid*, Article 26 (6)

makes it difficult to assess the cases of the placement of prisoners in the de-escalation rooms and creates doubt that the rooms are used against their purpose.

The de-escalation rooms should not be used for punishment of prisoners. If the prisoner commits disciplinary violation, relevant disciplinary measures/sanctions should be used.

During the monitoring it was revealed that general environment in the de-escalation rooms is acceptable and more or less satisfies the requirements³⁹ of the law⁴⁰. However, existing conditions do not fully ensure secure environment. According to several prisoners, it is possible to inflict self-injury in the de-escalation rooms. It is important to minimize the risk of the self-injury.

Also, according to the prisoners, the toilet falls in the field of vision of surveillance camera which is degrading for them. According to several prisoners, they did not eat while being placed in the de-escalation room as they would be needing toilet and tried to avoid using it. Prisoners think that it is inhuman to be placed in such conditions. It should be noted that before the legislative changes were introduced in the regulations of N2 and N3 penitentiary establishments in 2016⁴¹, the legislation envisaged equipment of the de-escalation room with a “surveillance camera which should not cover the toilet sink”. After the legislative change, this phrase was taken out from the regulation that made the conditions in the de-escalation room stricter. Including toilet in the field of vision of surveillance camera without a proper substantiation represents intrusion in the personal life of individual. If this decision and practice is determined by the need of minimizing risk of self-injury, an alternative way should be developed for achieving the same aim.

Besides, according to the legislation, placement of the prisoner in the de-escalation room is admissible as long as the danger which substantiated use of the de-escalation room still exists, however, no longer than 72 hours⁴². It should be welcome that the time of placement of prisoner in the de-escalation room decreased according to 2016 legislative changes. Before these changes, the administration of prison establishment determined the length of the placement which implied 4 days in practice. However, 72 hours is still too long. CPT noted in the report prepared as a result of the visit in 2014 in Georgia that the prisoner must be placed in the de-escalation room as short time as possible, for several

³⁹ The de-escalation room must be equipped with a safe mattress, surveillance camera, open toilet to resist damage, sink, lighting and proper ventilation.

⁴⁰ *Ibid*, Article 26 (1).

⁴¹ Orders N107 and N108 of the Minister of Penitentiary and Probation, August 9, 2016.

⁴² Order N109 of Ministry of Penitentiary and Probation concerning the adoption of the regulation of N3 Penitentiary Establishment, August 27, 2015

hours and no longer than 24 hours⁴³. Public Defender of Georgia has similar recommendation. According to the Public Defender, the prisoners should be not placed in the de-escalation rooms for long time under such conditions as “it violates honor and dignity of the individual”. According to the recommendation of Public Defender, if the reasons for the placement of the prisoner in the de-escalation room do not cease after 24 hours, the administration must take other measures, including providing adequate psychiatric help to the prisoner in case of need⁴⁴.

RECOMMENDATIONS

To Ministry of Justice:

- Ensure training of the prison employees regarding the techniques of the de-escalation;
- Upon the placement of the prisoner in the de-escalation room, the multidisciplinary team must conduct work in order to minimize and eradicate risks;
- The term of the placement of the prisoner in the de-escalation room should be maximum 24 hours;
- The de-escalation rooms must be arranged in such way that the risk of the self-injury is minimum;
- The toilet should not fall into the area of the surveillance camera in the de-escalation room. Ensure pixilation of the camera.

2.3. THE STATISTICS OF DISCIPLINARY SANCTIONS USED AGAINST THE PRISONERS

According to the information received as a result of studying the documentation regarding the disciplinary proceedings in the penitentiary establishments: Since January to April of 2018, 160 disciplinary sanctions were used against the prisoners in Kutaisi N2 penitentiary establishment. Since January 2018 up until the moment of conducting training, 725 disciplinary sanctions were used against the prisoners in N3 penitentiary establishment (the type of sanction was not indicated in 4 cases). Since January of 2018 up until the moment of conducting training, 29 disciplinary sanctions were used against the prisoners in Rustavi N16 penitentiary establishment. In 2018, 14 disciplinary sanctions were used against the prisoners in

⁴³ European Committee for Prevention of Torture and Inhuman or Degrading Treatment, Report concerning the visit in Georgia in 2014, CPT/Inf (2015) 42, paragraph 94.

⁴⁴ Report of Public Defender of Georgian regarding the state of human rights and freedoms in Georgia, 2015, page 42.

N17 penitentiary establishment. These sanctions were mainly used because of the noise and in some cases, because of insulting the doctor.

The types of disciplinary sanctions according to different penitentiary establishments are following:

Causing Noise in the Cell, Swearing and Heavy Knocking on the Door of the Cell			
Type of used sanction	Number		
	N2	N3	N16
Warning	3	4	1
Reprimand	28	3	-
Restriction of Receiving Parcel and Mail	3	-	-
Restriction of Phone Conversation	4	2	-
Placing in Solitary Cell up until to 7 Days	5	3	-
Restriction of Right to use shop in the prison territory	2	-	-
Swearing and Insulting Prison Officials			
Type of Used Sanction	Number		
	N2	N3	N16
Warning	-	5	-
Reprimand	10	4	-
Restriction of Receiving Parcel and Mail	5	-	-
Restriction of Phone Conversation	2	3	-
Placing in Solitary Cell up until to 14 Days	3	1	-
Restriction to Receive and Send Personal Correspondence	2	-	-
Prohibition of Next Short Visit	3	-	-
Verbal Insult of Prisoner by Another Prisoner			
Type of Used Sanction	Number		

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	N2	N3	N16
Reprimand	9	-	-
Restriction of Phone Conversation	1	-	-
Placing in Solitary Cell up until to 7 Days	6	-	-
Insulting Prisoner Employed in Maintenance Department of Prison			
Type of Used Sanction	Number		
	N2	N3	N16
Warning	-	1	-
Reprimand	-	2	-
Conflict between the Prisoners			
Type of Used Sanction	Number		
	N2	N3	N16
Warning	-	-	1
Reprimand	-	-	1
Placing in Solitary Cell up until to 5 Days	-	-	3
Prisoner did not Obey Legal Request of the Prison Official			
Type of Used Sanction	Number		
	N2	N3	N16
Warning	-	-	8
Reprimand	-	-	6
Restriction of Receiving Parcel and Mail	1	-	-
Prohibition of Next Short Visit	1	-	-
Placing in Solitary Cell up until to 10 Days	4	-	-
Restriction to leave prison for short time for 2 weeks	-	-	2

The Prisoner Shouted from the Cell			
Type of Used Sanction	Number		
	N2	N3	N16
Warning	-	25	-
Reprimand	12	19	-
Restriction of Phone Conversation	4	4	-
Prohibition of Next Short Visit	2	1	-
Restriction to Receive and Send Personal Correspondence	-	1	-
Placement in Solitary Cell up until to 10 Days	2	2	-
Prisoner Damaged Inventory of the Prison Establishment			
Type of Used Sanction	Number		
	N2	N3	N16
Reprimand	3	-	-
Restriction of Phone Conversation	1	-	-
Restriction of Receiving and Sending of Personal Correspondence	1	-	-
Verbal Insult of Prison Employee by the Prisoner			
Type of Used Sanction	Number		
	N2	N3	N16
Warning	2	61	-
Reprimand	11	210	1
Prohibition of Short Visit	-	2	-
Restriction of Phone Conversation	8	45	-
Restriction to Use Shop in the Prison Territory	3	-	-
Placement in the Solitary Cell up until to 14 Days	4	10	-

Prohibition of Next Short Visit	1	22	-
Restriction to Receive Parcel and Mail	1	-	-
Restriction to receive and send personal correspondence	-	10	-
Disciplinary Imprisonment	-	1	-
Prisoner Refused to Leave Cell for Check-up			
Type of Used Sanction	Number		
	N2	N3	N16
Warning	1	-	-
Reprimand	4	-	-
Restriction of Phone Conversation	1	-	-
Restriction to Use Shop in the Prison Territory	1	-	-
Prohibition of Next Short Visit	1	-	-
Prison Refused to Go Inside the Cell			
Type of Used Sanction	Number		
	N2	N3	N16
Warning	-	60	-
Reprimand	-	209	-
Prohibition of Short Visit	-	1	-
Prohibition of Next Short Visit	-	2	-
Restriction of Receiving and Sending Personal Correspondence	-	1	-
Restriction of Phone Conversation	-	1	-
Restriction to Receive Parcel and Mail	-	1	-
Placement in the Solitary Cell (from 2 to 10 Days)	2	1	-

Hygiene Lacking in the Cell			
Type of Used Sanction	Number		
	N2	N3	N16
Reprimand	2	-	-
Restriction of Phone Conversation	1	-	-
After leaving prison establishment for short time, prisoner came late			
Type of Used Sanction	Number		
	N2	N3	N16
Prohibition to leave prison for short time during 2 weeks	-	-	1
The case is transferred to the investigation; prohibition to leave the prison territory for short time before ending of investigation	-	-	1
Violating the Regulation of the Prison Establishment by the Prisoner			
Type of Used Sanction	Number		
	N2	N3	N16
Warning	-	-	3

According to the explanation of the administration of N2 penitentiary establishment, in case of disciplinary violation, the contact to the outside world is restricted for the prisoner after giving warning and reprimand. Also, according to the statement of the prison establishment, the method of prohibition of contact to the outside world works well because sometimes it is hard to talk to the prisoners and therefore prohibitions are necessary. Although restriction of different forms of contact to the outside world is envisaged by the legislation as a disciplinary sanction, this restriction should be used for as short time as possible (for several days) considering its special significant and only in case the disciplinary violation is in direct connection to such contact⁴⁵. It should be also noted that according to international standards, it is inadmissible to fully prohibit contact to family. It is admissible to prohibit such contact only for restricted time and in case the interests

⁴⁵ European Committee for Prevention of Torture and Inhuman or Degrading Treatment, Report concerning the visit in Georgia in 2014, CPT/Inf (2015) 42, paragraph 119.

of security and maintenance of the order strictly require it⁴⁶. The statistics presented in the report as well as the information received as a result of interviewing the prisoners demonstrate that the restriction of contact to the outside world is often used as a disciplinary sanction in relation to the disciplinary violations which are not related to the sanction.

The monitoring group also studied the documentation regarding the rewards used towards the prisoners. According to this documentation, in 2018, 59 prisoners were given rewards in N16 penitentiary establishment, including: 27 prisoners were given right to additional short and long visits and 32 thank you notes. As for Rustavi N17 penitentiary establishment, 282 prisoners were rewarded, including: 1 thank you note, 1 case of revocation of the disciplinary sanction; 14 additional short visits; 266 additional long visits. According to the statistics provided by the special penitentiary service, in N2 penitentiary establishment, since January to September 2018, the forms of rewards were used towards 51 prisoners, including: 8 cases of right to use personal TV; 7 additional short visit; 2 additional phone calls; 14 additional long visits; 5 cases of revocation of disciplinary sanction; 15 thank you notes. In N3 penitentiary establishment, from January to September 2018, 12 prisoners were rewarded – 11 prisoners were given right to additional phone call; 1 prisoner was given right to long visit.

Additional long and short visits are used as a form of reward based on the request of the prisoners. However, it should be noted that according to the statement of the prisoners, they do not have information as to what forms of rewards exist and how they can receive reward from the administration.

RECOMMENDATIONS

To Georgian Parliament:

- Introduce provision in the Imprisonment Code according to which usage of restriction to the outside world as a disciplinary sanction can be used only in case the disciplinary violation is directly connected to the contact to the outside world.

To Ministry of Justice:

- Inform the defendants/convicts regarding the forms of the rewards and grounds of their usage.

⁴⁶ Nelson Mandela Rules, Rule 43 (3).

3. REHABILITATION AND RE-SOCIALIZATION OF PRISONERS

One of the significant challenges for penitentiary system in Georgia is ensuring the main purpose of the sentencing – rehabilitation and re-socialization of prisoners.

According to Standard Minimum Rules for the Treatment of Prisoners, in order to achieve this goal, the right to education, professional training and work, and other kinds of educational, moral, spiritual, social, health and sport related rehabilitation activities must be ensured in the penitentiary establishment. Every program, activity and service shall be provided according to the individual needs of the prisoners⁴⁷.

As a result of the monitoring visits made to the penitentiary establishment, several problematic issues were revealed in relation to the rehabilitation of prisoners. The mechanism for individual planning of sentence is practically not implemented or has only formal nature. The activities implemented in terms of rehabilitation and re-socialization are fragmented and do not envisage the individual needs of the prisoners. Such activities are practically not provided in the high risk facility. The lack of sufficient personnel and inadequate qualification hinders individual planning and implementation in all above mentioned penitentiary establishments. The calm and therapeutic space is not ensured for psychologists and social workers to work with the prisoners. Except for the lack of rehabilitation programs and in certain cases, the non-relevance of such program, other factors also hinder participation of prisoners in existing programs and activities, such as criminal subculture and lack of motivation in the prisoners.

3.1 MECHANISM FOR INDIVIDUAL PRISON SENTENCE PLANS

According to legislation of Georgia, the goal of individual prison sentence plans is to minimize the possibility of commission of a crime in future through creating healthy environment in the prison and engaging the prisoners in relevant rehabilitation programs and activities⁴⁸.

The mechanism for individual prison sentence plans is problematic considering that it has only formal nature. After studying the individual prison sentence plans it was concluded that determining necessary response for the inclusion of prisoners in the activities in certain cases happens without indicating needs in the risk and need evaluation forms. The individual prison sentence plans do not reflect the work conducted by the specialist after identifying the needs of the prisoner. After

⁴⁷ *Ibid*, rule 4.

⁴⁸ Order N33 of the Minister of Penientary and Probation concerning the adoption of individual prison sentence plans, Annex 1, Article 1.

completing the programs and activities envisaged by the individual prison sentence plans, the achieved results are not measured and evaluated; the planned programs and activities do not respond to the revealed needs and are not sufficient.

In most of the cases, in the form of risk and need assessment, there is no clear description provided as to what determined concrete need of the prisoner and why it is included in individual prison sentence plans. Also, in many cases the assessment and plans are inconsistent. There is impression that the individual prison sentence plans envisaged inclusion only in those activities which are accessible in narrow scope of possibilities in the prison. It can be concluded that existing programs are adjusted to the prisoners and not vice versa – the program is not selected according to the needs of the prisoners. In such conditions, it is impossible to make effective intervention based on the needs of the prisoners.

Also, there were cases when the member of the interdisciplinary team did not indicate on the problem or criminogenic need of the prisoner in the assessment form. For instance, in the assessment form composed by the doctor, it was written about one of the prisoners that he had depression. However, this information is not reflected in the individual prison sentence plan of that prisoner. Also, social worker had noted in the assessment form that the prisoner had low interest towards employment which is a risk-factor for reoffending. However, this issue was lost in the individual prison sentence plan.

After talking to social workers from various prison establishments, it was concluded that the social workers fail to assess whether the prisoner achieved the goal set in the beginning after completing concrete program or activity. One of the main problems is that it is not possible to measure the results and assess whether risks were overcome and criminogenic needs were ensured. Such information is not found at all in the documentation regarding reassessing the risks.

According to one of the social workers, the criteria for assessing whether or not the goal was met is the satisfaction of the prisoner which is vague and is not sufficient to assess the real result. The social workers and psychologist also consider that the individual prison sentence plans do not meet the requirement of component of measuring results. Therefore, it can be concluded that the prisoners are included in the programs only to be involved in any rehabilitation program. However, the results and progress are not measured in long-term. This significantly hinders planning of next rehabilitation activities. The prisoners must be included the program in a targeted way and not spontaneously. This issue remains to be problematic due to the lack of relevant resources, instruments and experience.

Except for the formal composition of individual plans, the lack of practice of composition of individual plans is problematic. The individual prison sentence plans are practically not composed in N3 penitentiary establishment. In the light of limited rehabilitation programs, there are few cases of composition of individual prison sentence plans in N3 penitentiary establishment. The situation is the same in N2 and N17 penitentiary establishments. The part of the prisoners stated that they have never heard and are not informed regarding individual prison sentence plans. According to the statistics provided by the special penitentiary service, from January to September 2018, the individual prison sentence plans were prepared in relation to 25 prisoners in N2 penitentiary establishment (there were 764 prisoners in the penitentiary establishment in September. The plans were composed in relation to 62 prisoners); there were plans in relation to 4 prisoners in N3 penitentiary establishment (although there were 51 prisoner in total in the prisoner. However, it should be noted that 24 prisoners refused composition of the individual prison sentence plans; individual prison sentence plans were composed in relation to 152 prisoners in N17 prison establishment (1889 prisoners were placed in this penitentiary establishment); the provided information does not include statistics in relation to N16 penitentiary establishment.

Along with other factors, this problem is predominantly caused by the lack of sufficient personnel with relevant qualification.

RECOMMENDATIONS

To Ministry of Justice:

- Ensure composition and implementation of individual prison sentence plans in such way that it is oriented towards result and meets real needs of the prisoner;
- Strengthen the work of multidisciplinary team in order to effectively elaborate the individual prison sentence plans;
- Develop the practice of composition of individual prison sentence plans and cover as many prisoners as possible.

3.2 PERSONNEL

The social workers and psychologists are main link in the organization of rehabilitation process. The lack of such professionals in the penitentiary establishments creates risk that individual prison sentence planning and organizing the process of rehabilitation and re-socialization has formal nature.

The UN Standard Minimum Rules for Treatment of Prisoners establishes that the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, and teachers⁴⁹. The ratio between the numbers of prisoners and prison personnel must ensure possibility to work with each prisoner individually⁵⁰.

Considering the difficulty of work of social worker, Georgian legislation establishes limit of cases for social workers according to which each social worker should not take more than 50 cases⁵¹.

The number of convicts and specialists in the penitentiary establishments during the monitoring was following:

	N2	N3	N16	N17
Convict	764	51	173	1889
Psychologist	4	1	2	2
Social Worker	8	2	7	12

As the box shows, in certain penitentiary establishments, the ratio between the numbers of convicts and specialists exceeds the limit set by the legislation. For instance, in N17 penitentiary establishment, 1 psychologist is responsible for cases of approximately 900 prisoners and 1 social worker – for 157 cases. The situation is the same in N2 penitentiary establishment where 1 psychologist is responsible for 191 cases and 1 social worker – 95 cases.

It should be noted that during the monitoring there was vacancy for 3 social workers in N2 penitentiary establishment and in N3 penitentiary establishment – vacancy for the position of head of social department and 1 social worker; in N16 penitentiary establishment – vacancy for 4 social workers and in N17 penitentiary establishment – 2 social workers.

Due to the insufficient number of the personnel in various penitentiary establishments, including N16 penitentiary establishment, the social workers were overloaded. According to their explanation, often they do not manage to conduct assessment and compose individual plans in one month. Besides, they do not manage to reassess the individual plans. Thus, individual plans are often not

⁴⁹ Nelson Mandela Rules, Rule 78 (1).

⁵⁰ *Ibid*, Rule 89 (3)

⁵¹ Law of Georgia concerning the Social Work, Article 47.

changed. While interviewing two social workers in N17 penitentiary establishment, it turned out that both social workers have only one active individual plan while both of them are responsible for approximately 700 convicts. According to their explanation, they also have several passive plans as well (when the convict agreed to a plan, but then changed his/her mind). In total, there are 14 active individual plans in the penitentiary establishment that implies one or two working plans for one social worker. There are currently only two psychologists working in N17 penitentiary establishment. According to them, they divide work equally that means that one psychologist is responsible for cases of 900 prisoners that obviously shows the lack of professional resource. In N2 penitentiary establishment, the individual prison sentence planning does not take place at all. According to the information provided by the prison personell, the process stopped since July of 2018. The lack of human resources was named to be the reason for this. During the interview in N16 penitentiary establishment, one of the social workers noted that for the last 5 months the meeting of multidisciplinary team for individual planning has not taken place.

Except for the number of the social workers, their competence is also problematic. Most of the social workers employed in the penitentiary establishments do not meet the main requirements established by law for the social workers according to which social worker must have “bachelor, master or PHD degree in the sphere of social work or certificate of a social worker”⁵².

According to international standards, the prison personnel must have adequate education in order to professionally implement their obligations⁵³. Before starting their job, the prison employees must go through training targeting general and concrete obligations and pass the theoretical and practical test at the end of the training⁵⁴.

According to the information provided by the special penitentiary service, in order to increase the qualification of the social workers in the system of penitentiary service and improve their work, in 2017 the work started on the educational course for the retraining of social workers in the penitentiary system (5 stages). The course covered the specific features of the penitentiary system and social work in the system, main aspects of case management, work techniques, rehabilitation programs and etc. According to special penitentiary service, in 2018, 9 social workers received the training; 1 – in N3 penitentiary establishment, 5 – in N16, 11

⁵² Ibid, Article 42 (1) (C).

⁵³ Nelson Mandela Rules, Rule 75.

⁵⁴ Ibid, Rule 75.

– in N17. According to special penitentiary service, retraining of the social workers will continue in 2019.

Regardless the abovementioned information, interviews with the social workers in various facilities revealed that big part of the social workers have high education in law or pedagogical science but have taken only few trainings in social science. One of the social workers obliged to participate in the process of individual prison sentence planning, mentioned that she had not taken additional trainings to perform the job. She personally collected information but could not name the normative act regulating the process. In order to organize the rehabilitation and re-socialization programs of the prisoners, which, as a rule, shall be implemented through individual prison sentence planning, the necessary pre-condition is to train the respective staff members how to conduct similar job. This situation hinders implementation of high-quality social work in the facilities and consequently creates serious problem.

Besides that, in practice, social workers, apart to the duties aiming at educational, rehabilitation and social integration, are entitled to perform absolutely different functions and duties.

According to the social workers, their main duty is to give consultations to the convicted people, to assist them to have conjugal meetings, to enroll/remove in/from maintenance unit, to prepare ID documents, to arrange culture events, to hand in and send letters/complaints, to distribute personal correspondence in the cells, to provide legal support, to prepare description regarding their character and organize trainings. It is noteworthy that among those social workers, who were interviewed by the monitoring group, nobody mentioned planning of the rehabilitation process for the convicts, evaluation of their risks and needs and preparation of the sentence plan. They, mostly, are busy with some technical work that is beyond the field of social work. Often, the convicts perceive social workers as their assistants to prepare and send letters and complaints. Although the work of the social workers include ensuring the engagement of the prisoners in educational or rehabilitation programs, similar cases are quite rare.

The meeting infrastructure of the social workers with the convicted person is also problematic. There are no separate rooms to organize individual meetings with the beneficiaries; the existing rooms often do not ensure peaceful and therapeutic environment.

The social workers, like psychologists, often speak with the convicted person through the cell doors that creates barrier between the beneficiaries and the specialists and cannot ensure adequate working environment for them.

There is a room for the social workers in the dormitory of the Prison N 17 but the space is not equipped and does not offer adequate environment. For the individual meetings with the convicted people, the social workers, like psychologists, use either library or a room, where psychotropic medicines are handed (under video-surveillance), because there is no other appropriate room for individual meetings.

The personnel of the penitentiary establishment N 2 have common working room in the administrative building, working corner and personal computers. Also, there are special rooms in each building for the meetings with the convicted people. Social workers and psychologists of the unit have offices according to the buildings and as they stated, they visit the buildings on daily basis, meet the prisoners and ask them what they need. If a convict wishes individual meetings, they meet him. However, when the room was examined during the monitoring, where psychologist, doctor or a social worker has a chance to individually receive a beneficiary, we observed that there is depressive environment in it, there is no ventilation though there is air-conditioning, which creates huge noise and it is impossible to hear anything if it is on. The room is long but narrow without natural lighting. The rooms of the psychologist/social worker are not separated in the Building E of the facility; so, they use the room of the officer-on-duty.

RECOMMENDATIONS

To the Ministry of Justice:

- To increase the number of psychologists and social workers;
- To ensure that the social service recruits only educated social workers, who acknowledge the essence and importance of the re-socialization and rehabilitation;
- To ensure education of the social workers, who do not have high education in social science, to teach their general and concrete duties;
- To train all social workers working in penitentiary establishments on individual prison sentence planning;
- To ensure improvement of the staff members' qualification before they take over their duties; social workers, before starting job in the penitentiary system (and not afterwards) shall take respective trainings on organizing the educational-rehabilitation process of the convicted person and about individual prison sentence planning

3.3. REHABILITATION ACTIVITIES

Provision of the rehabilitation activities and programs differs among the facilities. However, some general problems were identified, which are more or less common for all facilities. The provision of the rehabilitation programs does not have preliminarily planned and systemic character. The convicted people are not enrolled in rehabilitation programs in respect to their individual needs but only in available programs and activities. Consequently, the provided activities or programs are not always effective for the convicted person. There is lack of sport, cultural and educational programs in the facilities. The rehabilitation process of the prisoners with mental problems is still an acute problem in the penitentiary system of Georgia. The number of the convicted people enrolled in the psycho-social rehabilitation programs is critically low.

Particularly grave is the situation with regard to rehabilitation and re-socialization in the prison N 3 for high-risk convicts, where few rehabilitation activities are carried out. For example, according to the information provided by the Special Penitentiary Service, in 2018, only 3 rehabilitation programs were implemented in the facility. During the monitoring, only one vocational program – farming and one educational program – Georgian language course - were implemented in the prison. The prisoners do not have possibility to participate in the rehabilitation activities that are available for the prisoners in other closed penitentiary establishments.

The inmates of the prison N 3 are in particularly grave psychological conditions. Psychologist individually works with some of the convicted people but it does not happen systematically. Absence of interesting and entertaining activities for the prisoners in similar facilities, spending 23 hours in the cell and only 1 hour walk, increases feelings of protest, injustice and hopelessness. Insufficient fresh air negatively affects both physical and psychological health of the convicted people; consequently, it is important to increase the time of walking in the fresh air.

In accordance to international standards, in order to maintain physical and psychological health, the prisoners shall be provided with the possibility to rest and carry out cultural activities⁵⁵. Each penitentiary establishment shall try to provide the prisoners with the access to the programs selected according to their needs⁵⁶. It is particularly important that inmates of closed and high-risk facilities at least could be busy with interesting, entertaining, art, vocational, educational and other activities. Also, it must be noted that the walking yard of the facility is not equipped

⁵⁵ See Nelson Mandela's Rules, Rule 105

⁵⁶ European Prison Rules, Rule 28.1.

with fitness equipment. Consequently, it is necessary to create adequate conditions for the inmates to spend time and exercise in the fresh air. Also, to encourage physical activities inside the building, depending on the outbuildings of the facility, it is recommended to arrange spaces for sport and other recreation activities by re-arranging the cells.

During the monitoring in the penitentiary establishment N 17, the therapy program for drug-addicts and cognitive-behavioral therapy programs were implemented, where 15 convicts were involved. Besides that, Georgian language course was available for the convicts who do not speak the language. Some prisoners participated in the educational programs; for example, one of them was the student of the Andria Pirveltsodebuli University. Suicide prevention program is also implemented in the facility. Some convicts are employed in the maintenance unit. It is worth to note that in the facility with 1800 inmates, only 80 convicted people were enrolled in the rehabilitation programs that is very low number.

Examination of the individual prison sentence plans revealed that the needs of the convicts are similar and consequently they are enrolled in similar programs that, most probably, were available in the establishment. It is obscure, how the necessary programs are identified and then implemented in the facility.

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There is a problem of influence of criminal sub-culture in the facility. The representatives of the sub-culture negatively affect the desire of the inmates to participate in the rehabilitation programs. A convicted person stated that the prison administration does not do anything to eradicate the problem. Moreover, the administration itself is under the influence of the sub-culture.

In comparison with other facilities, there are diverse rehabilitation activities in the prison N 16, where the inmates actively participate.

In accordance to the Imprisonment Code of Georgia, “a convicted person is placed in a low risk prison facility based on his/her written consent which must indicate that he/she agrees to fulfill the obligations established for low risk prison facilities, in particular, to study and/or work, and to participate in rehabilitation activities offered by the facility⁵⁷.”

The monitoring group visited the workshops, where the prisoners create various crafts, including leather and fleece works. There is greenhouse for flowers in the facility. The convicts have possibility to get education; educational programs are available for them; some inmates are students of bachelor and master programs in different high schools. In accordance to the information provided by the

⁵⁷ Imprisonment Code of Georgia, Article 60¹ (2)

administration, distant education is also available in their facility. The students receive educational materials via correspondence or in the prison library. The monitoring group also visited the sport hall, which is adequately equipped with sport equipment. There were many prisoners in the sport hall, who were busy with various sport activities. The sales manager's courses are available in the prison and respective certificates are issued to the participants. Some other rehabilitation programs, trainings and activities are conducted in the prison.

However, despite the abovementioned situation, the conditions of the inmates of the prison N 16 significantly differ from each other. More precisely, there are two dormitories in the prison: A and B buildings. The low-risk convicts are placed in the Building A, while the inmates preparing for the release are placed in the building B. The inmates of the Building A participate in various interesting activities (vocational, professional, psycho-social, educational, sport and more). One of the convicts has talent of writing music and sells his work from the prison (he purchased the respective apparatus himself). As for the inmates of the Building B, only one rehabilitation program is available for them. They are deprived of the right to enter the fitness hall and library. One of the prisoners, who was moved from the Building A into B, stated that he could not continue participation in the programs, which were implemented in the Building A.

Throughout 2018, several rehabilitation programs were implemented in the prison N 2: Atlantisi: suicide prevention program and the program for individual prison sentence planning, which was suspended in summer of 2018 because of insufficient human resources, as the social worker reported. Also, there was English language course in the prison, as well as the Georgian language course for the prisoners who do not speak Georgian.

According to the prison administration, they interview the inmates twice a year about the rehabilitation programs. The list of the programs is sent to the prison from the social service and they conduct interviews according to it. They start implementation of the program, which is most liked by the interviewed prisoners.

During the monitoring, only Atlantisi and suicide prevention programs were implemented in the facility. The head of the social unit said they cannot organize rehabilitation, culture and sport programs because of insufficient human and professional resources of social workers. Throughout 2018, they conducted the trainings on penitentiary stress only for two groups and maximum 6 inmates participated in each group. All in all, only 12 inmates undertook the training. Sport-cultural events are not organized in the facility that is very important for physical and psychological health of the convicts.

There are prisoners with disabilities in the prison. During the monitoring it was found out that nobody works with them in respect to their needs. They are not involved in the rehabilitation programs; the personnel does not have skills and knowledge to work with the people with disabilities; the facility is not adapted for wheelchair users.

“Atlantis”

Implementation of the program Atlantis was one of the issues that was monitored during the visit in prison N 2 as well as psycho-social rehabilitation process of the inmates involved in it.

According to the instruction, respective infrastructure was arranged in the facility to carry out the program. There are 4 cells in the space, which was allocated for the program implementation and there are at least 3 places in each of them; all in all, the space can room 12 inmates. In the moment of monitoring, only 6 convicts were engaged in the program, while according to the instruction, the program can accept up to 12 convicts in one round⁵⁸. The maximum number of the convicted people involved in the program per round never exceeded 7 inmates. The main criteria for participation is addiction to alcohol, drugs or other psycho-active substances; also the prisoner shall have desire to participate in the rehabilitation program but the monitoring revealed that the regime and security services of the prison make final decision on the selection of program participants. It is important that the respective commission members made decisions on the enrolment of the convicted people in the program “Atlantis”, who will follow the Minister’s decree⁵⁹.

The following rehabilitation activities are carried out for the beneficiaries of the program “Atlantis”: English language lessons, “12 step” program, 2 hours of sport in the so-called sport-hall; however, it must be noted that half of the allocated time (sport hours) is used at the expense of \ walking hours. The program has a library; there is a chapel for orthodox prisoners in one of the cells, where icons and other religious items are placed.

2 social workers and 1 psychologist are involved in the program, who coordinate its implementation. The convicted person started consultations with psychologists one month after the program was launched. During the first month, the convicted person attended only English language course. As the main goal of the program “Atlantis” is to provide psycho-social rehabilitation of the beneficiaries, it is

⁵⁸ December 31, 2014 Decree # 161 of the Minister of Corrections of Georgia on the “Approval of the Instruction for the Implementation of the Psycho-Social Rehabilitation Program “Atlantis” in the Penitentiary Establishments”, Annex # 1, Article 3(4).

⁵⁹ Ibid Article 8

important to involve the psychologist and social worker from the very beginning it is launched. The activities aiming at psycho-social rehabilitation are very limited; the therapy instructor does not work with the family members of the beneficiary⁶⁰. There are no individual interviews with the participants of the program and consequently, the activities are not planned according to their needs.

During the monitoring, the individual plans of the convicted person participating in the program were evaluated. Almost all convicted people had filled out the forms only partially; consequently, they cannot provide information about their problems and needs. Also, the activities listed in the individual plans often do not meet the risks and needs of the convicted person. The individual plans of the convicted people are equal, that naturally raises doubt that the documents are filled out formally.

Employment

In parallel to be engaged in various rehabilitation programs, during the imprisonment term, it is important to ensure employment opportunity for the prisoners. In accordance to the legislation⁶¹, the following labor opportunities are available for the convicted people in the penitentiary establishments: 1. employment on the territory of the prison facility and/or outside; 2. employment in enterprises; and 3. employment in the housing unit of the facility.

There are very few enterprises established in the prison facilities. Consequently, not everybody can get employed there mostly because of lack of working places.

In accordance to the information provided by the Special Penitentiary Service, throughout 2018, by the end of September, 84 convicted people applied to the director of the prison N 2 for employment; among them, the applications of 76 inmates were satisfied; in the penitentiary establishment N 3, one convicted person applied for the employment in the maintenance unit but his application was not satisfied; in the same period of time, four convicted people applied the director of the prison N 16 for employment and all of them were satisfied; 21 convicted people requested employment in the maintenance unit of the prison N 17 and all of them were satisfied. The SPS did not provide information about the causes of the rejected applications.

Majority of the convicted people employed in the housing unit do not participate in the rehabilitation, educational and sport activities mostly because of limited free hours that place them in unequal conditions with other prisoners. The international

⁶⁰ Ibid, Article 6 (c)

⁶¹ Imprisonment Code of Georgia, Article 110-112, 112¹

standards state that those prisoners, who work in the maintenance unit, “shall have at least one day-off in a week and enough time to get education and participate in other activities.⁶²” Consequently, the prison administration shall ensure that the convicted people working in the maintenance unit had the same number of days-off as other employed prisoners.

It is positive that water-heating devices were installed in the cells of those convicted people, who carry out cleaning works in the penitentiary establishment N 3; so, they can take a shower every day.

In accordance to the Mandela Rules, “So far as possible the work provided shall be such as will maintain or increase the prisoners’ ability to earn an honest living after release.⁶³” The inmates employed in the maintenance unit have to implement the work like distribution of the food, washing, fetch food products and other personal items from the prison shop, cleaning so that these duties will less likely assist them to increase their ability to earn an honest living after release. At the same time, carrying out similar duties is related with strong stigma. Unfortunately, the members of the sub-culture in the penitentiary establishments create the situation when the prisoners employed in the maintenance unit are stigmatized, isolated and marginalized from the general life of the prison.

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Considering the abovementioned situation and the fact that most convicts committed crime because of hard social life, do not have education or/and adequate skills, that could enable them to be employed after release, it is important to create such a working opportunity for the prisoners, which will enable them to earn their living after the release.

RECOMMENDATIONS

To the Ministry of Justice:

- To ensure engagement of more prisoners in the rehabilitation programs;
- To increase the number of rehabilitation programs and activities;
- To pay particular attention to the evaluation of the risks and needs of the prisoners with mental health problems;
- To maximally ensure engagement of the convicted people with mental health problems in various sport or awareness-raising activities in due respect of their behavior;
- It is essential to create needs-oriented educational and rehabilitation programs for the prisoners with disabilities, where all convicted people

⁶² European Prison Rules, Rule 26.16

⁶³ Nelson Mandela Rules, Rule 98 (1)

with special needs will have possibility to enroll;

- To ensure establishment of rehabilitation programs implemented in the closed facilities in the high-risk prisons as well considering the infrastructure and security norms of those facilities; it is important to introduce various rehabilitation activities in the high-risk prison N 3. It is particularly important for the high-risk prisoners to get engaged in the rehabilitation and educational activities that may encourage their positive behavior;
- The inmates of the closed and high-risk prison facilities shall be given possibility to walk in the fresh air more than one hour;
- To ensure, affordably, diversity of rehabilitation activities in the penitentiary establishments (particularly in the penitentiary establishments N2, N3 and N17);
- To offer more diverse rehabilitation activities to the inmates placed in the Building B of the penitentiary establishment N 16;
- Social service shall ensure development and implementation of diverse rehabilitation and educational programs to promote rehabilitation of the convicts;
- In due respect of individual needs of the convicted persons and security standards to initiate new individual and group rehabilitation programs;
- The prison administrations shall exhaust all possibilities and resources to rehabilitate the addicted prisoners; first of all it can be achieved by ensuring that 12 places envisaged in Atlantis Program are fully used for the prisoner and ensure that the convicts addicted to alcohol, drugs or other psycho-active substances have equal access to the program;
- A psychologist and a social worker shall start working with the convicted people as soon as they get involved in the program “Atlantis”;
- To create such an employment opportunity for the prisoners, which will enable them to earn their living after the release;
- The prison administration shall encourage the convicted people employed in the maintenance unit considering their individual abilities and desires to participate in various rehabilitation programs, sport activities or take skills development courses.

3.4. OBSTACLES

Existence of criminal sub-culture/non-formal rules and lack of motivation create obstacles for the prisoners to participate in the rehabilitation activities.

It is practically impossible to plan the imprisonment term for the prisoners subordinating the criminal sub-culture because they refuse to obey the rules established by the state/institution and participate in the rehabilitation-resocialization programs, including educational programs. They say it is “participation in the action” that is inadmissible in accordance to the rules of the sub-culture. They say that participation in similar programs shall be voluntary and not obligatory for them.

Very small part of the representatives of the sub-culture is ready to deny the non-formal rules and start new life. One of the prisoners, who, according to the description of his character included in his case file, belonged to the criminal sub-culture, stated that he was ready to take part in the educational program. The prison administration members said that they observed this particular convict and due to positive characteristic and motivation he will take part in the educational programs in 2019.

As reported by the social workers, under the influence of the sub-culture members, many other prisoners also refuse to get involved in the rehabilitation activities. They said participation in the programs is discriminatory for certain group of prisoners and they often use the rhetoric like “are you going to school?”

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It is unclear how the social service and prison administration work to mitigate similar influence on the prisoners and ensure more engagement of the convicts in the rehabilitation programs.

It is difficult to work on the motivation of the convicts. During the monitoring, it was impossible to identify common approach to this problem. As reported by the social workers, the only measures they take is that once in three months they double-check with the convict whether he has changed mind and has decided to take part in the elaboration of his individual sentence plan and rehabilitation programs.

It is important to identify such convicts, to evaluate their risks and needs and to work with them individually. At the same time, it is important that the employees of the social unit actively worked on the encouragement of the prisoners and to create motivation for them to get involved in various activities. It will be good motivator to offer the prisoners activities, which will directly affect the reduction or amendment of the remaining imprisonment term.

We positively evaluate the initiative of the former Minister of Corrections, which he announced in 2017⁶⁴, according to which the Ministry had to start working on the introduction of a new mechanism in 2018. According to the initiative, the convicted person employed in the penitentiary establishment should have his/her imprisonment term reduced according to the worked days. We will welcome if this initiative will be realized, which aims to encourage positive conduct and rehabilitation of the prisoner.

RECOMMENDATIONS

To the Ministry of Justice:

- To ensure proactive work on the increase of motivation of the convicts to get involved in the rehabilitation activities;
- To identify those convicts, who under the influence of criminal sub-culture, refuse to participate in the rehabilitation programs and study their needs and to individually work with them;
- To establish the mechanism for increasing motivation of employment of the prisoners, according to which, the employed convicts will have their imprisonment terms reduced according to the number of worked days.

Absence of individual needs oriented programs, activities and services and lack of human rights based approach reduces the chance of improvement, rehabilitation and integration of the convicts in the society.

It is important to have complex approach to make the rehabilitation programs successful, that means to have well-arranged, long-term action plan, to attract enough and qualified personnel, to conduct systematic, long-term and needs-oriented rehabilitation activities, spend longer time in fresh air and on sport activities, create more employment opportunities, introduce effective mechanisms to increase motivation of the prisoners to participate in the rehabilitation activities.

⁶⁴ See information at <https://1tv.ge/news/dasaqmebis-sanacvlod-msjavrdebulebs-mosakhdeli-sasjelis-vada-sheumcirdebat/> (last seen on June 16, 2019)

4. WORKING CONDITIONS OF THE PENITENTIARY ESTABLISHMENT PERSONNEL

As a rule, when studying the situation in the penitentiary establishments, less attention is paid to the state of human rights of the prison personnel. However, the working environment in the penitentiary establishments, including professional activities and inter-relation between the leaders and the staff members, social and legal aid guarantees, significantly affect the environment in the facility and treatment of the prisoners. Consequently, general policy and approach is important factor, which, includes effective communication with the staff members and improvement of their working conditions.

The purpose of the examination of this issue was to study the state of human rights of the personnel in the penitentiary establishments and to identify those key challenges, which the prison personnel encounter in their working environment and conditions.

4.1. RECRUITMENT AND SELECTION OF THE PERSONNEL

In practice, the penitentiary establishments hardly attract high qualified personnel. The possible reason might be lack of active policy of personnel recruitment or unattractive working conditions, stereotypes in the society with regard to working in the penitentiary establishment or competition from the law enforcement bodies, like police.

In accordance to the information collected as result of the monitoring and research, selection and training of the personnel is often formal process. Majority of the employees never dreamed of having career in the penitentiary establishments. Motivating factors to get job in the penitentiary establishment, mostly is a desire for a stable job in prison and general unemployment. Also, there are cases when people are mobilized from various military institutions.

The monitoring revealed that the number of personnel is not enough considering the work load in all facilities. Misbalance between the personnel and the prisoners increase risk of harm and it makes constructive dialogue from the employees absolutely impossible. At the same time, insufficient number of the personnel, often, requires extra working hours and long-term shifts that causes professional burn-out of the personnel⁶⁵.

⁶⁵ Physical, emotional and mental exhausting, which is revealed among the social field professionals

International standards underline that the number of the prison personnel, among them the number of concrete specialists, shall be enough to effectively implement various functions⁶⁶.

It must be noted that for the attraction of human resources to the penitentiary establishments, it is necessary to elaborate complex and consecutive plan and to popularize the penitentiary service in different forms. Considering the fact that the employees of the penitentiary system have to carry out very difficult job, it is necessary to offer them the guarantees like competitive salaries, social guarantees, reimbursement of extra working hours, bonus system, insurance, stable and respect-based working environment.

In accordance to the European Prison Rules, the leadership of the prison system must permanently inform the society about the goals and work of the system to raise the public awareness about it⁶⁷. There are many ways which are applied by the European prisons to better promote the role of prison in the society. It may be invitation of the civil society and media to prison, to interest educational organizations, colleges and universities with employment opportunities in prisons, offering various educational programs which underline the significant role of the prison personnel in the protection of the civil society⁶⁸.

Selection of the personnel

Although the legislation⁶⁹ regulates the selection rule of the personnel in penitentiary system, some senior officials (including the director and deputy director of the penitentiary establishment) might be appointed without competition⁷⁰.

In accordance to the Recommendation of the Committee of Ministers of the Council of Europe, while selecting the personnel for high positions, it is important that the selected candidate had respective experience and skills⁷¹. Namely with regard to the prison director, the international organizations set up particular requirements like respective qualification, administrative and organizational skills,

⁶⁶ Nelson Mandela Rules, Rule 78

⁶⁷European Prison Rules, Rule 90.1

⁶⁸ Endrew Koyl "A Human Rights Approach to Prison Management" Chapter 2

⁶⁹ The Law of Georgia on Special Penitentiary Service, Chapter IV

⁷⁰ October 29, 2015 Decree N 153 of the Minister of Corrections of Georgia about the Approval of the List of Senior Positions in the Special Penitentiary Service of the Ministry of Corrections, who are appointed without competition, probation term and training course, also the rule of appointment on these positions," Article 1.

⁷¹ Recommendation (97)12 of the Committee of Ministers of the CoE to the Member States "On Staff Concerned with the Implementation of Sanctions and Measures"

attendance of respective trainings, other necessary professional skills, qualification and experience⁷².

It must be noted that international standards mean appointment of the qualified personnel in the penitentiary system via competition, his/her training at the initial stage and onward. The national legislation allows that entire team of the leaders (high and middle level managers) were appointed without competition.

These norms do not meet international standards and best practice, because the senior management team (directors, their deputies, heads of departments) need highest professional qualification considering that successful functioning of the penitentiary system depends on that. It is proved by the 2014 Report of the Committee against Torture, Cruel and Inhuman Treatment and Punishment, which reads that people from the police are appointed to the positions of the prison directors in Georgia, who do not have relevant experience in the system that requires complex and different experience⁷³. It must be noted that the national legislation does not require those senior officials to take at least basic training course⁷⁴.

Simultaneously, the existing situation creates a threat that people will be appointed to the positions of the prison directors arbitrarily and their qualification will not be evaluated by the competition commission. It is important that selection criteria and procedures were transparent. Consequently, it is reasonable to have non-facultative but obligatory interviews and the people were appointed to the position based on the decision of the competition commission not only through selection of the applications, but also as a result of evaluation of their experience, qualification and skills.

It must be noted that the international standards envisage particular approach to the selection of the personnel, who will deal with foreign prisoners, that requires particular cultural, sensitive, interactional and linguistic skills of a person⁷⁵. These people shall be adequately trained in treating foreign prisoners⁷⁶. Moreover, the international standards require these personnel to study the language of the foreign prisoners⁷⁷. It is noteworthy that the Georgian legislation does not envisage different criteria for the personnel working with foreign prisoners and in practice as

⁷² Nelson Mandela Rules, Rule 79; Havana Rules, Rule 86

⁷³ CPT Report 2014 about the Visit in Georgia CPT/Inf (2015) 42, Paragraph 108

⁷⁴ Non-profit legal entity "Initiative for the Rehabilitation of Vulnerable Groups," desk survey "Penitentiary System Personnel," page 5

⁷⁵ Recommendation of the Committee of Ministers of the CoE (2012)12 to the Member States about the Foreign Prisoners, Rule 38

⁷⁶ Ibid Rule 39.1

⁷⁷ Ibid Rule 39.3

well often prison personnel and foreign prisoners do not have positive communication due to the language barrier.

The monitoring revealed that selection of the personnel in the penitentiary establishments, mainly, starts from the existing personnel in the system. The monitoring results showed that motivation of the personnel, their skills to obtain operative information and length of working experience play the decisive role. As the internal communication in the penitentiary establishments works properly, the leader of structural unit or/and the leadership always identify motivated personnel and when competition is open, they recommend promotion of similar staff members. In accordance to the international standards, “regular and frequent assessment of the work performance shall be discussed with responsible person, who will assist the colleague to completely demonstrate his/her potential and prepare for the promotion⁷⁸.”

If the candidate is not selected from inside the personnel, the candidate is selected from outside based on the recommendations of the leadership, who first takes interview with the leadership of the penitentiary establishment and then his/her background is examined by the Security Service of the facility; afterwards, his/her CV is sent to the Special Penitentiary Service. As it was found out, the candidate, who receives recommendation from the prison leadership, enjoys the priority in the competition.

Based on the recommendation of the Committee of the Ministers of the CoE, personnel selection criteria shall be detailed, clear, fair and non-discriminative. The selection commission shall work impartially⁷⁹.

Staff drain

The monitoring results revealed that the drain of the system personnel is one of the key challenges. However, information about the reasons of the staff drain is not available. It also disclosed that there is no practice of the so-called final interviews. The causes of leaving the job are shared only informally, in private talks. It is important to systematize the data and causes of the staff drain, to conduct periodic analysis and prevention.

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Recommendation (97)12 of the Committee of Ministers of the CoE to the Member States “On Staff Concerned with the Implementation of Sanctions and Measures”

⁷⁹ Ibid, Rule 8

Encouragement

For the motivation of the staff members existence of the fair system of encouragement is very important. There is no encouragement system established in the penitentiary system to praise the well-done job of the personnel. According to the existing practice, sometimes financial bonuses are used as encouragement and they are mostly symbolic.

Regardless years-long working experience, the prison personnel recalled only single cases of appraisal.

It must be noted that the encouragement, as one of the mechanisms of increasing the motivation, does not aim to encourage any of the staff members based on the assessment of the work performed by him/her; but it is the preliminarily defined mechanism, which is applied for all staff members equally.

RECOMMENDATIONS

To the Parliament of Georgia:

- To determine by the law appointment of staff members of the penitentiary establishments, among them the management members, through competition;
- To determine the selection criteria of those prison personnel by the law, who have to work with specific group of prisoners.

To the Ministry of Justice:

- To elaborate and exercise the policy, which will ensure attraction of sufficient number of qualified personnel to the penitentiary system;
- To equip the penitentiary establishments with the adequate number of the personnel to enable the prison personnel to perform their duties at higher level and prevent their work overload and burnout;
- To select the prison personnel considering the ethnic background, gender and social status of the inmates that finally promote better communication with the inmates and play huge role to ensure dynamic security;
- Human resources department shall define clear and measurable criteria and steps for the career promotion for concrete positions;
- To equally enable all candidates to take vacant position;
- To ensure conduct of the so-called “final interview”, where the

representatives of the human resource department will find out the reasons of quitting the job (salary, bad social packet, abnormal working time, or other). It will assist the Ministry to eradicate the miscarriages, which hinders to carry out correct personnel policy, to maintain professional and experienced staff members, who may ensure continued institutional memory, and more;

- To ensure establishment of the evaluation system of the individual work of the employees and to attach it to the encouragement mechanisms.

4.2. TRAININGS AND CONTINUED EDUCATION

European Committee for the Prevention of Torture believes that adequate training of the prison personnel is the best guarantee to prevent cruel treatment of the imprisoned person⁸⁰.

According to the national legislation, a job applicant takes a competition, special examination and is appointed to the position for no longer than 6 months probation period. An employee undergoes special training course in the Penitentiary and Probation Training Center during the probation period. Meanwhile, he/she performs professional duties under supervision of the authorized person. After successful completion of the training course, the employee received respective certificate, which is valid for three years. If the employee works with juvenile defendant/convict, according to the rules determined by the Georgian legislation, he/she undergoes special professional trainings in the juvenile justice⁸¹.

In accordance to the European Prison Rules, staff who are to work with specific groups of prisoners, such as foreign nationals, juveniles or mentally ill prisoners, etc., shall be given specific training for their specialised work⁸².

The Georgian legislation pays particular attention to the staff working with the juvenile prisoners, though it does not require other specific training that comes in conflict with the international standards. As a result, there is no specialized staff in

⁸⁰ Committee for the Prevention of Torture (CPT) standards about the training of the law enforcement personnel from its second general report CPT/Inf (92) 3, Par. 59

⁸¹ Law of Georgia on Special Penitentiary Service, Article 8

⁸² European Prison Rules, Rule 81.3

the penitentiary establishments, who will be able to work with the foreign nationals, people with disabilities or other specific groups.

The prison personnel say that they had attended trainings on general topics, like human rights and freedoms, treatment of prisoners and their individual duties. Most of the personal hardly names concrete topics or/and names of the trainings.

The Ministry has not elaborated the systemic evaluation system of the training results. Neither the practical realization of the received knowledge is evaluated. In accordance to the international standards, it is obligatory to conduct systemic evaluation of the trainings to measure the effectiveness and determine what the trainees learned and how they use the received knowledge during their professional activities⁸³.

The monitoring revealed that the needs of the prison personnel are not surveyed when planning the trainings and consequently the trainings are not planned in accordance to their needs. In accordance to the Recommendations of the Committee of Ministers of the CoE: “Nonstop training content, as far as it is possible, shall aim to meet the needs of the employees ... that will be prepared based on the consultations with the employees.”⁸⁴

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As the prison personnel state, successful training directly affects their promotion and remuneration. However, they note that they can use the knowledge received during the training in practice and they appreciate it. In accordance to the international standards, the prison leadership shall ensure the personnel with special trainings, which are obligatory for their promotion⁸⁵.

It is noteworthy that in accordance to the recommendation of the Committee of the Ministers of the CoE, “personnel shall be allowed to attend trainings during working hours.”⁸⁶ In Georgian practice, round-trips of the personnel to attend the trainings are reimbursed. During the trainings, food and accommodation is available in the facility of the training center. The trainings are mostly organized on working days though there are some exceptions.

Ethics

In 2015 Report the Public Defender positively evaluated the approval of the Ethic Code of the Personnel of Penitentiary Service based on the Decree N 144 of

⁸³ Recommendation (97)12 of the Committee of Ministers of the CoE to the Member States about the Responsible Personnel on the Execution of Public Sanctions and Events”, Rule 27

⁸⁴ Ibid Rule 21

⁸⁵ Ibid Rule 22

⁸⁶ Ibid Rule 24

October 19, 2015, which regulates the standards and rules of conduct of the personnel, which aimed to promote the principles of responsibility and justice of the personnel, for the encouragement of professionalism, human rights respect, public trust and respect of the employees⁸⁷. However, majority of the prison personnel is not familiar with the report and some of them have never heard of it.

Crisis management

Generally, for the crisis management, the institutions act in accordance to the Imprisonment Code and the Minister's Decree N66 on Crisis Management in Penitentiary Establishments. The documents provide general rules of crisis management though they do not list concrete instruction of the act of each prison personnel.

As reported by the Special Preventive Group, majority of the prison personnel is not familiar with the guidelines of the crisis management. In critical situations, the personnel, basically, follow the verbal instructions of their leaders.

Annually, the crisis management rules are updated in the establishment, however the documents are sealed and the prison director opens it when emergency situation is there. According to guideline rules, the personnel receive verbal and sporadic instructions, though not in written form. At the same time, emergency situations are not staged in order to check how well the prison personnel have acknowledged their role during critical situation.

Almost all facilities have fire safety inspector, who is responsible to carry out anti-fire measures in the institution. The facilities are equipped with anti-fire systems. Some facilities have fire suppressions, anti-smoke system, handles, fire barrel which is connected with the water system. However, the prison personnel is not systematically trained how to use the equipment. Evacuation plan is not hung up in the prison buildings, including administrative ones, due to security measures.

In some establishments smoke-detector and fire-proof central systems are installed but they were not tested since exploitation.

RECOMMENDATIONS

To the Parliament of Georgia:

- To regulate by the law the obligation of specific training of the employees, who have to work with the prisoners with specific needs;

⁸⁷ 2015 Report of the Public Defender of Georgia, page 35

To the Ministry of Justice:

- To ensure elaboration of effective mechanisms to evaluate the effectiveness and sustainability of the training results, as well as to evaluate practical use of received knowledge and skills obtained;
- To survey the needs of the personnel when planning the trainings and to design the training modules in respect of those needs;
- To train all prison personnel in ethic code. This will promote deterrence of violent behavior
- To ensure periodic trainings of the prison personnel on crisis management rules;
- To ensure periodic testing of the fire-proof systems in the penitentiary establishments.

4.3. JOB DESCRIPTIONS AND FUNCTIONS OF THE STAFF

Job descriptions

The monitoring revealed that the employees of the penitentiary establishments do not have individual job descriptions. According to the information provided by the respective state body, the job descriptions were for all staff members, but as a result of structural changes and unification of the penitentiary and probation ministry with the Ministry of Justice, they plan to elaborate new job descriptions⁸⁸. The individual decree of the minister refers to all penitentiary establishments, and determines the functions of concrete structural units. As for the individual job descriptions of the staff members, in some facilities it is established practice that the prison director, within the scope of the minister’s decree, describes the duties and obligations of the staff members in job registries, which are signed by the staff members. However, the employees receive mostly verbal instructions about their concrete duties and obligations.

It is noteworthy that the job description and respective formulation is essential to enable the prison staff to properly implement their functions and ensure accountability. At the same time, job description enables the employee to be fully aware of his/her duties and obligations. Besides that, giving instructions only verbally contains some risks, for example, the employee may misunderstand or incorrectly remember the imposed obligations and consequently perform the

⁸⁸ Non-profit legal entity “Initiative for the Rehabilitation of Vulnerable Groups,” desk survey “Penitentiary System Personnel,” p. 20

duties improperly. We appreciate that the personnel does not have additional tasks and functions beyond the functions of the concrete structural units.

Level of centralization

In a penitentiary establishment, as a rule, the decision-making authority is strictly centralized. Except rare exceptions, the decisions, starting from technical details ended with significant functional decisions, are made by the prison director. It is noteworthy that employees of various levels may, due to urgent need, make decisions though at a later stage they need to report about the decisions to the prison director. In addition to that, the staff members of the penitentiary establishments N2 and N3 underlined that the director makes decision upon consulting with them and hearing their opinions. It is essential that the prison leadership shared the decision making function with the staff members considering their competences. In accordance to the international standards, during the trainings on various topics, special attention shall be paid to the issue of sharing the responsibilities⁸⁹.

Internal communication

It shall be positively evaluated that the staff members of almost all units in the penitentiary establishments have positive interrelation. The colleagues rarely have conflicts and if any, they are settled through negotiation.

The prompt and effective exchange of the information about the professional duties between the employees from all units shall be evaluated positively too.

Every day, 15-20 minute morning meetings have positive impact on the internal communication, when so-called shifts are exchanged under supervision of the leader (director or a deputy director). Mostly, the employees of the legal regime and security service attend the shifts exchange process. However, other units also organized daily-based meetings to distribute tasks for the day.

Additionally, the prison director organizes one common meeting with the employees from all structural units once a month, where the employees may raise any issue for discussion.

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Recommendation (97)12 of the Committee of Ministers of the CoE to the Member States about the Responsible Personnel on the Execution of Public Sanctions and Events”, Rule 26

The daily and monthly meetings, indeed, are good practice for the reinforcement of the internal communication that is also required by the international standards. Namely, the European Prison Rules state that “there shall be arrangements for management to consult with staff as a body on general matters and, especially, on matters to do with their conditions of employment⁹⁰.” According to the recommendation of the Committee of Ministers of the CoE, regular meetings and discussions should be arranged between the different staff categories in order to achieve and maintain a proper balance between a sympathetic understanding of prisoner’s problems and firmness of control. ⁹¹.

RECOMMENDATIONS

To the Ministry of Justice:

- To ensure elaboration of individual job descriptions;
- To improve distribution of the authority in the penitentiary establishments for the increased effectiveness of the work of the penitentiary system;
- To achieve that, training shall be organized for the management members to teach them the mechanisms and positive sides of the authority distribution.

4.4. WORKING CONDITIONS

Official salary

It is evident that the remuneration is one of the main components of the staff motivation. The monitoring revealed that the amount of the official salaries does not meet the difficult working conditions, job-related risks and responsibilities in penitentiary establishments.

Although, throughout 2017, the salaries of the people working in the legal regime were raised, it was not significant raise of the salaries (averagely with 100-150 GEL).

It is a pity that the amount of the remuneration is not interconnected with the well-done job of the employee, and it is fixed by the Special Penitentiary Service for

⁹⁰ European Prison Rules, Rule 86

⁹¹ Recommendation (2003)23 of the Committee of Ministers of the CoE to the Member States “on the Management by Prison Administrations of Life-Sentenced and Long-term Prisoners,” Rule 39

concrete positions. Consequently, the work of the employees is not evaluated individually and their remunerations are not revised according to it that negatively impacts the motivation of the staff and quality of the implemented jobs.

Bonuses and increments

Mainly, the bonuses are paid on public holidays and the amount of bonuses reduce every year; in 2018, it was 30% of the salary. Bonuses are not paid to praise the job done by any of the staff members, but it is preliminarily determined mechanism, which refers to all employees equally, in concrete cases.

Those employees receive increments, who work extra hours in the penitentiary establishments every day. Mainly, they are the management members (director, deputy directors, heads of the units); in some exceptions, the staff members, who perform the duties of their colleagues, who miss job, also receive increments.

Transportation

Although prison facilities are often located outside the settlements, the prison personnel does not receive allowances for the transportation. In similar case, among the monitored penitentiary establishments, prisons N16 and N17 were exceptions, where everyday transport was fixed based on the minister's decree. Also, as an exception, the management members receive coupons of fuel.

For traveling to trainings, except special cases, there is no transport allocated and the prison personnel, mostly travel with their money, by private or municipal transport.

Shower and rest room

In accordance to the Mandela Rules: "Working conditions shall be favorable in view of the exacting nature of the work⁹²." Employees, who work in 24 hours shift, do not have access to proper shower, cloak-room, personal wardrobes, and comfortable resting rooms. There are cases when the employees use the shower-rooms of the prisoners.

Extra-hour work

⁹² Mandela Rules, Rule 74.3

According to the information obtained by the monitoring group, in some facilities, some staff-members work at least extra 8-8 hours per week that is systematic process and includes weekends too. The extra working hours are not voluntary job; nobody records and remunerates it. There was almost no case, when an employee reused to perform extra-hour work.

Considering the fact that senior officials compensate their extra-hour work with monthly increments in due respect of the work-load and quality of the performed job⁹³, the extra-hour work of the ordinary staff members is not even recorded. Similar discriminative approach and practice is alarming and demotivates the personnel.

High intensity of the extra-hour work is caused by limited human resources for almost all positions. The number of the staff members is very small in comparison to the work-load in the penitentiary establishments. However, extra-hour work may be caused by the peculiarity of the job either: for example, case files are sent to the special registry unit after 6 pm and the staff works on them until 8-9 pm.

There were several instances, when ordinary employee of the prison refused to be promoted to the position of the head of a structural unit because of abnormal working timeframe on that position.

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In accordance to the national legislation, in enterprises with specific operating conditions uninterrupted production/work process must not exceed 48 hours a week⁹⁴. Working on the weekends and holidays is voluntary for the employees, except those working in shift. In similar case, their extra-work is remunerated in accordance to Georgian legislation, working hours for employees who work in shifts shall not exceed 24 hours, except in special cases determined by the director of a penitentiary facility⁹⁵.

Vacation

The employees of the penitentiary establishments hardly manage to fully enjoy the vacation days. As a rule, the employees of all units may take vacation for about 10-12 days once a year in accordance to the special vacation schedule, which is elaborated by the head of the structural unit upon the agreement with other employees in the beginning of the year.

⁹³ June 30, 2018 Decree N 5 of the Minister of Corrections, Article 24

⁹⁴ Labor Code of Georgia, Article 14; Law of Georgia on Special Penitentiary Service, Article 16

⁹⁵ Law of Georgia on Special Penitentiary Service, Article 16

As a rule, unused vacation days are not used and reimbursed next year.

In this regard, the prison N 16 is an exception, where some employees can enjoy the vacation period in two parts and take 2-2-weeks vacations throughout the year. However, it must be noted that neither the employees of this facility can enjoy the full vacation time consecutively.

In accordance to the Georgian legislation, an employee is entitled to annual paid vacation for a period of 30 calendar days. Annual paid vacations shall be allocated to employees during the calendar year in accordance with the vacation schedule⁹⁶.

Maternity leave

As for the maternity leave, female employees enjoy 6-month paid maternity leave without any problems and can extend it with another 2 years of unpaid maternity leave.

Break-time

The monitoring revealed that mostly the prison personnel stays inside the facility and except rare exceptions, which are directly agreed with the director, an employee may leave the facility. The same approach is used if an employee cannot return to the prison at the fixed time – it is also agreed directly with the director.

Often, prison personnel cannot rest during break-time and continues working non-stop.

Stressful working environment

In general, the prison personnel often suffer from highly stressful working environment.

The monitoring revealed that the riskier the facility is, the threat of physical assault on prison staff from the side of prisoners increase. At the same time, the prison personnel are authorized to prevent the prisoners to damage themselves and commit a suicide.

In accordance to the survey of the organization Penal Reform International, in some facilities the abovementioned challenges are everyday working environment for the prison personnel. Often, they have to stand verbal or physical assault from the side of prisoners. Quite often, the stressful working environment affects the

⁹⁶ Ibid, Articles 17-18

health conditions of the personnel, like depression, insomnia, isolation, heart deceases and other physical problems⁹⁷.

The prison staff have to work in the environment, where infrastructure is not arranged, there is not enough space, air and light, the sewage system and waste management system are not working properly that may become a basis of additional stress. At the same time, there is higher risk of getting infected of B and C hepatitis, tuberculosis, etc.⁹⁸.

In addition to the abovementioned problems, there is negative impact of working in the closed institutions: prisons, as a rule, are located far from the cities in isolated places that disable the staff to go to shops, plan visits to doctors, or pick up children from schools. The prison staff is prohibited to use phones during working hours and have contact with the outside world that creates stressful working environment. This problem is particularly acute for the employees working in 24 hours shift.

Majority of the staff members have not attended the stress management and burnout trainings that is very important to effectively perform their daily duties. They do not have access to free consultations of psychologists either.

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In accordance to the recommendations of the Committee of Ministers of the CoE, the prison leadership shall strive to prevent such working conditions, which promote increase of stress symptoms among the employees. For that it is necessary to ensure physical safety of the prison staff, reasonable working hours, scope of decision making process, environment of operative communication and psychological support⁹⁹. The recommendation also includes immediate assistance of the prison staff, if she/he get traumatized when performing professional duties¹⁰⁰.

According to the same recommendation:

“Welfare policy of the prison staff shall be created, which will assist the employees to cope with their personal problems, which affect his/her work. The staff

⁹⁷ Organization Penal Reform Information, Fact Sheet “Working Conditions of the Employees,” second edition, p. 7

⁹⁸ Ibid, p. 9

⁹⁹

Recommendation (97)12 of the Committee of Ministers of the CoE to the Member States about the Responsible Personnel on the Execution of Public Sanctions and Events”, Rule 42

¹⁰⁰ Ibid rule 43

members shall have access to comprehensive information about the offered support.¹⁰¹”

RECOMMENDATIONS

To the Ministry of Justice:

- To take all measures to make the staff salaries and working conditions adequate to the hard working environment;
- To take all measures to ensure transportation for the prison staff to the facilities;
- To ensure well-arranged showers and resting rooms for the staff members;
- To ensure sufficient number of staff members in the facility, to enable them to properly implement their duties in the shifts;
- To ensure that extra working hours of the employees in all units were recorded and remunerated;
- To ensure sufficient number of the personnel in the penitentiary establishment to enable the employees to enjoy the full vacation days in accordance to the national legislation;
- To allow the prison staff to enjoy their unused vacation days next year;
- To ensure to recruit enough personnel in the establishment, that will enable the employees to fully and without obstacles enjoy the break-times;
- To maximally regulate the stressful working environment of the prison staff through creating high standards of physical safety, reasonable length of working time, social benefits including adequate salaries, remuneration of extra working hours, encouragement mechanisms, wide discretion of the decisions about the work, open communication and at the expense of psychologically supportive environment;
- to periodically organize trainings for the prison staff on professional burn-out and stress management;
- to make free aid of psychologist available for the prison staff.

¹⁰¹ Ibid rule 44

4.5. GENDER DISCRIMINATION AND SEXUAL HARASSMENT

The monitoring in the penitentiary establishments revealed that there are no clear policy and rules in any of the monitored facilities, which protects the employees from the gender-based physical or verbal violence and harassment. Consequently, there are no clear procedures to respond to sexual harassment facts. Almost none of the employees, including leadership members, do not have clear knowledge what can be considered sexual harassment and whom they should apply to in similar case. In general, the prison personnel associate the term “sexual harassment” with the sexual minority prisoners.

The facilities, which were monitored, no facts or official complaints were observed, when an employee applied to the senior official regarding sexual violence or harassment. None of them were ever trained on this topic.

Regardless the above-mentioned, the monitoring revealed that the facts of sexual harassment happen in prisons and the number of similar facts increase in accordance to the risks. The interviews showed, that often the prisoners sexually harass the medical nurses and doctors. In order to mitigate similar situation, often, the doctor is accompanied by the security service officer during the visits of the prisoners. Often, security service officers control the dress-code of the female personnel of the prison and do not allow them to go into the dormitory.

In accordance to the international standards, it is permanent obligation of the prison administration to avoid and respond to the gender-based discrimination of the female employees¹⁰².

In accordance to the Bangkok Rules:

“Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.¹⁰³”

It is significant that all employees had attended the trainings on gender issues, prohibition of discrimination and sexual violence.

¹⁰² United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (‘the Bangkok Rules’) Rule 30

¹⁰³ Ibid, Rule 31

RECOMMENDATIONS

To the Ministry of Justice:

- To ensure that all employees attended the trainings on the prohibition of gender based discrimination and sexual harassment;
- To order the facilities to elaborate and introduce the staff with clear policy and regulations, which will aim to protect the employees from physical and verbal violence, assault and sexual harassment.

4.6 SURVEY AND QUALITY CONTROL

The monitoring of the establishments revealed that penitentiary system does not survey the satisfaction of the employees. Also, none of the penitentiary establishments conduct systemic evaluation of their personnel and their work. As a rule, there are no clear criteria and the work done by the employees is not evaluated in a written form. The evaluation depends only on the personal observations of the immediate supervisors that may later become the basis of promotion.

In some facilities, the sentry protocols are filled out, where the officers of the security service monitor the work done by the legal regime employees. However, it cannot be viewed as systemic and continued evaluation of the employees' work.

In accordance to the European Prison Rules, the prison leadership shall support establishment of the survey and evaluation systems in prisons, which will aim to empower the prison system and increase its role in the democratic society¹⁰⁴.

RECOMMENDATIONS

To the Ministry of Justice:

- To determine the measurable indicators to evaluate the work of the personnel and to introduce the evaluation system to ensure high-level functioning of the prison system;
- To reflect the evaluation results of the employees in the decisions made on his/her promotion, and encouragement or professional development. physical and verbal violence, assault and sexual harassment.

¹⁰⁴ European Prison Rules, Rule 91