

# **Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries**

**Project “Global Action to Abolish the Death Penalty”**

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## Foreword

The EU financed two-year project „Global Action to Abolish the Death Penalty“, which was launched in 2007 in three regions - Middle East/North Africa, Eastern Europe/South Caucasus and Central Asia - is concluded. The project implemented by Penal Reform International (PRI) promoted the abolishment of death penalty in regions where it still exists and dealt with life imprisonment issues in regions where death penalty has been abolished. South Caucasus countries as the members of Council of Europe have abolished death penalty already years ago and therefore the main aim of the project was to examine and raise the awareness about the situation of lifetime prisoners.

PRI is monitoring the conditions of prisoners sentenced to life imprisonment very closely. It is well known that prisoners serving long-term or life sentences often experience differential treatment and worse conditions of detention compared to other categories of prisoners. In South Caucasus countries where the criminal justice institutions are in continuous development and the resources are far from comparable with European countries, the difficulties associated with lifetime prisoner's prison conditions and rights are serious ones.

It has been reported by different international organisations that the prison conditions in the region are below international standards. The observations state that the lifetime prisoners are threatened by the lack of possibilities to exercise their rights and possibilities for rehabilitative and other activities during imprisonment are missing as well. Although Armenia, Azerbaijan and Georgian situation is different there are also several similarities. The main concerns are about the poor prison conditions in general, but lack of rehabilitation and lack of possibilities for contacts with outside world are common as well.

Despite the difficulties, there are several positive developments and efforts made from the state structures, civil society and international community. Strengthened prison monitoring commissions and its activities, possibilities for international trainings and exchange of experiences and step by step improvements in the legislation as well, increase the transparency and quality of prisons everyday work.

Current publication „Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries“ is prepared with aim to provide an overview of the situation of lifetime prisoners in South Caucasus region. The publication doesn't pretend to be just a scientific research - it is created with purpose to summarize the history of death penalty and its abolishment in SC region and to describe the use and conditions of life imprisonment at present. This publication has a special value as the views and opinions of prisoners sentenced to life imprisonment have been one significant source for this publication. Baring that in mind, the current project dealt with sensitive but also important range of questions which all are reflected in the publication.

PRI South Caucasus Office is grateful for cooperation of our partners from state and civil society representatives who contributed to the aforementioned project and current publication.

**Rait Kuuse**

Regional Director

PRI South Caucasus Office

## The summary of the project

The project “Global Action to Abolish the Death Penalty” covered three regions: Middle East/North Africa, Eastern Europe/South Caucasus and Central Asia. The project was financed by the European Union (EU) in the framework of the programme - European Instrument for Democracy and Human Rights (EIDHR) - and implemented by Penal Reform International (PRI). The project was launched in January of 2007 –and completed in January 2009.

The project had overall and specific objectives. The two **overall objectives** of the project were:

1. To challenge and change societal beliefs about the effectiveness of the death penalty in promoting public safety, good governance and the rule of law in four targeted regions.
2. To support governments and other stakeholders in progressing towards abolition of the Death Penalty and challenging the validity of life imprisonment as an alternative sanction.

The **specific objectives** of the project were:

1. To coordinate and implement four programs of activity in the target regions aimed at challenging the Death Penalty where it exists, and the use of life imprisonment as a standard alternative.

2. To provide the necessary communication and information sharing mechanisms.
3. To provide global expertise on the problems of using Life Imprisonment as a standard alternative to the Death Penalty where it has been abolished or there is a moratorium in place.

The outcome of the project would be a significant progress in the areas of public support for the abolition of death penalty, in line with political and legislative changes and amendments in order to achieve the abolition and awareness in relation to issues related to executing life imprisonment in South Caucasus.

Despite the fact that the South Caucasus states of Armenia, Azerbaijan and Georgia are all members of the Council of Europe and have all abolished the Death Penalty in accordance with their obligation on joining, launching this project was based on the following: in each case there are specific issues that provide grounds for the further examination of the situation in more detail. The issue of treatment of lifetime prisoners is common to all three countries. Conditions for such prisoners are reported to be well below international standards, highly restrictive and often jeopardizing physical and mental health of the inmates. This is particularly damaging given the long-term nature of their sentences and limited or non-existent opportunities to be considered for early release.

The implementation of the project in South Caucasus countries was coordinated by PRI Regional Office, in particular in Georgia the project was implemented by PRI staff, in Azerbaijan - by the members of Center of Developing Programs “EL”, Public Association “Prison Watch” and the Human Rights Center of Azerbaijan, in Armenia – by the Public Monitoring Group, Youth Center for Democratic Initiatives (YCDI), Youth NGO “Sail of Hope”, Physicians’ Association after Grigor Magistros, Organization of Women named after Virgin St. Sandukht. Members of listed organizations were at the same time the members of prison monitoring commissions of the respective country.

The main beneficiaries of the project in South Caucasus were prisoners sentenced to life imprisonment - as the South Caucasus states have abolished death penalty as members of Council of Europe.

In the framework of the project it was envisaged to conduct a research in relation to the situation (legal and physical) of former death row prisoners mainly, but also other long-term and/or life sentenced prisoners who are serving the sentence in the South-Caucasus region. To conclude the research various activities were planned. Specifically interviewing life sentenced prisoners using the questionnaire that was prepared beforehand, interviewing those stakeholders (judges, prosecutors, lawyers, members of the parliament, representatives of the Ministry of Justice, Penitentiary Department and prison administration) who have or had any connection with using life imprisonment as a form

of punishment, and with determining and enforcing the sentence for prisoners.

The research groups of all three countries interviewed most of the prisoners serving life imprisonment. In each country the interviews were also conducted with the representatives of the parliament, prosecutor's office, judiciary and penitentiary departments. Besides the interviews, in order to observe the living conditions and treatment of the prisoners, the visits were carried out to those prisons and places of detention where the prisoners sentenced to life imprisonment were held in detention.

One of the components of the project was to elaborate the national legislation and review its compatibility with international standards and to examine the application of these standards to practice

The results of the research are to be used for advocacy campaign to promote relevant international standards and conventions for the influence on the state policy with regard to the treatment of such prisoners. At the same time, problems faced by the former death row and life sentenced prisoners will be further addressed in the publication which will be issued in Armenian, Azeri and Georgian languages.

On September 26<sup>th</sup>, 2008 Armenian research group held a round table in Yerevan, Armenia. Participants of the round table were representatives

of governmental and non-governmental institutions, members of the research group, representatives of PRI, and media. The subject for the round table was usage of life imprisonment as a form of punishment and the conditions of serving it in Armenia.

Moreover, the regional conference (Georgia, Armenia, Azerbaijan) was held in the framework of this project on 12 December 2008 in Tbilisi, Georgia. The conference was co-financed by the Organization for Security and Co-operation in Europe (OSCE) mission to Georgia. The conference was attended by the research group of Azerbaijan, research group and the representative of Penitentiary Department of Armenia, research group of Georgia, representatives of local NGOs and international organizations, also representatives from judiciary, Ministry of Justice, Penitentiary Department and other officials from Georgia.

The results of the research in all three countries were presented and discussions about the abrogation revealed during the research were also examined at the conference. According to the results of the research, there are certain problems in all specific cases that were revealed while studying in detail the conditions of using and executing life imprisonment as a punishment in practice. Research showed that the living conditions of life sentenced prisoners are most problematic in all three countries. In general the living conditions are not compatible to international standards and they often threaten physical and mental well

being of prisoners because of the long-term nature of the punishment, poor conditions and limited use to early release.

Reports will be prepared on the project implementation at the final stage of the project. Its outcomes will be presented to the representatives of those governmental bodies (in Armenia, Azerbaijan and Georgia) that are addressees of recommendations in order to facilitate eradication of the existing problems. PRI, along with the members of the research group from all three countries will follow up and conduct monitoring on the implementation of these recommendations.

# A R M E N I A

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## **General Information**

By the time of conducting the research there were 76 male prisoners at penal establishments of Armenia imprisoned for lifetime. The prisoners were located in 1 establishment in Nubarasheni prison. There were 42 persons who were sentenced to death penalty before and their sentence was replaced by life imprisonment afterwards.

## **Methodology**

In 2001 the Republic of Armenia (RA) became a member of the Council of Europe, thus undertaking a number of obligations in the sphere of human rights protection. One of the undertaken obligations was the abolishment of the death penalty as an exclusive form of punishment. Although the death penalty, as an exclusive punishment existed in Criminal Code of Republic of Armenia (RA), it has not been actually implemented since 90s, after declaration of independence. But before the repeal of this punishment from the Criminal Code, the RA courts were still delivering judgments involving capital punishment. In 2003 a new RA Criminal Code was adopted, which replaced the capital punishment with life imprisonment. According to the Article 60 of the RA Criminal Code, life imprisonment is the isolation of a convict in a form of keeping him imprisoned in a penitentiary institution without time-limit, which can be imposed in the cases envisaged by the criminal

code for particularly grave crimes. Persons who are under age of 18 at the moment of committing the crime and women pregnant at the moment of committing the crime or delivery of judgment can not be sentenced to life imprisonment.

On 9 September 2003 the National Assembly ratified Protocol 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms.

In the framework of the project a comprehensive research was conducted. It was implemented as follows: the working group has compiled questionnaires based on issues regarding the custody of the persons imprisoned for life, their food, medical service, and sanitary hygienic conditions. Questionnaires were compiled for the staff of the penitentiary institutions, Human Rights Commission of the National Assembly, staff of the prosecutors' offices, judges, and officers of the Ministry of Justice.

“Nubarashen” Penitentiary Institution, where the persons imprisoned for life are kept, was visited several times. The interviews were conducted based on random selection, with about 28% of the convicts. It needs to be noted that the interviews were conducted anonymously.

The interviews with the convicted inmates were conducted in a separate room provided by the administration, without presence of convoy. During and after the aforementioned surveys, an interview was

conducted with the management of the penitentiary institution, and additional necessary materials were also obtained. After completion of the monitoring a statistical summary was prepared.

## **The conditions of imprisonment for life sentenced prisoners**

As already mentioned, there are 76 individuals convicted for life imprisonment in the Republic of Armenia. In the past, some of them were kept in “Goris” Penitentiary Institution, and as of September 27, 2006 they were transferred to “Nubarashen” Penitentiary; at present there are 76 persons sentenced to life imprisonment.

According to the Article 108 of the RA Penitentiary Code, persons sentenced to life imprisonment are kept in cells. As a rule there are four inmates held in one cell. A convict can also be kept in an isolated cell at his own request and in cases of threat to his personal security. Decision on isolation is made by the head of the penitentiary institution. The work with the given convict is arranged based on requirements defined by the internal regulations of the penitentiaries concerning housing of convicts in cell.

Most of the interviewed prisoners sentenced to life were sentenced in accordance to the Articles 99 of the old Criminal Code, which later was replaced by Article 104 of the new Criminal Code. Most of them have

already spent 13-14 years in penitentiary. The preliminary investigations into their cases lasted from one month to two years. The court hearings took from one month to three years. Their final judgments were delivered mainly by the courts of first instance and the court of cassation. The interviewed prisoners made a number of complaints in relation to investigation of their cases and court proceedings. The capital punishment of 42 of them has been commuted to life imprisonment. Almost all the interviewees find that life imprisonment is a more severe punishment than death penalty. In their opinion death penalty should have been commuted to 15-20 years of imprisonment, and not life imprisonment. The life-sentenced prisoners opine, that according to the RA Law on Enforcement of the Criminal Code, the provisions of the new Criminal Code do not expand on persons who have committed grave crimes before the entry of the new Criminal Code into force, therefore the convicts should not have been sentenced to life, since life imprisonment is one of the provisions of the new Criminal Code (Article 60), and the previous Criminal Code did not envisage life sentence as a sanction. Since those convicts had been sentenced in accordance with the previous Criminal Code, after the repeal of the provision on death penalty, they should have been sentenced only to 15-20 years of imprisonment.

Most of the interviewed persons sentenced for life were convicted for the first time. According to the inquiry the convicted persons were

informed about the internal regulations of the penitentiary and their rights and obligations.

## **Living Conditions**

At present, persons sentenced to life imprisonment are kept on the 4<sup>th</sup> and 5<sup>th</sup> floors of the “Nubarashen” Penitentiary Institution. There are four inmates in a cell, and the cells comply with the standards set by the legislation. The cells were renovated during last two years, mainly from the convicted persons’ funds. It is worth mentioning that the cells were refurbished also by the inmates themselves. Most of the cells have a TV set, radio, fans, electric heater, which provides heating in the cells during wintertime. The cell floor is made of wood. There are two types of toilets in the penitentiary: without seats (Asian type) and with seats, which are partitioned within the cells. In the past the ventilation system was located above the toilets, and as a result of partition, they remained within the toilets. The interviewed life sentenced prisoners stated that they take a shower once a week. The linen is washed and changed once a week, mainly with the help of the prisoners’ relatives. The sanitary hygienic conditions of the penitentiary were assessed as medium by the convicts.

## **Food**

The prisoners sentenced for life receive meals three times a day. They assess the quality of food received from the penitentiary as medium.

The 60% of the interviewed do not take the meals provided by the penitentiary. It was mentioned during the survey that the meat and meat products are provided with meals every other day, and cereals and bread- every day. Milk products, fruit, and other kinds of food are rarely provided. Half of the interviewed persons receive additional food with parcels once per week, and the other half once per month. Most of them do not purchase products from the shop of the penitentiary because of the unaffordable prices.

### **Access to Outdoor Exercise**

The life sentenced prisoners have access to outdoor exercise every day, except for Saturdays and Sundays. This is explained by the fact that the responsible staff is not working during the weekends.. The outdoor exercise lasts one hour. The Article 78 of the Penitentiary Code sets one hour as a minimum time for the outdoor exercise.

### **Medical Services**

None of the interviewed life sentenced prisoners had been subjected to the individual medical examination at the moment of their entry into the penitentiary institution. There is a medical post at the penitentiary, which convicts can use as needed. They get medicines from the medical post of the penitentiary mainly free of charge, and sometimes from the shop of the penitentiary at their own expense. In cases of necessity, the life-long convicts are transferred to the Central Hospital of the

Penitentiary Institutions. As to the medical service, the convicts complain about the lack of medicines and equipment, prohibition of getting medicines with parcels, and about unavailability of specialized medical service.

### **Communication with the Outside World**

The life sentenced prisoners have right to see their family members and friends for a long term once a year and for a short term three times a year. The duration of the long term visit is one to three days, and the short term is one hour. Five of the interviewed convicts have renounced their right to short term visits, because the meetings take place in presence of an employee of the penitentiary, and the convict and visitor are separated by a glass, as stipulated by the law. They find the duration and the frequency of the visits unsatisfactory. The convicts have access to a lawyer, psychologist, representatives of the Public Defender and public observers. They are allowed to use the telephones of the Penitentiary, except for Saturdays and Sundays.

### **Access to Sources of Information**

The interviewed life-sentenced prisoners stated that they have access to TV and radio every day, but rarely to printed media. They have no access to internet at all. There is a library in the penitentiary but only 50% of the convicts use it.

All interviewed convicts have right to send letters, appeals, and complaints through administration of penitentiary at any time.

## **Treatment**

The life-sentenced prisoners have right to meet with the employees of the penitentiary every day, together with psychologist and social worker, and with the head of the penitentiary and a lawyer, if needed. The interviewed convicts consider their relationship with the staff of the prison to be acceptable.

Half of the interviewed life-sentenced prisoners have been subjected to disciplinary punishments. The punishments have been in a form of reprimand, isolation in punishment cell, and ban on receiving parcels.

In terms of needs following issues were highlighted by the inmates during interviewing: increase of visits, opportunity to work, access to sports facilities, and communication with other inmates.

## **Questions to the staff on Admission of Detainees**

At present there are 74 life-sentenced prisoners in the Nubarashen Penitentiary, and death penalty was replaced by life imprisonment to 42 of them. The judgments of the aforementioned convicts were reviewed on 3 August 2003. Almost all employees opine that life imprisonment is a more severe punishment. According to their opinion the number of judgments involving life imprisonment has increased last years.

Overall, the convicts were sentenced for different criminal offences, most of them for murder. The convicts receive information on their rights and internal regulations in written form at the moment of their entry to the penitentiary institution. Individual criteria are applied for risk assessment. Inmates are isolated based on the results of the assessment, which is necessary according to the penitentiary administration.

## **The Staff**

The employees working with the life-long convicts must be specially prepared, but there are no special courses per se. As to the question of what qualifications are important for working with life-sentenced prisoners: strong will, patience and operative skills were mentioned.

The number of employees at the penitentiary is not sufficient to organize the work properly, that is explained by the lack of security and social workers, psychologists and lawyers. During the monitoring, it was mentioned that the convicts have access to services of following specialists as needed: doctor, lawyer, psychologist, and social worker. It has been also mentioned that the life-long convicts may have access to the medical service they require. According to the staff, the penitentiary is provided with all the necessary medicines and equipment.

The relationship between the convicts and the staff is assessed as normal. In regard to the attitude towards the life-sentenced and other convicts, the answers “yes” and “no” are equally distributed. In cases of “yes”, the attitude towards the life-sentenced prisoners is qualified as more attentive and caring. As a result of the monitoring, it became clear that the convicts do not have special days set for meetings, and the issue is regulated by the internal regulations of the penitentiary. As to the questions on how many complaints have been received during the last year, the following answers have been registered: “many”, “one”, and “none”. Most of the complaints received relate to unfair judicial proceedings and direct answers have been given only to half of them.

## **Security**

No wiretapping or other surveillance devices are used in the penitentiary, and the convicts know about that, but as the penitentiary staff have mentioned, there is need in such devices.

As to the question on what reasons may incur the transfers of the life-sentenced prisoners from one cell to another, the following answers were given: bad relations between the inmates, bad health conditions, and technical issues. There are cases, when inmates themselves ask to transfer them to another cell because of similar reasons.

Disciplinary penalties that are applied to the life-sentenced prisoners are: reprimand, strict reprimand, punishment cell, and other type of

punishments. Depending on the violation committed, the duration of the penalty in a form of isolation in a punishment cell may vary from 3 to 15 days. The penalties applied to the life-long convicts do not differ from the ones applied to other convicts. There have been no cases of suicides and suicide attempts during the last three years. A case of self injury has been registered once as a protest against unfair judicial proceedings: the convict has sewn his mouth and eyes. In such cases the administration requests medical service. On cases mentioned above accurate statistics is maintained.

The results of the monitoring show, that the number of suicides, suicide attempts, and self injury are decreasing.

Conflicts between the inmates occur very rarely, and happen only because of social issues.

### **Living Conditions of the Convicts**

The life-long convicts are kept in “Nubarashen” Penitentiary Institution, occupying 24 cells and in “Yerevan-Kentron” Penitentiary institution, occupying 2 cells. The area of the cells is 24sqm in Nubarashen Penitentiary, and 8sqm in Yerevan-Kentron Penitentiary.

The number of the convicts per cell in Nubarashen Penitentiary:

4 persons – 11 cells; 3 persons – 8 cells; 2 persons - 2 cells; 1 person - 2 cells In Yerevan-Kentron Penitentiary 1 person - 2 cells.

Considering security regulations, the life-sentenced prisoners are not being transferred to civil clinics, and only to “Hospital for Convicted Persons” of Penitentiary Institutions. In critical cases, if the convict is in the Hospital for Convicted Persons, corresponding specialists are invited from outside.

As to the access to education, it is necessary to mention, that two life-long convicts study at higher educational institution. It is also worth mentioning, that most of the convicts have expressed their wish to receive higher education, but do not have sufficient means. And there is no access to work programs because of the type of the institution and its conditions.

According to the opinion of the penitentiary’s employees, it is desirable to provide the life-long convicts with work and give them access to sports.

The employees of the penitentiary assessed the conditions as normal. In addition to conditions for work with life-sentenced prisoners, they have mentioned that it is necessary to improve the premises, working, living, and social conditions. Moreover, the employees would like to have salary increase and provision of certain privileges.

# **Local legislation and international standards**

## **Treatment**

The right to adequate treatment includes also the right of a person to be free from cruel, inhuman and degrading treatment.

The guarantees for this right are training and preparedness of the staff in human rights and fundamental freedoms.

The life-sentenced prisoners assess their relationship with the staff as satisfactory. In cases of necessity they meet with a lawyer and psychologist of the penitentiary: Almost all the prisoners state that cases of torture, inhuman and degrading treatment have been brought down to minimum.

## **Submission of complaints and appeals on violation of rights and freedoms**

The legislation provides grounds for the right to submit complaints, appeals, and recommendations. This right is mainly ensured in Nubarashen Penitentiary. No complaints have been registered for failure to delivery. Nevertheless, the Group finds that this is an area difficult to inspect, since the convicts may be afraid to complain.

## **Maintenance of health, including getting sufficient food and medical service**

Maintenance of personal hygiene is a precondition for good health. From this point of view the conditions in cells, sanitation and unrestricted access to water are of vital importance.

The quality of the medical service is very low because of the lack of equipment which is out of date, qualified medical staff, and in some cases complete absence of such personnel.

The nourishment regime of the life-sentenced prisoners is the same as of other convicts. It is worth mentioning that the most of the convicts get food from their relatives. There are obvious shortcomings in food supplies; in particular the requirements for portions and the ratio defined by the RA Government are not met. The interviewed convicts state that milk, dairy products, and fruits, set by the decree, have not been included in their ratio. Ill convicts, who have been instructed by the doctor to keep diet, do not receive any additional food, except for butter and vegetable oil. It needs to be noted that the quality of bread needs improvement. The convicts assess the food provided by the penitentiary as being medium quality. The convicts receive parcels twice per month up to 70kgs, as defined by law.

As to the improvement of the food quality, there has been an improvement of the bread quality. Moreover, the quality of the soups is

far from being satisfactory. There are no complaints in relation to portions of the meals.

At the moment of entry into the penitentiary institution all the convicts pass a mandatory medical examination. All of them state that they use medical services only in cases of strict necessity.

### **Communication with outside world, including the correspondence, visiting entitlement, telephone calls, literature, and access to media**

The communication with the outside world is ensured within the framework of the law. There are radio receivers in the cells; many cells are equipped with TV sets which are installed by means of the convicts, correspondence is allowed with some restrictions defined by law, visits are allowed, and telephone communication is provided in accordance with an approved schedule.

The life-sentenced convicts maintain communication with the outside world mainly through telephone communication, which is regulated by a schedule approved by the penitentiary administration, and correspondence by mail. They receive newspapers and magazines with parcels. However, their access to means of communication with the outside world is significantly limited compared to other convicts. Now the life-sentenced prisoners can apply to related agencies and civil society organizations by phone and letters. It is worth mentioning that unlike the previous practices, the correspondence currently is kept

absolutely confidential.

One long term and three short term visits are allowed for the prisoners sentenced to life. Almost all interviewed convicts renounced their right to short term visit, explaining that those meetings take place in presence of an employee and they are separated from the visitor by a window. The next reason for refusing is the convicts' preference in having one more long term meeting instead of the short term meetings. One more important reason is that the convicts are handcuffed during the short term meetings, because those meetings must be closed, without direct communication. And this definitely poses obstacles to maintaining positive relations with the family.

### **Rest, including the outside walk, physical exercise, and eight hour night sleep**

Convicts have right to one hour outside walk. The life-sentenced prisoners are entitled to one hour walk every day; except for Saturdays and Sundays (which in itself is a violation of the regulation). The violation of the convicts' right to walk on Saturdays and Sundays is explained by the staff with the fact that less number of convoy is available on those days.

## **Education and creative activities, as defined by the law**

The convicts' right to education is defined by the Article 89 and 90 of the Penitentiary Code, according to which penitentiary institution takes measures to organize the convict's basic, distance, and postgraduate professional education in penitentiary institution. Internal regulations of the penitentiary institutions provide details of the educational activities.

According to the internal regulations of the penitentiaries the work on organizing education, is set as the responsibility of the administrations of penitentiary institutions. The higher and postgraduate education is to be organized at the expense of the convict.

Convicts are unaware of the procedures and conditions to utilize this right in any penitentiary, and do not get use of it. There is only one exceptional case in Nubarashen Penitentiary, where a life-long convict gets higher pedagogical distance education.

The right to engage in creative activity of the convicts is not restricted; they can utilize this right during their free time.

In order to keep the convicts engaged in an activity, there has been a room equipped with computers in the block of the life-sentenced prisoners in Nubarashen penitentiary, but it has not served its purpose, and the computers have been removed from that room.

## **Work**

This right is not included in the list of convicts' basic rights. According to the Article 85 of the Penitentiary Code, employment of convicts is conditioned with the existing capacity, and as defined by the internal regulations of the penitentiary, the convict has the right to self employment.

In general, the convicts' right to work remains unrealized, which is significant obstacle for the convicts' reintegration back into the community.

Decree of the RA Minster of Justice, issued on February 14, 2005, established a procedure on involvement of the short term and lifelong convicts in technical-economical activities/services at the penitentiary. According to the decree, the engagement of the short term and life-sentenced prisoners in technical-economic activities of the penitentiary must be organized on contractual basis, but unfortunately the provisions of the given decree have not been applied to the life-sentenced prisoners.

## **Issues concerning the early conditional release**

In accordance to the recommendation no. 99/22 of the Committee of Ministers of the Council of Europe on "Prison Overcrowding and

Prison Population Inflation” approved on 30.09.1999, the early conditional release of the convicts is assessed as an efficient option for not only unloading the prisons, but also for contributing to the process of convicts’ involvement in public life.

In conjunction with practicing conditional early release, the recommendation also attaches importance to the community’s support to the offender and creation of conditions for assisting them, with a view to supervision, in a way that the judicial and administrative bodies consider early conditional release as an acceptable and responsible option.

Paragraph 5 of Article 76 of the RA Criminal Code defines the pre-term conditional release of the life-sentenced prisoners, which states that the person sentenced to life imprisonment can be conditionally released before term, if the court finds that he does not need to serve the rest of his term, and has actually served not less than 20 years.

These norms of the RA Criminal Code derive from the convicts’ right: “Every convict has right to appeal for parole or commutation of the punishment” as set forth in the Article 20 of the Constitution of the Republic of Armenia.

According to the Article 116 of the RA Penitentiary Code a person sentenced to life imprisonment can be considered for parole in case he has not been subjected to disciplinary punishment for malicious

violations of the established order during the last five years before applying for parole, and only after serving not less than twenty years of the term.

In case of rejection by the independent commission on “Parole and Commutation of Punishment” of a motion for parole of a life-sentenced prisoner, next submission for the convict’s pre-term conditional release and commutation of punishment can be discussed by executing penitentiary institution only after one and a half year from the time of last rejection.

In case the court rejected the appeal for pre-term conditional release, a new submission can be made after three years of the last court decision on rejection.

## **Conclusion**

The research group used the results of the survey conducted with the employees of the Ministry of Justice, which was given as follows:

The employees working with the life-long convicts do not pass special training programme, there is a need in psychologists, lawyers and social workers. In case of necessity the convicts may use the services of a doctor, lawyer and social worker. There has been no answer given to the question on complaints received from the life-long convicts.

No wiretapping or surveillance devices are being used in the penitentiary institutions. Disciplinary measures are applied to the life-sentenced prisoners, which are common for all the convicts. There have been no suicides during last three years. According to the statistics there was one case of self injury in 2007. Special supervision is established for this type of convicts: They are under the supervision of a neuropathologist, and appropriate work is being conducted by the social-psychological service. All goods which may become tools for self injury are confiscated.

The life-sentenced prisoners are kept in Nubarashen and Yerevan-Kentron penitentiaries, in separated cells: 22 cells in Nubarashen and two in Yerevan-Kentron penitentiaries. As to the question on any difference between life-sentenced and other prisoners, the employees of the Department on Penitentiary Institutions of the Ministry of Justice answered that there are no differences, except for the visit entitlements. The life-sentenced prisoners have access to educational and work programs; in this case two of the convicts receive distance education. According to the MOJ Penitentiary Department employees, these programs will provide opportunity for perception of public values, life evaluation and social integration and accommodation in future, upon release. As to the question on changes/reforms needed in regards to the conditions of life-sentenced prisoners, the employees answered that it

would be desirable to improve the living conditions and security regime.

The sanitary hygienic conditions, visits, medical service, food, parcel allowance, correspondence, and treatment were assessed by the employees of the Department on Penitentiary of the Ministry of Justice. The majority of interviewed persons think that the condition in cells, food and medical service needs improvement.

As to the issue of granting the right to appeal for pardon, the answers were contradictory: yes and no. In case of “yes”, the right to pardon must be granted after 20 years of serving the term.

In relation to conditions of work of life-sentenced prisoners, they have mentioned that conditions are satisfactory, and added about the necessity of the additional space for creative activity and work.

# Recommendations

Based on the information provided above, there are following recommendations from the research group:

1. To implement all necessary measures in order to provide access to the right to education<sup>1</sup>.
2. To solve the issue of prisoners' employment<sup>2</sup>.
3. To provide the life-sentenced prisoners with opportunity to engage in sport activities, thus ensuring their health maintenance<sup>3</sup>.
4. To repair the air-ventilation system in the prisoners' cells<sup>4</sup>.
5. To regularly renew the library for the life-sentenced prisoners'<sup>5</sup>.

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<sup>1</sup> Pursuant to the article 17 of the RA Criminal-executive Code, main corrective measures of a prisoner are the order and conditions for carrying out and undergoing the punishment, social, psychological and legal activities implemented with the prisoner, labor, educational, sportive and other similar occupations of the prisoner, as well as the public influence.

<sup>2</sup> The Decree 15-N of the RA Minister of Justice from February 10, 2005, concerns to occupational issues of life-term prisoners and to signing employment contracts with them.

<sup>3</sup> See point 1.

<sup>4</sup> Pursuant to the article 64 of the RA Criminal-executive Code, prisoners are conveyed with escort, if necessary – under medical supervision, by means of transportation with sufficient lighting and air conditioning, which excludes the causing of additional physical inconvenience to them. Although the Code does not assume air conditioning system in cells, we followed the logic that if prisoners are being conveyed in the conditions described above it means the conditions of custody should not differ from those of transportation.

6. To review Paragraph 8 of Article 68, Provision d, of Paragraph 2 and Provision B of Paragraph 3 of Article 102 (reducing the terms), and Provision 1 of the Article 116 (setting a 15 year term).
7. To create special conditions at the “Hospital for Convicted Persons of Penitentiary” for medical treatment of life-sentenced prisoners.
8. To increase the number of the long-term visits<sup>6</sup>.

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<sup>5</sup> According to CPT, as well as to the Criminal-executive Code a prisoner is entitled to obtain possible and officially intended education and to be occupied with creative labor.

<sup>6</sup> Points 6, 7 and 8 of suggestions have been proposed based on practical experience of the observation group and implemented surveys.



# A Z E R B A I J A N

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## **General Information**

By the time of conducting the research there were 235 life sentenced prisoners at penal establishments of Azerbaijan. 219 prisoners were detained in Gobustan Prison and 16 prisoners were at medical establishments. There are 83 prisoners who were initially sentenced to death penalty and later their sentence was changed to life imprisonment.

## **Methodology**

For evaluating the subjective perception of the terms of imprisonment of life sentenced prisoners the sociological survey was conducted based on the questionnaire provided by Penal Reform International (PRI). 199 prisoners were given the questionnaire, out of which 101 prisoners filled it in and 98 prisoners refused to do so. The research also included visiting prisons and conducting survey with officials.

This created some differentiation between the answers to some questions; but as a whole both surveys gave similar picture of dissatisfaction of life sentenced prisoners towards the conditions.

## **The History of Death Penalty in Azerbaijan**

In the latest history of Azerbaijan, capital punishment, as the most severe measure of punishment was introduced for the first time in 1918 but already in January 1920 it was abolished. The Bolsheviks reintroduced given measure of punishment in 1922. From 1947 till 1950 the capital punishment was replaced by 25 year term of imprisonment<sup>7</sup>. From 1950 till 1998 capital punishment was retained in the legislation as the most severe measure of punishment. Initially, it was applicable to crimes related to parricide, espionage and sabotage<sup>8</sup>. In 1954

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<sup>7</sup> The Criminal Code of Russian Federation, State publishing house, 1952, page 70.

<sup>8</sup> Decree of the Presidium of the supreme Council of the USSR of January 12, 1950.

premeditated murder in aggravating circumstances was added to this list of crimes<sup>9</sup>.

In 1958 the new list of six types of grave criminal offences, for which capital punishment was envisaged was adopted. Namely: to parricide, espionage, sabotage, terrorism, brigandage and premeditated murder in aggravating circumstances<sup>10</sup>.

The Criminal Code approved in Azerbaijan by the law of December 8, 1960 envisaged the capital punishment for the following crimes: parricide (article 57, paragraph 1), espionage (article 58), terrorist act (article 59, paragraph 1), terrorist act committed against representative of a foreign state (article 60, paragraph 1), sabotage (article 61), organizational activity, directed towards committing of especially grave crimes and participation in activities of anti-soviet organizations (article 65 and 57-61 of the Criminal Code), especially grave lese-majesty committed against foreign state (article 66 and 57-65 of the Criminal Code), brigandage (article 70), activities undermining functioning of penitentiary facilities (article 70-1), evasion of conscription and mobilization (article 72 paragraph 2), production and sales of forged currency and securities (article 80, paragraph 2), violation of rules of currency transactions (article 81, paragraph 2), embezzlement of state and public property in especially large amounts (article 88-1), premeditated murder in aggravating circumstances (article 94), rape (article 109, paragraph 3), acceptance of bribes (article 170, paragraph 2), attempt of murder of representative of law enforcement bodies (police) or public order brigades (article 191-1), insubordination to the superior (article 233, paragraph “c”), resistance to the superior or his coercion into violation of his duties (article 235, paragraph “c”), violent

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<sup>9</sup> «Pravda», 7. V. 1954.

<sup>10</sup> The law on Approval of the Fundamentals of the Criminal Law of the USSR, December 25, 1958

acts towards the superior (article 237, paragraph “b”), desertion (article 242, paragraph “c” and “d”), unauthorized abandoning of unit in military circumstances (article 243), evasion of military duty through maiming or some other manner (article 244, paragraph “b”), intentional destruction or damage of military property (article 246, paragraph “c”), violation of the statutory rules of sentry service (article 250, paragraph “f”), violation of rules of military guard (article 252, paragraph “c”), abuse of power, exceeding of power and negligence of duties (article 255, paragraph “c”), surrendering to the enemy of means of combat (article 256), abandoning of drowning military vessel (article 257, paragraph “b”), unauthorized leaving of the battlefield and refusal to use arms (article 258), voluntary yielding as prisoner (article 259), looting (article 261), use of violence towards population residing within the zone of military activities (article 262).

The period of Perestroika and reinstatement of independence was accompanied by severe political battles, which caused introduction of new articles to the Criminal Code, which envisaged capital punishment for usage of military forces of Azerbaijan and other armed forces against Azerbaijani people or constitutional state organs (article 57-1, paragraph 2, which was introduced to the Criminal Code in June 22, 1992); creation of armed forces and groups not envisaged by the law (article 70-2, paragraph 3, introduced to the code in January 17, 1992); hijacking and seizing of trains, air transport, marine or river vessels, as well as seizure of stations, airports, ports or other transport facilities and organizations, seizure of freight not aimed at embezzlement of cargo (article 212, paragraph 3, adopted in April 2, 1992); terrorism (article 212-3, adopted in October 21, 1994).

The right of pronouncing capital punishment as sentence enjoyed three courts (the Supreme Court, Baku City Court and the Supreme Court of Nakhchevan Autonomous Republic). Later on, in the period of war this

right was also granted to the garrison tribunals. The author is informed of one case, when in 1994 the citizen of Azerbaijan was sentenced to execution by shooting by the military tribunal of the Caucasus Division of Russian Army for murder of Russian officer on the territory of Russian Military Base located in Azerbaijan town of Gebel.

According to the data of the director of Azerbaijani Scientific Research Institute on forensic expertise, criminalistics and criminology Ilgam Raghimov, during last 20 “soviet” years preceding independence (1971-1991) 400 sentences on capital punishment, i.e. 20 sentences per year on average were pronounced in Azerbaijan<sup>11</sup>.

It seemed that the period of perestroika (1985-1990) has brought us closer to abolishment of capital punishment in Azerbaijan. According to the statistics in 1980, 34 persons were sentenced to the supreme measure of punishment, in 1981- 30 persons, in 1982- 26 persons, in 1983- 26 persons, in 1984 – 16 persons, in 1985 – 15 persons, in 1986 – 17 persons, in 1987 – 11 persons, in 1988 – 6 persons, in 1989 – 3 persons, in 1990 – 3 persons. The statistics of execution of sentences was approximately the same: thus, in 1988 – 5 persons were executed, in 1989 – 6 persons, in 1990 – 3 persons and in 1991 no one was executed.

But notwithstanding declarations of humanism of judiciary after termination of the communist rule the statistics of the period of independence reveals steady increase of the number of sentences, envisaging capital punishment, which just becomes more “exclusive” measure of punishment. Thus, in 1991 18 persons were sentenced to capital punishment through shooting, in 1992 – 27 persons, in 1993 – 22 persons, in 1994- 23 persons, in 1995- 30 persons, in 1996 – 39 persons, in 1997 – 23 persons, from January 1 to February 10 of 1998 – 6 persons.<sup>12</sup> Execution of capital punishment was restored too. In 1992

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<sup>11</sup> Newspaper “Mirros”, May 6, 1995.

<sup>12</sup> It should be stated, that above referred statistical data may not be accurate and it is assumed, that the figures are understated. Thus, in 2005 in the Gobustan prison there

1 person, sentenced to capital punishment was executed, while another with the same sentence died prior to execution. In 1993 8 were executed and one person died prior to execution. Only introduction of official moratorium on capital punishment in June of 1993 has averted further execution of sentences.

Moreover, if in 1989-1994 no capital punishment was reached due to political motives (if we do not take into consideration capital punishment of Armenian partisans separatists); starting from 1995 the share of capital punishments in regard to similar offences was quarter of the total cases. Capital punishment became the tool of political revenge and was used for frightening radical opposition.

## **Facility for Prisoners Sentenced to Capital Punishment**

The only place, where prisoners sentenced to capital punishment were kept was Bailov prison, official name of which was investigation isolator No1; it was used as penitentiary facility from 1888. After capital punishment was reintroduced in 1922, in 1923 facility No5 was set in operation. There were cells for the sentenced to capital punishment and basement for their execution through shooting.

The statistics shows, that during the last period of the soviet regime, on average 20 persons were annually sentenced to capital punishment (maximum was 34) and they did not have to wait for their execution longer than 9 months and their cases were considered either in Azerbaijan or Moscow. Apparently, taking into consideration this statistics in the No5 facility 9 isolation cells and 6 cells for two persons was organized, i.e. cells No118 and 132. Later they made double-decker bunks in the isolation wards and cells for two persons. Due to overcrowding in the cells, the cell No113, which was initially

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were 25 persons, sentenced to capital punishment in 1997, while 5 more, who had the same penalty died after March 1998. Total is 30, while in official statistics their number is stated as 23.

designated for 8 prisoners, was rearranged and one of washrooms was also used as a cell, while prisoners were using one of the toilets as a place to shower. Sometimes they were using storeroom to keep prisoners in and they were conditionally calling it cell No117<sup>13</sup>. Presently there is a corridor in that storeroom, which leads to the yard for outdoor walk of inmates.

Within the building, on the both sides of a 20 meter corridor was the room of the head warder, cells and entrance to the place of execution<sup>14</sup>. To the left of the corridor relatively small cells (no118 and No124) and one big cell No133 were located. Windows of these cells were overlooking the prison yard. To the right parallel to the outer fence more “comfortable” cells (No125 and No132) are located. These are overlooking the fence. In the end of the corridor, on the right side and next to cell No125 is a door, which leads to the basement for execution.

In September 1994, part of the inmates, who were in grave condition or extremely weak, were moved to 3 cells for a short period of time. These cells were located in bloc No6 (for minors). They were relatively large and with much better conditions. Later on in 1997 they used the same idea.

Outdoor exercise was not allowed for the sentenced to capital punishment. The outdoor walking space was organized only after abolishment of the capital punishment in 1998. By that time in 16 cells of the bloc No5 and No6 of the Bailov prison there were 128 inmates<sup>15</sup>. The cells were overcrowded at least by 3-3.5 times. This was causing high mortality and morbidity and sick prisoners were kept together with the healthy, hence the diseases were transmitted easily and ill inmates were not taken to prison hospitals.

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<sup>13</sup> Presently there is a corridor which leads to the yard.

<sup>14</sup> In 2004 upon insistence of the European Committee against Torture some of the cells were merged and planning of the facility was changed.

<sup>15</sup> The figure is quoted from the speech of the President of January 1998, although according to some by the end of March in bloc No5 were 127 prisoners, sentenced to capital punishment as to one of them the sentence was substituted by a milder one.

Food for inmates of bloc No5 was the same as for inmates in detention blocs. The food was prepared in the prison kitchen by the inmates themselves and was taken to the cells three times a day. Usual ration was soup, pearl-barley porridge, tea and one loaf of white bread in the amount of 650 grams. Theoretically the inmates, sentenced to capital punishment were allowed a monthly parcel and a meeting, but in practice prison authorities were acting at their own discretion.

Bailov facility, including bloc No5 was initially within authority of the Ministry of Interior, which was responsible for investigation and execution of the sentence. Only a year and a half after abolishment of capital punishment in October of 1999 Bailov prison was taken from subordination of the Ministry of Interior and moved under jurisdiction of the Ministry of Justice by a presidential decree <sup>16</sup>.

Upon abolishment of capital punishment and its replacement by life imprisonment, majority of the sentenced were moved to Gobustan prison of the Ministry of Justice in three stages, namely March 26, 27 and 29 of 1998. Although, part of the sentenced, including several outstanding political prisoners were kept in bloc No5 under the Ministry of Interior and their status for a while remained undetermined.

By the time of abolishment of capital punishment bloc No5 had 15 cells for two prisoners and one cell for 8 prisoners, total of which could accommodate 38 persons. Periodically prisoners sentenced to capital punishment were sent to Gobustan prison and their number was on average between 31 and 38. Among them were political prisoners, majority of who were representatives of the former government, who were isolated more meticulously. In the morning of January 5, 2001

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<sup>16</sup> Decree of the president of Azerbaijan on “on transfer of investigation isolators under the Ministry of Interior to the Ministry of Justice of Azerbaijan”, dated by October 9, 1999.

these prisoners were transported to Gobustan prison in the atmosphere of extreme secrecy.

Presently bloc No5 is an investigation isolator. Those detainees, who can be sentenced to life imprisonment and are considered as extremely dangerous criminals are kept here. Prisoners, sentenced to life imprisonment, who are awaiting reconsideration of their sentences or are going to be interrogated in the capacity of witnesses, are also kept here.

### **Abolishment of Capital Punishment**

In 1992 Azerbaijan became member of UN and the same year it ratified International Pact on Civil and Political Rights (1966), article 6 of which recognizes the right to life.

On the background of these events actual moratorium on execution of the capital punishment, deletion of majority of articles of the Criminal Code, which dwelt on capital punishment, pardon of those, sentenced to capital punishment, increasing cases of sentencing people to capital punishment and existence of such punishment in itself was not in compliance with the course, the country has chosen. Starting from 1996 Azerbaijan was aspiring to becoming member of the Council of Europe, one of preconditions of which was abolishment of capital punishment.

At last, abolishment of capital punishment became reality, but was this decision popular? Surveys of public opinion were revealing that if referendum was conducted on this issue, it is most likely, that this would not have been attainable.

Thus according to one of the surveys, conducted in Azerbaijan in 1993 (the year, when execution of capital punishment was suspended) by the scientific-research institute in the sphere of forensic expertise,

crimilistics and criminology<sup>17</sup>, 81,8% of population was for retaining capital punishment. It is interesting, that the share of humanists was much higher among the interviewed staff of the law enforcement bodies and 66.8% of them were against retention of capital punishment.

One year later, sociological agency Dina of Baku youth club conducted survey and interviewed 130 respondents<sup>18</sup>, out of which 80,7% considered, that capital punishment was the most efficient method of punishment of crime, 17,6% were against capital punishment, while 1.7% could not answer the question. It is noteworthy, that 23.1% considered, that it was not possible to mistakenly sentence to capital punishment, while 61.5% allowed for such occurrence and 14% could not answer the question. 86.1% of the interviewed considered, that grave crime should be punished by capital punishment, 5.4% did not consider that capital punishment should be allowed for crime of any gravity and 8.5% could not answer the question.

61% of male and 36.5% of female were supporting capital punishment. According to age categories persons within the age group of 50 and over were the biggest supporters of capital punishment – 65.2%, the least popular it was with youth of 16-25 – 45.1%. Among social groups for retention of capital punishment were 84.6% of military and 61.5% of pensioners. Against capital punishment were 83.3% of businessmen, 50% of students and 62.5% of housewives.

It should be stated, that the same surveys are indicative of flexibility of public awareness, as major part of respondents due to certain specifics of mentality were ready to concur to decisions, which are against their beliefs, if such decision is adopted by the authorities. What was the opinion of respondents in regard to alterative measures of punishment?

In 1993 51,2% of respondents considered it acceptable to replace capital punishment by imprisonment, and 31,2% out of them stated, that the

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<sup>17</sup> Newspaper “Mirror”, January 14, 1994.

<sup>18</sup> Newspaper “Youth of Azerbaijan”, January 31, 1995.

term of 15 years would be appropriate, while 29,8% of respondents from the age group of 15-25 years have supported the life imprisonment.

As to replacement of capital punishment by life imprisonment, in the beginning of 1995 this was supported by 12.3%, who also stated, that this should be introduced as soon as possible, as well as 33,8%, who considered, that this should not be introduced in the nearest 5-10 years. 47.6% of respondents were against such replacement (59.7% of male and 34.9% of female interviewed), while 6.83% could not specify.

This was prior to application for membership in the Council of Europe which was the main stimulus as well as argument for abolishment of capital punishment in 1998.

It is clear, that consistent opponents of the capital punishment were in minority in Azerbaijan as anywhere throughout the world (less than 20%). At the same time, there was certain division of opinion between personal beliefs in supporting this type of punishment “in principle” and readiness to accept abolishment of capital punishment (for the sake of public interests) and its substitution by a long term in prison or life imprisonment. Difference in figures is substantial and it amounts to 80.7-81.8% and 46.1-51.2% correspondingly. Another part of respondents (7-14%) has not clarified its position yet and consequently, was ready to accept any solution to the problem. Apparently, due to unpopularity of complete revocation of capital punishment this process was happening in several stages.

Starting from the period of perestroika development of legal framework was directed towards liberalization of economy and consequently, commutation of punishment for economic crime. Thus, the law of January 27, 1993 has abolished article 81 and the supreme measure of punishment was deleted from articles 80 and 170. The same law has abolished article 66, which dealt with political crimes.

In December 21, 1994 capital punishment for women was abolished in

the country. According to article 22 of the Criminal Code in regard to women, who were pregnant at the time of committing of crime or passing of sentence were not sentenced to capital punishment. Women, who were pregnant by the time of execution of the sentence, could not have been executed as well<sup>19</sup>. Also, according to the lawyer of the Parliament A. Atakishev, the supreme measure of punishment has not been applied to women in Azerbaijan for 50 years by the period of abolishment<sup>20</sup>.

Later on the right to life was reflected in the Constitution of the 1995, article 27 of which stated, that “prior to its complete abolishment capital punishment as a supreme measure of punishment can be applied to the gravest offences against state, life and health of other persons”.

For the purpose of enforcement of given article of the constitution by the law of May 29, 1996, the capital punishment was deleted from article 18 of the Criminal Code and from the following articles: 70-1, 74, 88-1, 233, 235, 237, 242, 243, 244, 246, 250, 252, 256, 257, 258, 259, 261, 262. Articles 60, 65, 191-1 were deleted from the criminal code completely<sup>21</sup>. It should be stated, that last three articles were dubbing the above referred articles and for this reason article 60 was merged with article 59, and article 65 was merged with article 57 and article 191 with article 94, 3<sup>22</sup>.

At the same time legislative incentive of the president on abolishing of application of the capital punishment to men, who have reached the age of 65 by the time of committing of crime was adopted. Thus, at the moment of complete abolition of capital punishment it was applicable only to crimes, envisaged by the following articles of the Criminal

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<sup>19</sup> Decree of the Presidium of the Supreme Council of Azerbaijan Republic of August 7, 1962.

<sup>20</sup> Newspaper “Milliat”, 26 October 1994.

<sup>21</sup> Newspaper “Baku Workers”, 30 May 1996.

<sup>22</sup> Newspaper “7 Giun”, 1 June 1996.

Code: 57, 57-1, 58, 59, 61, 70, 70-2, 94, 109, 212-2, 212-3, 255.

On January 22, 1998 the President made a speech, which was published on the next day in official publications<sup>23</sup>. He offered to abolish capital punishment as a measure of punishment. He stated that at that time there were 128 persons sentenced to capital punishment and he proposed to replace this sentence “by lengthy term of imprisonment”.

In January 30, 1998, in the interview on given issue, one of the leading lawyers of the country, the Reporter of the Parliament Murtuz Aleskerov<sup>24</sup> stated, that a draft law has been elaborated, according to which capital punishment was to be replaced by life imprisonment or imprisonment for the term of 20-25 years. Capital punishment should be replaced by imprisonment for the term of 20 years to those, who have already been sentenced. As the reporter of the Parliament explained, “life imprisonment is the new type of punishment and it can not be applicable to those, sentenced to capital punishment”.

It becomes clear from the above mentioned statements, that initially it was planned to follow the Georgian model. There capital punishment was abolished in 1997 and was replaced by imprisonment for the term of 20 years. Although, prior to its consideration by the Parliament the draft law has been subject to revision in the part of alternative measures of punishment replacing capital punishment<sup>25</sup>.

On 3 February 1998 the President Geidar Aliev addressed to the Mili Mejlis with legislative initiative on complete abolishment of capital punishment. The fact, that the draft was initiated at such high level immediately affected those, who have been supporting the idea of capital punishment in the press and the Parliament. A week later, in February 10, 1998 the historical law on abolishment of capital

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<sup>23</sup> Newspaper “Azerbaijan”, 23 January 1998.

<sup>24</sup> Newspaper ‘Adaliat’, No19, (859), 30 January 1998.

<sup>25</sup> Newspaper ‘Azerbaijan’, 21 February 1998.

punishment was adopted<sup>26</sup>.

Thus, in 1998 the most severe measure of punishment, which was previously applicable to grave crimes, was replaced by life imprisonment. In the same manner as capital punishment, life imprisonment can not be applied to persons, under age (18), as well as women. In the Criminal Code of 1998 the upper age limit, which previously existed in regard to capital punishment, has been deleted. After adoption of the new Criminal Code in 2000 the upper age limit was reintroduced and age limit of 65 for men, by the time of judgment was established.<sup>27</sup>

### **Standpoint of international Organizations**

Status of life time imprisoned remains to be under close scrutiny of different international organizations. Namely, in June 2000 International Red Cross Committee visited these facilities. In May 2000 special reporter of the UN on torture has visited Gobustan prison and in May 2003 issues related to life imprisonment were discusses by the UN Committee Against Torture.

Despite this the main partner of the government in reformation of the system of life imprisonment remains to be the Council of Europe. Even prior to accession of the country to this organization the Government held consultations with experts of the Council of Europe (Bruk and Tolstrup).

In 2002, 2005 and 2006 European Committee on Prevention of Torture was interested in issues related to life imprisonment. In September 2007 they were visited by representatives of the Council of Europe on human rights. Periodically reporters of Monitoring Committee and Monitoring Group are visiting the condemned to life imprisonment.

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<sup>26</sup> Entered into force upon publication on 21 February 1998.

<sup>27</sup> Article 57 of the Criminal Code of Azerbaijan of 2000.

In its Resolution No 1545(2007), dated by April 2007 the Parliamentary Assembly of the Council of Europe has stated, that “conditions within the penitentiary system of Azerbaijan remain heavy despite efforts focused on improvement of infrastructure. Situation of Gobustan prison raises special concern due to high mortality and suicide rates of inmates”.<sup>28</sup>

More than one year later, co-presenters on Azerbaijan have repeated the same word by word in June 2008, adding, that “they have received complaints from several convicts on inhuman regime, established by the new superintendent of the prison, including physical and psychological torture”.<sup>29</sup>

On the basis of this report PACE adopted resolution 1614 (2008), in which it advises to implement recommendations of CPT, reflected in the reports on visits in January 2004 and May 22005 and allow publication of these documents.<sup>30</sup>

On the whole despite existing bureaucratic problems in given sphere the authorities have positive attitude towards further reformation of the system of life imprisonment. This has recently been confirmed by adoption of the law and promotion of visits of representatives of the public committee under the Ministry of Justice to Gobustan prison.

85% of the sentenced have never committed any crime before and the same percentage of the sentenced considered themselves as calm and serious people. 5% out of the questioned prisoners justified their crime by revenge, 5% by mutual combat, 10% by alcohol intoxication, 20% by bad financial condition; it was hard for 60% of the questioned

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<sup>28</sup> Resolution 1545 (2007). Honoring of obligations and commitments by Azerbaijan, § 8.8.

<sup>29</sup> Doc. 11627. The functioning of democratic institutions in Azerbaijan, 6 June 2008, § 136.

<sup>30</sup> Resolution 1614 (2008). The functioning of democratic institutions in Azerbaijan, 24 June 2008, §§ 23.1, 23.2.

prisoners to answer the question about the motives of the crime. At the same time 25% of the questioned prisoners confessed that they were taking drugs.

Therefore, one third of the life sentenced prisoners tries to find some “objective” justification to the crimes committed by them. In this context it is quite significant that in the rating of personal tragedies the questioned persons placed the punishment that they have received in forms of life imprisonment on the first place (50%), instead of the crime they have committed (45%). According to the survey conducted by the Center for Programme Development, 51.9% thinks that life imprisonment is inapplicable to their crime and 96.3% thinks that the court has made the wrong decision. Big part of the respondents – from 66.7% (CPD) to 75% (Independent Monitoring Board) - has tried to appeal their verdict and other decisions connected to it.

According to the results of the survey, the convicts feel guiltier in front of their families than to the law. 95% - 100% of the questioned believe that they will be released. But at the same time from 50% to 80% of the questioned set as their aim “to get back to their families”, whereas from 20% to 45% of the questioned only wishes to be released. Considering that 90% of the questioned evaluate their relations to their family, parents, and friends as good or excellent it can be interpreted as the feeling of guilt before them.

Only 85% (independent monitoring board) or 92.6% (CPD) are aware of the right to address the president about the pardon or the prison administration about the early conditional release. At the same time, though, if all the prisoners previously with the death penalty from 10 to 19 years are already candidates for pardon, few out of other life sentenced prisoners who were sentenced after February, 1998, have formal right to pardon. 5% of the questioned prisoners were sentenced during the current year.

# Conditions of imprisonment for life sentenced prisoners

## Living Conditions

Unlike the 10<sup>th</sup> anniversary of abolishing Death Penalty when the number of life sentenced prisoners was one or two, after changing the legislation in June, 2008 they started to settle 3 life sentenced prisoners in the cells formerly foreseen for 4 people. More than 3 life sentenced prisoners per cell can not be accommodated.

Thus, according to the survey conducted by the Independent Monitoring Board, 75% were kept two by two in the cells for 2 persons (4 square meters per person), 15 persons two by two in the cells for 4 persons (8 square meters per person), and 10% - three by three in the cells for 4 persons (5.3 square meters per person). For some reason there were no prisoners that are kept in single bed cells (3% of the total number), among the respondents. According to CPD, most of the respondents (59.3%) were kept two by two in the cells, 37% - three by three and 3.7% - in one-man cells.

It should be mentioned that the standard of 4 square meters per prisoner is determined by the Code of Execution of Punishments. Consequently, from 25% to 37% of prisoners are kept in the cells with better conditions thanks to the recently changed legislation.

In accordance with the norms, the cells are equipped with plank beds, cupboards, have the linen and underclothes. Only 46% has mentioned that they are equipped with all necessary items, while 19% of the prisoners mentioned the lack of prison linen and clothes. All questioned prisoners noted the lack of the laundry and the need to wash these

clothes by themselves or with the help of the members of their families. 100% of the prisoners use common bath.

All the questioned prisoners mentioned the presence of the window in the cell, letting the air and light in. At the same time 50% of the questioned prisoners think that it is not in accordance with modern standards and does not allow enough light in.

All prisoners go out for a walk but many of them – 5% (Independent Monitoring Board) to 33.3% (CPD) – note that the walking time lasts for less than an hour.

All prisoners get their meal in the cells as determined by the Code of Execution of Punishments. The prisoners are given bowls and spoons made of aluminum and metal cups. The boilers for water and electric kettles are also allowed.

72% of the questioned prisoners (Independent Monitoring Board) said that there are some vegetables, meat and cereals in their daily ratio. Also 40% answered in different combinations and mentioned “other products” as well. The main complaints from the prisoners were about the quality of food and the monotonous ratio.

This explains the fact that almost all prisoners add products to their daily ratio by purchasing them in the prison shop (“Lariok”) or through parcels sent by their relatives. It has to be mentioned that the relatives of the prisoners often have to carry these product parcels, which sometimes weigh about 31 kilograms, from far away, or pay and send them by post. Therefore the fact that there is 15% of the life sentenced prisoners getting products for nourishment only through the parcels and 70% receiving the parcels and purchasing food at the prison shop illustrates the complaints for the expensiveness of products at the prison shop.

55% (Independent Monitoring Board) and 77% (CPD) of the questioned prisoners think that the conditions in the cells are “hazardous for the health and life of the prisoners”. To the similar question about the “appropriateness for serving the life imprisonment” of the existing conditions in the cell, the absolute majority of the respondents – 69% (Independent Monitoring Board) and 81.5% (CPD) – answered negatively. At the same time different reasons were named for the “peril”: small area for the cells, bad acoustic insulation, bad ventilation, the presence of the open, “Asiatic” type of toilet in the cell, ferroconcrete floor and ceiling (cold in winter, hot in summer, causes rheumatism and so on). Some of the prisoners also mentioned that it is not only the construction of cells that is hazardous for their health but also the absence of sport activities, work, the presence of the psychological pressure caused by the closed space, the presence of violent, mentally ill neighbors, etc.

Most of the prisoners also evaluated the sanitary and hygienic situation as “hazardous for the health and life” of the prisoners; 59% (Independent Monitoring Board) and 92.6% (CPD) of the questioned prisoners think so. Along with the complaints about the cells regarded as “concrete box”, that causes tuberculosis and rheumatism, there were also complaints about the insanitariness in the bath and the quality of provided food.

The respondent would like to feel as humans, living in human conditions and gave various requests. In different combinations, 85% made request in connection to the improvement of living conditions (bigger cell, domestic devices, more hygienic toilet, more frequent bath, high-quality food, conditions for self-cooking, outdoor sport, and medical service), 50% - providing job and education, 45% - getting help of the psychologist and a priest, 5% - increasing the number of visits, 5% - providing the isolated cell (one-bedroom cell). 5% of the questioned prisoners just do not want to be reminded of the crime they have committed and do not want other to pity them.

85% (Independent Monitoring Board) and 92.6% (CPD) know that they can apply for the pardon after serving 10 years and may be released conditionally before the term expires, after they have served 25 years of their punishment. Thus, in the first decade of their imprisonment the prisoners do not even have the theoretical chance to be released. Therefore some of the respondents have expressed their opinion that without the real chance to be released before the term expires, the improvement of material life conditions will not have a significant effect.

### **Medical Service**

The survey revealed the problems connected to the medical service for the life sentenced prisoners, starting from the moment of the arrival of the convicts. 43% (Independent Monitoring Board) and 66.7% (CPD) have stated that they had no medical examination upon entering the Gobustan prison. At the same time the condition in this regard has improved compared to that of 1998.

95% (Independent Monitoring Board) and 100% (CPD) of the prisoners prove that the doctors do not visit them regularly with their own initiative, but come to the cells only if called. At the same time 59% have stated that they can call and get the doctor anytime and 41% said that there are certain days when they can call the doctor.

The medical-sanitary part of the prison, where it is possible to carry out stationary examination and treatment of the prisoners, is considered accessible by 40% (Independent Monitoring Board) and 92.6% (CPD) of the questioned prisoners. Moreover, the convicts are quite critical towards the possibility of high-quality treatment in the medical and sanitary section of the prison. Thus, 60% (Independent Monitoring Board) of the questioned prisoners think that there are no medicines and qualified medical personnel, 25% expressed their doubt in their accessibility, and 15% has stated that the amount of the equipment and

medicines is not enough. e.g. there were complaints about the quality of dental health service, about poorly equipped laboratory, absence of the surgery and so on.

The particular problem is the late hospitalization of life sentenced prisoners in the central prison hospital. This was mentioned by 14% (Independent Monitoring Board) and 48.1% (CPD) of respondents (there were more sick prisoners in the second group of respondents). Some of the questioned prisoners noted in connection with this subject that the problem is not the viewpoint or the attitude of the medical or administrative personnel, but the limited number of unoccupied places in the central prison hospital. Because of this reality the sick prisoners in need of the stationary treatment are not transferred to the hospital.

As a whole only 7.4% (CPD) and 9% (Independent Monitoring Board) of the questioned prisoners think that the quality of the medical service is good. At the same time 58% (Independent Monitoring Board) and 70.4% (CPD) of the questioned prisoners think that the quality is bad. Old prisoners are most critical towards the quality of the medical service. Most of the old prisoners have the chronicle diseases. At the same time, 10% of the prisoners that are practically healthy could say nothing about the medical service at the prison, as most of them have only spent one year at the prison and they have not been in need for medical treatment in this period of time.

### **Contact between each other and the outside world**

The life sentenced prisoners are isolated from each other and until recently only two prisoners could be kept in one cell at the same time. Verbal communication through the window or with the neighboring walking cabin is considered as breach of the rules of the regime, though usually it is not punishable. This is exactly the reason why 74% (Independent Monitoring Board) and 85.2% (CPD) of the questioned prisoners indicated the impossibility of communication with other life sentenced prisoners or with the prisoners of other categories that are

kept in the same, Gobustan prison.

It has been already mentioned above that the life sentenced prisoners give great importance to communication with their families. Short visits (6 times a year) have the duration of 4 hours, long visits (2 times a year) – 3 days. There are some prisoners in the prison who do not meet with their families, e.g. some of the foreign nationals. There are 3.7% (CPD) and 5% (Independent Monitoring Board) of such prisoners. There are 10% of the prisoners who meet with their relatives more rarely due to the rules determined by law.

As a rule, the administration does not impede and never prohibits the visits with the relatives in the case of 22.2% (CPD) and 65% (Independent Monitoring Board) prisoners. At the same time there were some problems because the relatives forgot to bring their ID cards with them, or came for the visit on wrong days or there were more than 2 visitors together (10%). In other cases (25%) the administration did not let the friends on the visit as they do not represent the relatives.

Big part of the prisoners – 55.6% (CPD) and 85% (Independent Monitoring Board) – know about the possibility to meet the lawyers, priests, representatives of the public defender's office and other subjects, provided by the law. Another problem is that the priests are not willing to visit the prison and the family members do not usually have money to hire the lawyer. It is interesting that 5% of the respondents think that a better access to the press is necessary.

The survey has shown that 85% of the respondents do not have any problems to write anything but the “complaints and claims”, i.e. the letters and complaints that are not connected with the prison conditions. 5% of the prisoners said that they have “nobody to write to” – this number coincides with the number of prisoners who are not having visits with relatives or family members.

Many prisoners keep the contact with their families through the phone

calls (twice a month). For this purpose there are special, common telephone sets in the prison. 88.9% (CPD) and 98% (Independent Monitoring Board) of the questioned prisoners consider these telephone sets as accessible. At the same time it should be mentioned that international calls should be paid by the prisoners themselves, which creates financial problems for the foreign nationals.

The life sentenced prisoners are allowed to use the radio receivers since 2001 and TV sets since 2008. Currently 80% of the respondents have access to the means of media (television, radio, newspapers). By the time the survey was conducted not all life sentenced prisoners had TV sets, but this issue is still under discussion. It should be mentioned that it is allowed to watch TV only for 4 hours per day and there is only one state channel in Azeri language the prisoners are given access to. The last circumstance already causes the feeling of dissatisfaction among the foreign nationals, who wrote a complaint to the Minister of Justice of Azerbaijan. Nevertheless, the general psychological atmosphere in the prison has improved after allowing the TV stations.

There is a library in the prison, and most of the prisoners (91%) have mentioned that they have access to the library. Nonetheless the complaints were expressed about the poor assortment of books among which there are many outdated books from the soviet time. It is not prohibited by the law to have personal libraries, and each prisoner can have up to 10 volumes in the cell.

### **Suicidal Attitudes**

The increased isolation from the society and the absence of real possibilities to be released before serving 10-25 years create the favorable background for the suicide.

85% of the questioned prisoners evaluated their character as calm and serious and only 15% of the questioned prisoners think that they are emotional. This is close to the number of mentally ill prisoners (13.6%) that was received as a result of the survey conducted among the life

sentenced prisoners.

It is hardly accidental that almost the same number of life sentenced prisoners (20%) have thought and tried to commit suicide. At the same time it is known that  $\frac{3}{4}$  of the prisoners unsuccessfully attempting suicide could not realize what they were doing at the moment.

As for the methods of suicide – 10% planned to cut their veins, 15% - to be hanged, and 75% decided not to tell the method they were planning to commit suicide with. It is noteworthy that cutting the veins demonstratively is the widespread method for committing suicide among the life sentenced prisoners. Choosing this slow process, the suicides, as a rule, count on survival, while the most part of the real suicides happen through hanging themselves.

The most widespread reason for committing suicide is said to be the impossibility of being released, also the prisoners regretting the crime they have committed and the unlawful actions from the side of prison personnel. Though 75% of the potential suicides left the reasons of their sentiments unrevealed.

Despite the fact that 80% of the prisoners stated that they have never thought to commit a suicide, part of them sympathized the suicides. Thus, 10% of the unsuccessful suicides stated that other prisoners knew about their intentions and again 70% left this question unanswered – probably to prevent their cellmates from punishment.

Despite this suicidal background, the Gobustan prison never had a psychiatrist and does not have a permanent psychologist. As for the visiting psychologist, 75% (Independent Monitoring Board) and 92.6% (CPD) of the prisoners have stated that they have almost no practical possibility to get any type of consultation from him.

## **Relationship with the Prison Personnel**

The life sentenced prisoners see the junior prison personnel every day, during the technical inspection, examination of the cells, outdoor walks and meals. As for the officers, 69% of the questioned prisoners said that they meet with them on the daily basis, 20% - as needed, 7% - once a week, 7% - every day and also as needed.

25% (Independent Monitoring Board) and 44.4% (CPD) evaluated their relations with the prison personnel as good. Significant number of prisoners – 72% (Independent Monitoring Board) consider their relations with the administration as “normal”. Only 3% think that the relations are unambiguously “bad”.

However under “normal” and “good” relations with the representative of the prison administration and ordinary staff members 37% (Independent Monitoring Board) and 44.4% (CPD) of the respondents were imposed a penalty. The number of such prisoners is two or even three times more than the number of “emotional” prisoners. It is also noteworthy that only half of punished prisoners (20%) considered themselves guilty in disobeying the rules of the internal regime.

The attitude towards the encouragements and punishments, according to the respondents is good – 80%, normal – 15%, while 5% did not answer the question, probably because their attitude towards these instructive activities is negative.

Certain contradiction has arisen as a result of interviewing: out of 36% of prisoners only 20% think that they have really disobeyed the rules, and at the same time their attitude towards the punishment is good or normal. Our version is that the prisoners consider the relation “normal” if the complaints on the sentence are absent, punishment or the activities of the prison personnel, even when there are claims, that there

were treated unfairly. This type of assumption can be strengthened by the fact that the prisoner's disagreement with the sentence is considered to be the negative feature of the character of the prisoner, even though it is their constitutional right. As for the complaints that are not even connected with the conditions at the prison or with the actions of the prison personnel, they might still have negative consequences for the prisoner (10% of the questioned prisoners have stated so).

### **Observing the Rights of the Prisoner**

The question about informing prisoners about their rights and also about the responsibilities and internal rules, asked by the Independent Monitoring Board showed that 72% prisoners received information, while the same question asked by the CPD showed only – 18.5%. The reason may be the fact that in the second group there were many prisoners formerly sentenced to death or from the first wave of life sentenced prisoners, when the administration did not devote enough time and attention to this issue. This was also pointed out by the UN special reporter on torture, who has visited Gobustan prison in May, 2000. The reporter has drawn the attention of the officials to the fact that the prisoners were not aware of their rights. But even the relatively small number (20%) means that every fourth life sentenced prisoner entering the prison did not receive the information about his rights.

Currently 85% (Independent Monitoring Board) and 92.6% (CPD) of the respondents believe that they have the possibility to send out the letters, written requests and complaints, though many of them with the proviso that these letters and complaints do not concern the prison administration. 7.4% (CPD) of prisoners do not believe that letters and complaints can be sent out and received, 5% (Independent Monitoring Board) do not write any letters or complaints at all.

Similar result was received on the question about the pardon and conditional early release. 90% know that they can apply for pardon after serving the sentence for 10 years, after serving the sentence for 25 years they can apply for conditional early release, therefore they do not see any purpose in terms of future perspective, 5% - has applied but were left unanswered, 5% - did not answer the question.

It has been mentioned already that the overwhelming number of life sentenced prisoners (96.3%) do not consider the verdict on their cases to be in compliance with the standards of fair trial. However noticeably smaller number of prisoners has appealed their criminal case to the court – 66.7% (CPD) and 85% (Independent Monitoring Board); others have never appealed. At the same time, 10% have appealed to the European Court for Human Rights; and 5% not appealing to the court were sending the applications and requests to the president to be pardoned and released. 84% have admitted that they do not have financial resources to appeal to the court – it is necessary to hire the lawyer for solicitation of the case in higher instances. Some were repeatedly punished for appealing to the courts, and 70% of the appellants were not getting answers or were getting inadequate answers.

Letters and complaints are given to the special section through the duty officer and should be sent out during 3 days. Some of the prisoners were complaining about their complaints, concerning the prison administration activities being delayed or not sent at all.

# Local legislation and international standards

## Life Imprisonment

The Criminal Code of Azerbaijan, operative from September 1, 2000, envisages life imprisonment as one of 13 sanctions applied for criminal offences (articles 42.13 and 57 of the Criminal Code). It is applicable to especially grave offences against peace and the government (article 57.1). The life imprisonment cannot be applicable to preparation and attempt to commit a crime (article 63.4 of the Criminal Code). Life imprisonment cannot be applied to women and persons, who by the time of committing a crime have been under age, as well as men, who have reached the age of 65 by the time of conviction (article 57.2 of the Criminal Code). In the event of crime, committed by person, who is already serving life imprisonment, the life imprisonment shall be extended to the new crime (article 67.7 of the Criminal Code).

Life imprisonment is envisaged for the following crimes:

1. Waging of aggressive war (article 100.2 of the Criminal Code)
2. Genocide (article 103 of the Criminal Code)
3. Complete or partial extermination of population with no indications to genocide (article 105 of the Criminal Code)
4. Sexual harassment (rape, coercion into prostitution, forced sterilization or other acts, related to sexual harassment) article 108 of the Criminal Code
5. Forcible detention of a person (detention, arrest or kidnapping with the purpose to devoid of the lawful right to defense upon order, support or agreement of a state or political organization and future denial of the fact of forced detention of a person or refusal to provide information on his fate or place of detention) article 110 of the Criminal Code.
6. Racial discrimination (apartheid) article 111 of the Criminal

## Code

7. Violation of the rules of war (article 115.4 of the Criminal Code)
8. Violation of the norms of international humanitarian law in the period of armed conflicts (article 116 of the Criminal Code)
9. Inactivity or provision of criminal orders in the period of armed conflicts (article 117.2 of the Criminal Code)
10. Premeditated murder with aggravating circumstances (article 120.2 of the Criminal Code)
11. High treason (switching to enemy's side, espionage, divulging of state secrets, provision of assistance to a foreign state, organization or their representatives in maintaining of animosity and undermining activities against Azerbaijan Republic) article 274 of the Criminal Code.
12. Usage of Azerbaijani armed forces and other armed units, envisaged by legislation of Azerbaijani Republic against Azerbaijani people and constitutional state organs (article 275.2 of the Criminal Code)
13. Infringement of the right to life of the state officials or public figures (terrorist acts) article 277 of the Criminal Code.
14. Forced seizure of power and retention of power (article 278 of the Criminal Code)
15. Formation of armed forces, not provided by the legislation (article 279.3 of the Criminal Code)
16. Armed revolt (article 280 of the Criminal Code).

In September 3-7, 2007 Commissioner of the Council of Europe on human rights Thomas Hammerberg, who visited Azerbaijan penitentiary facilities where inmates serving the life sentence are held in captivity, stated in his report, that the Criminal Code of Azerbaijan has “unusually long listing of crimes, punishable by life imprisonment, some of which are not comprehensively outlined (terrorism in article

214, high treason in article 274) and thus, are hardly compatible with the general principle of law, which requires, that the crime should not only be set forth by the law, but that the law should be quite comprehensive.<sup>31</sup>

To such list of crimes, which are not clearly outlined such crimes, as “other acts, related to sexual harassment” (article 108 of the Criminal Code), or “forced detention of persons” (article 110 of the Criminal Code) can also be added, as in case of such wording of the article it can be applicable to activities of police against demonstrators undertaken in 2003 (arrest for the purpose to devoid a person of his lawful right to defense and further negation of the fact or refusal of provision of information on the fate and location of the person).

It should be stated, there are no convictions based on the majority of the articles listed above.

In case if 15 years have elapsed form the time of committing especially grave crime, criminal charges can not be brought against the person (article 75.1.4 of the Criminal Code). But, in case of application of the life imprisonment the situation is changing. The issue of application of statute of limitation in regard to persons, who have committed crime, for which life imprisonment is envisaged, is decided by the court. If the court deems, that given person can not be free from criminal responsibility due to statute of limitation, life imprisonment shall not be applied to him (article 75.4 of the Criminal Code). Statute of limitation is also not applicable to persons, who have committed crime against peace and security of mankind and war crimes (article 75.5 of the Criminal Code).

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<sup>31</sup> CommDH(2008)2 / 20 February 2008. Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to Azerbaijan, 3 - 7 September 2007, §56.

In the same manner the person, convicted for committing especially grave crime shall be released from serving the sentence, if the indictment of the court has not been enforced during 15 years (article 80.1.4 of the Criminal Code). The issue of application of the statute of limitation to the person, who has been convicted to life imprisonment, shall be decided by the court. If the court rules against application of the statute of limitation, this type of punishment shall be replaced by imprisonment for a definite term (article 80.3 of the Criminal Code). In this case too, the statute of limitation shall not be applicable to persons, who committed crime against peace and security of mankind (article 80.4 of the Criminal Code).

### **Alternatives to Life Imprisonment**

There is no situation when the application of the life imprisonment is mandatory. The judge has the right to choose between imprisonment for definite term and life imprisonment, which means, that life imprisonment is discretionary. Hence, it is clear, that in the event of revision of merits of the case alternative measure of punishment, such as imprisonment for the term of 15 years can be applied (article 23 of the previous Criminal Code). Articles 55.2 and 52.4 of the new Criminal Code also state, that imprisonment for definite term cannot exceed 15 years and in case of aggregation of terms for different offences it can reach 20 years.

This caused so called “problem of 15 years”, which is named after the alternative measure of punishment to capital punishment, provided by article 23 of the previous Criminal Code (1960). The fact that at the time of commission of a crime maximum term of imprisonment was 15 years and statements of the reporter of the Parliament of January 1998 made prisoners, who were formerly sentenced to capital punishment think, that life imprisonment is heavier alternative, than provided by the law.

According to article 149, chapter VII of the Constitution “normative and legal acts, improving legal status of natural and legal persons and lifting or mitigating criminal responsibility, have retroactive power. Other normative and legal acts do not possess such power”. Article 71, chapter VIII of the Constitution also states, that “in the event, if the new law eliminates or mitigates legal responsibility for offences, committed prior to its adoption, the new law shall have superseding authority”.

Article 6 of the Criminal Code stated: “the crime and its punishability is determined by the law, which was in force at the time of commission of such crime. The law, determining the crime and its punishability, which envisages making punishment more stringent or aggravates the status of the offender in some other manner, does not have retroactive power”.

Article 10 of the current Criminal Code also states the following: “10.1. Criminality and punishability of an offence (activity or inactivity) is determined by the criminal law, which was in force at the time of committing of offence. Nobody can be charged for actions, which were not considered as crime at the time of their committing. 10.4. The criminal law, determining criminality of an action (or inaction) which provides for more stringent measures or aggravates status of a person in other manner does not have retroactive power”.

The situation was further aggravated by the fact that life imprisonment was allowed on the basis of extrajudicial decision as provided by the law of February 10, 1998. This law was later on abolished with adoption of the new Criminal Code in the year 2000. The fact, that this law had no legal power was confirmed by decision of the Chamber of Constitutional Court dated by July 28, 2005.

The problem is concerning quite a large circle of convicts, especially those, sentenced to life imprisonment, who have committed criminal

offences prior to abolishment of capital punishment, as well as those, who were sentenced after abolishment. According to article 6 of the old Criminal Code and article 10 of the new Criminal Code, punishability of a crime is dependant on the date of its committing.

In August 2005 this issue was discussed at a round table with participation of leading experts in the sphere of criminal law. They discussed problems related to wording and execution of the law of 1998 and the experts offered either reinstatement of the legal power of the law or replacement of sentence to those prisoners, who were sentenced to capital punishment by imprisonment for the term of 15 years.<sup>32</sup>

In 2002-2005 this issue was brought up to the Constitutional Court by the person who was convicted on numerous occasions and in 2005-2007 it was also facing courts of general jurisdiction. Except for one exception<sup>33</sup>, the courts have always supported the life imprisonment, referring to already abolished act of February 10, 1998.

it The precedent of Igor Krijhanovski, who was sentenced to life imprisonment in Azerbaijan is interesting to mention in this regard. Soon after the courts of general jurisdiction have supported the life sentence, he was transferred to Russia for serving his sentence. In December 25, 2006 the Supreme Court of Russian Federation considered his appeal and ruled the following: “In the process of determination of the punishment and finding a person guilty on the basis of article 102, paragraphs “a” and “i” of the Criminal Code of Russian Federation (article 94, paragraph 1.4 of the Criminal Code of Azerbaijan), which dwells on the issue of willful homicide for the self-interest motives, it should be stated, that the accused cannot be

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<sup>32</sup> Magazine “Qanun” №8, August 2005.

<sup>33</sup> Decision of the Plenum of the supreme court of Azerbaijan on the case of Samir Gadjeiev, dated by 30 March 2006

sentenced to capital punishment or life imprisonment, as the latter has not been provided by the law, while in regard to the supreme measure of punishment, i.e. capital punishment, Russian federation has imposed moratorium on execution of this punishment. In such circumstances it should be admitted, that in the event of bringing of charges on the basis of given article according to the Criminal Code of the Russian Federation Krijanovski should be sentenced to the 15 year term of imprisonment.”

Another alternative to life imprisonment may be granting of pardon and deprivation of liberty. Article 22.1 of the old Criminal Code (1960) envisaged pardon of the convict at any time after sentencing him to the term exceeding 15 years, although it was not applicable to the sentences, providing for deprivation of liberty for the term of 20 years.

Presently article 82.3 of the Criminal Code envisages replacement of the life imprisonment through pardon by deprivation of liberty for the term up to 25 years. This provision exceeds the previously existing 20 year term, although at the same time abolishes previously existing 15 year lower threshold. If previously pardoned person, who was sentenced to capital punishment (and later on to life term) should have served no less than 15 year term, presently he can be released sooner than 15 years. Some of the persons, release of whom was requested by the Council of Europe, were released after serving from 7 to 11 years.

Resolution of the President on pardon, adopted in July 18, 2001 has entered some corrections into the terms of pardon, establishing the limit in the form of serving preliminary detention and no less than 10 years of the term. Although it should be stated, that given provision (paragraph 8.3) is of recommendatory character, including proviso “as a rule”. In the referred cases majority of “political” prisoners, sentenced to life imprisonment were released even sooner.

Criminal law envisages opportunity of early conditional release in case of life sentence after serving 25 years. Thus, according to article 57.3 of the Criminal Code “the court, taking into consideration the fact, that the convict has served 25 years of his life sentence and has not committed intentional crime in the period of serving of his sentence, having decided that there is no further need for him to serve the sentence, may replace life imprisonment for deprivation of liberty for definite term or can release prior to expiration of his term conditionally”. At the same time it should be stated, that “punishment in the form of life imprisonment can be replaced by deprivation of liberty up to 15 years” (article 57.4 of the Criminal Code).

Thus, if prior to adoption of the new Criminal Code convict for capital punishment (1991-98) or life imprisonment (1998-2000) could hope to be released through court proceedings after 15 years, and through pardon – after 15-20 years, presently he can be released through court after 15 years and through the mechanism of pardon after serving the term up to 25 years, while in case of conditional release – after 25-40 years. The courts of higher instances have not applied to life imprisonment during the last years.

The fixed term is universal for all types of crime and criminals. In case of condemned to life imprisonment, who belong to older age groups taking into consideration the average life expectancy in men in Azerbaijan, which is 69.7 it can be stated, that this term is too lengthy and is equal to capital punishment only with deferred date of death.

T. Hammerberg spoke about this problem in the above mentioned report. Namely, he thinks, that “life imprisonment without fair opportunity of early release causes concern in regard to honoring of human rights. Especially in combination of conditions of “maximum safety”, this can be equal to inhuman and degrading treatment and be in

violation of European Convention on Human Rights”<sup>34</sup>

In July-August of 2008 over 70 life imprisonment convicts have applied to the Ministry of Justice and the Parliament with request of revision of the “fixed term” referring to resolution R(76)2 of the Committee of Ministers of the Council of Europe<sup>35</sup>, which recommends to the member states to ensure “revision of life sentences in the event, if it has not been done previously, in the period from 8<sup>th</sup> to 14<sup>th</sup> year of imprisonment and conduct regular revisiting of cases of condemned to life imprisonment”.

Some of the condemned were trying to bring this issue in 2007 before of the courts of General Jurisdiction referring to the superseding character of international agreements and some of the precedents of the European Court on Human Rights, although the courts refused to revise the term on individual basis even in the case of an old man, who shall have first opportunity of reconsideration of his term no sooner, than after 85 years.

### **Conditional Serving of Sentence**

In the period, when capital punishment was provided by the law, the convict was kept in investigative isolator in accordance with common practice, that the sentence may be appealed or executed in the same isolator. In the events, when the sentence was recalled, the convict was transferred to the colony of strict regime (depending on the fact, whether he was acknowledged as especially dangerous recidivist).

After abolishment of capital punishment according to article 56.1.5 of

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<sup>34</sup> CommDH(2008)2 / 20 February 2008. Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to Azerbaijan, 3 - 7 September 2007, §58.

<sup>35</sup> Resolution № R(76) 2 on treatment of condemned to serve lengthy terms, §12

the Criminal Code the life time imprisoned convicts are kept in prisons (closed type penitentiary facilities) in the cells, designated for 1 or two persons. Only in July of 2008 restriction on number of convicts in the cell was lifted for a long period of time in regard to construction of a new prison, where there will be cells for 1, 2 and 4 convicts.

In the event of replacement of life imprisonment for deprivation of liberty for a definite term, the convicts are transferred to colony of special regime No8 even if they have not been ruled by the court as especially dangerous recidivists. At the same time, quarter of the remaining term should be spent in approximately the same conditions, as in Gobustan prison. Presently there are 15 who were pardoned.

Currently there is only one prison in the country (the closed type facility), which is located in Gobustan settlement 70 kilometers away from Baku. Blocs № 1, 2, 3 are designated for those, condemned to non-life imprisonment (357 persons), blocs № 4, 5, 6 are designated for convicts imprisoned for life time (237 persons). Bloc №7 is medical-sanitary and №8 – is punishment and quarantine cell.

Conditions of maintaining of life time convicts are substantially different and worse, than conditions for other categories of prisoners in the Gobustan Prison, who are serving definite terms.

Condemned to life imprisonment are accommodated in the cells for 1 or 2 persons. Typical cell No188 of the 6<sup>th</sup> bloc is around 2.57 x 3.88 meters and the ceiling is around 3.5 meters. There are double-deck bunks, small table and two chairs, which are attached to the floor, as well as bedside table for personal belongings and a toilet, partitioned from the cell by a 1 meter wall. Thus, the standard is around 4 square meters per prisoner, which was established in 2000 by the code of execution of punishments. European Committee Against Torture,

Inhuman and Degrading Treatment has established a standard<sup>36</sup> of 7 square meters, which is met only in single cells, which on the other hand represents a degrading treatment.

Floors in the cell are made of stone and the ceilings are concrete, due to which it is hot in summer and cold in winter. Heating is centralized and the pipe runs through cells, which is not sufficient for keeping them warm.

Barred window of 80 x 80 centimeters, is located above the toilet and does not have glass. In winter it is covered by transparent polyethylene film. The bar with sections of 15x15 cm does not allow for penetration of air and daylight. Due to the fact, that over the door to the cell there is no barred window, usual for such facilities and small window in the door opens only in case of distribution of food, the air in the cell does not circulate. Till 2001 it was not allowed to have fans in Gobustan prison.

The convicts were allowed to have radio receivers but only pocket-size and with small range, which receives radio signals at the distance of 70 kilometers from Baku and through thick stone walls poorly. Starting from July of 2008, theoretically the convicts of Gobustan prison can have tape recorders and TV sets, but in practice they are not allowed to do so yet. Starting from July 2008 the convicts to life sentence are entitled to 6 short and 2 long visits, 8 parcels and 24 telephone calls each for 15 minutes per year. They can spend up to 15 (AZN) per month for purchasing of basic essentials<sup>37</sup>. Long visits were allowed starting from 2001, when special facility for such visits was built in Gobustan.

According to article 122.2 of the code on Execution of Punishments, improvement of conditions of maintaining of condemned to life sentence is possible only after they serve 10 years, if they did not have

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<sup>36</sup> Report CPT/Inf (92)3 paragraph.4.3.

<sup>37</sup> Around 18 USD.

any punishments prescribed during conviction. In such case the convicts additionally receive opportunity for 2 short and 1 long visit and 2 more parcels and 2 telephone conversations per year. In the event of revocation of improved conditions, this measure of encouragement can be allowed only after expiration of three years from the date of adoption of such decision.

It should be stated, that even this heavy conditions, provided by the law are violated in practice. Thus, according to article 85 of the code of execution of punishments convicts are entitled to daily walks for duration of 1 hour. In blocs No5 and 6 of the Gobustan Prison are 40 cells and 4 yards. Consequently, if walks are supposed to last for 1 hour, then it shall take 10 hours to take all convicts for one hour outdoor walk, i.e. from 10.00 till 20.00, while in practice outdoor walks finish at 13.00-14.00, or maximum at 15.00, when the supervisors return the keys to their superior. Thus, in reality the walks last 15-25 minutes.

The norms of food provision, established by resolution No154 of the Cabinet of Ministers, dated September 25, 2001, are not adhered to as well. Namely, convicts are not getting daily ratio of 80 grams of meet, 100 grams of fish, 500 grams of potato and 300 grams of vegetables. Instead they are getting similar nourishment with insufficient calories and vitamins. Quality of bread is not sustainable and quite often the heart of bread is moist and not eatable. All this has especially grave impact, when a person is ill, while parcels are allowed only once in every three months.

Despite large number of convicts with gastrointestinal diseases, nobody is provided with dietary food.

Presently in case of life imprisonment there is total lack of any useful

activities, work, educational programs or communication with other convicts. Despite the fact, that articles 95-99 of the Code on Execution of punishments provides for encouragement of useful activities of persons, who are convicted to lifetime, except for one convict, who is repairing electrical appliances and radios, none of the convicts are involved in labor activities.

Human rights defenders and representatives of international organizations, who have visited Gobustan prison, have stated repeatedly, that there is the danger of “institutionalization” of lifetime convicts. Thus, T. Hammerberg has stated<sup>38</sup>, that in conditions of current status lifetime convict “can lose any ability of disposing of their time and responsibility. Organized activity, such as useful labor and education, which could distract the convicts from this monotonous cycle, is not arranged and the convicts have minimum useful activities to do. In addition to this they have no opportunity of walking at least 1 hour a day. Due to long term that they have to serve, he is calling upon the Ministry of Justice to ensure, that all penitentiary facilities organize collective activities and useful labor. Such activities are important not only for self-esteem and dignity of the convicted, but are also important for promotion of rehabilitation. Organized activities may also help to integration of these people into society after they have been released. Lack of activities hinders constructive communication between the convicts.”

Nigel Rodli, UN special reporter on torture visited lifetime convicts in Gobustan prison in May of 2000. He stated the following in regard to conditions, in which prisoners are kept: “55. There were no activities planned for leisure time or education, as it was stated, that this is not

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<sup>38</sup> CommDH(2008)2 / 20 February 2008. Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to Azerbaijan, 3 - 7 September 2007, §51.

provided by the Code of Execution of punishments”.

On the basis of report of the special reporter and alternative reports of human right defenders, the UN Committee against Torture has stated in recommendations, reflected in the II periodic report on Azerbaijan, dated by May 12, 2003, that “the committee also recommends that Azerbaijan revises treatment of lifetime convicts”<sup>39</sup>.

Amendments lifting official ban on vocational education, watching of television, promoted contacts with the outer world through increase of number of allowed visits and telephone calls were introduced to the Code on Executions of Punishments on July 11, 2008,

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<sup>39</sup>Committee Against Torture issues provisional conclusions on Cambodia, conclusions on Azerbaijan, 12.05.03 - <http://www.unog.ch/news2/documents/newsen/cat0322e.htm>

## Recommendations

As a result of work conducted within the framework of the project, which included visiting the places of detention of life-sentenced prisoners, sociological surveys, talks and correspondence with the convicts, contacts with the officers and medical personnel, analysis of European norms and professional findings by international experts who have visited the prison –there are following recommendations from the research group:

### Hearing of Criminal Cases

1. To ensure a case-by-case review of life sentences which were the result of the abolition of the death penalty and allow the persons concerned, to benefit from the retroactive application of the most favorable criminal law provisions<sup>40</sup>.
2. Speed up the process of creating jury trial system in Azerbaijan, determined by the Criminal Procedure Code of the Republic of Azerbaijan for crimes punishable with life sentence since September 1<sup>st</sup>, 2000.
3. Instead of the valid served period by convicts which is not less than twenty five years' of punishment period in life imprisonment as determined by the Criminal Code of the Republic of Azerbaijan, to put an individual valid served period in action as the part of the sentence, taking into consideration the personality of the criminal and the character of the committed crime<sup>41</sup>.
4. While conducting judicial hearing on criminal and civil cases in

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<sup>40</sup>Resolution 1545 (2007), honoring of obligations and commitments by Azerbaijan, § 8.9.

<sup>41</sup>CMCE Resolution (76)2 On the treatment of long-term prisoners, § 12

prison conditions, to provide enough openness and transparency for the relatives and representatives of the society and the press<sup>42</sup>.

## **Providing Legal Aid**

5. It is necessary to provide the opportunity to life sentenced prisoners to have access to the consultations of the lawyer as the part of their right to free legal aid in criminal cases, which is guaranteed by the Constitution as well as by the European Convention on Human Rights (ECHR)<sup>43</sup>. For example, this could be done by the Bar, by appointing one lawyer on duty at the prison.
6. It is necessary to fulfill in practice the confidentiality of correspondence between the convict and the defense attorney, including the correspondence about the complaints to higher international instances which is guaranteed by article 83.2 of the Code on Execution of Sentences<sup>44</sup>.
7. Considering the right to appeal, and in relation to the decision made about executing the punishment guaranteed by article 10.2.7-1 of the Code on Execution of Sentences, which is impossible without enclosing the copy of the disputing decision to the complaint, ensure the issuance of enough number of copies of the disputing decision to the convicts and also other unclassified materials from their personal records<sup>45</sup>.
8. In order to avoid the excessive secrecy of the personal records about the infliction and execution of punishment of the convict,

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<sup>42</sup>Decision by ECHR on the case of *Hummatov v. Azerbaijan* (nos. 9852/03, 13413/04, 29 November 2007, §§140-152).

<sup>43</sup>Article 61 of the Constitution; Article 6.3 (c) of the ECHR; CMCE Rec(2006)2. European Prison Rules, Rule 23.1, 23.3.

<sup>44</sup>Article 32 of the Constitution; Article 8 of the ECHR; CMCE Rec(2006)2, Rule 23.4.

<sup>45</sup>Article 60 of the Constitution; CMCE Rec (2006)2, Rule 23.6.

the list of such secret documents should be made<sup>46</sup>.

9. Considering the complaints of the convicts in relation to receipt of letters and correspondence, lost or sent with delays, renew the old practice about issuing the official receipts for the convicts upon receiving the document from them<sup>47</sup>.
10. For quick and efficient delivery of the complaints of convicts to local and international organizations, and also to ensure the delivery of these complaints to the addressee, the scanned copies should be sent via internet.
11. It is necessary to provide the translation of the documents in and from other languages (first of all in Russian) considering the number of foreign nationals kept in prisons. This is determined by Article 10.2.7 of the Code on Execution of Sentences<sup>48</sup>.

## **Living Conditions**

12. The living conditions of the prisoners are in need of improvement. In particular it is necessary to review the minimal norms of the space in the cells in article 91.2 of the Code on Execution of Sentences of the Republic of Azerbaijan, increasing it to 7 square meters per person, as it is recommended by the European Committee for the Prevention of Torture<sup>49</sup>.
13. Isolation of prisoners may cause the fatal consequences on the personality of the prisoner. The isolated detention should not be enduring and the convict should have the real possibility to appeal to this kind of decision made by the prison administration<sup>50</sup>.

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<sup>46</sup> CMCE Rec (2006)2, Rule 23.6; 2nd General Report CPT/Inf (92)3, § 55.

<sup>47</sup> CMCE Rec(2006)2, Rule 24.5.

<sup>48</sup> Articles 21, 45, 69 of the Constitution; Article 6 § 3 (a) of the ECHR; CMCE Rec(84)12, §§ 8, 9; CMCE Rec(2006)2, Rule 38.3.

<sup>49</sup> The 2nd General Report of CPT/Inf (92)3, § 43.

<sup>50</sup> The 2nd General Report of CPT/Inf (92)3, § 55, 56; The 11<sup>th</sup> General Report CPT/Inf (2001) 16, § 32; CMCE Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners, § 19(c).

14. It is essential to anticipate in practice the terms of socially useful work, which is envisaged in the Code on Execution of Sentences in 2000. The convicts should be provided with the work in accordance with their profession or field similar to his/her profession<sup>51</sup>.
15. Also the interest should be stimulated to study (especially in young prisoners) and also to creative work study<sup>52</sup>.
16. It is essential to create the laundry in the prison<sup>53</sup>.
17. The prices of the products at the prison shop should be decreased to the acceptable level, in order to provide prisoners with additional requested products considering their age, health condition, religion, culture and their work manner<sup>54</sup>.
18. The duration of the walks on fresh air should be one hour or more<sup>55</sup>.

## **Psychological Assistance**

19. Provide in practice the execution of the right to psychological assistance<sup>56</sup> which is determined by article 10.2.9-1 of the Code on Execution of Sentences, for which the full time positions of psychologists should be made available at the prison.
20. The Prison staff should take a course in psychology and conflict studies<sup>57</sup>.
21. Baku State University offered to train the psychologists for the penitentiary system<sup>58</sup>.
22. Upon allocation of the life sentenced prisoner it is essential to

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<sup>51</sup> Article 35 of the Constitution; CMCE Resolution (76)2, § 4; CMCE Rec(2006)2, Rule 26.

<sup>52</sup> Article 42 of the Constitution; CMCE Rec(2006)2, Rule 28; CMCE R(89)12.

<sup>53</sup> CMCE Rec(2006)2, Rules 20, 21.

<sup>54</sup> CMCE Rec(2006)2, Rules 22.1, 26.11.

<sup>55</sup> CMCE Rec(2006)2, Rule 27.1; 2nd General Report CPT/Inf (92) 3, § 48.

<sup>56</sup> CMCE Rec.(2003)23, §§ 10, 27; CMCE R(98)7, § 53.

<sup>57</sup> 2nd General Report CPT/Inf (92)3, § 60; CMCE Rec(2003)23, § 14.

<sup>58</sup> 2nd General Report CPT/Inf (92)3, § 60.

- conduct psychological consultations in order to determine the psychological compatibility with the cell-mate<sup>59</sup>.
23. To address the government with the request to provide priests for regular religious service in prison in order to ensure the right to worship and use the potential of the priests to reeducate the convicts<sup>60</sup>.
  24. Instead of detaining the prisoner in the punishment cell or putting the handcuffs on them create the soft (safe) room for detaining persons who are inclined to suicide, and also use the strait-jacket<sup>61</sup>.

## Medical Service

25. It is essential to fill the missing positions of the medical department of the prison<sup>62</sup>.
26. Considering the presence of mentally ill persons and persons with psychological disorders or drug-addicts among the life sentenced prisoners, provide regular control over their health by the doctors – psychiatrists and experts in narcology<sup>63</sup>.
27. The suggestion of the doctors of the central prison hospital should be taken into consideration in relation to transferring part of the stationary examination and treatment from the central prison hospital to the medical department of the prison, where in the stationary unit more places are available<sup>64</sup>.
28. The convicts and the members of their families should have access to information about their health condition, the course of treatment and prescribed medicines (if necessary, in the form of

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<sup>59</sup> CMCE Rec(2006)2, Rule 18.7; CMCE Rec.(2003)23, § 9.

<sup>60</sup> CMCE Rec(2006)2, Rule 29.2.

<sup>61</sup> CMCE R(98)7 concerning the ethical and organizational aspects of health care in prison, §§ 57, 58.

<sup>62</sup> CMCE R(98)7, §§ 5, 11.

<sup>63</sup> CMCE R(98)7, § 5, 7, 47; CMCE Rec.(2003)23, § 27; CMCE Rec(2006)2, Rule 47.2.

<sup>64</sup> CMCE R(98)7, § 3; CMCE Rec(2006)2, Rule 46.2.

medical report). Even if it is not recommended from the therapeutic point of view to review the card in depth. Family members and the lawyer should have such possibility<sup>65</sup>.

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<sup>65</sup> The 3<sup>rd</sup> General Report CPT/Inf (93) 12, § 46.



# **G E O R G I A**

## **Research group:**

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## **General Information**

During the interviewing process (July-August), according to the data of 18 August 2008 provided by the Penitentiary Department there were 72 men and 2 women life sentenced prisoners at penal establishments of Georgia. The prisoners were detained in 3 establishments, in particular 71 men prisoners in prison #6, one man prisoner in prison #7 and 2 women prisoners at Tbilisi women and juveniles prison and common regime establishment. There were no prisoners in penal establishments of Georgia who were sentenced to death penalty and their sentence was changed to life imprisonment later.

## **Methodology**

20 male prisoners and 2 female prisoners were interviewed during the preparation of this report. Only one male prisoner refused to be interviewed out of those invited. Interviewing took place through personal meetings of the representatives of the research groups with all the prisoners. In addition to the representatives of the research group, the interviews were attended by a psychologist of Rustavi prison #6, and other staff members did not attend the process of interviewing. It is worth mentioning that during the whole interviewing process an employee of the institution, who brought prisoners to the interview, was in the next room. The door connecting the two rooms was open, it is impossible to say whether his presence was advantageous or disadvantageous for the interview. However, it should be pointed out that this officer was a representative of a social service except one day of the meetings, when such an officer in charge of prison security.

During the interviews there was a mutual cooperation among the administration of the institution and representatives of the research group. Besides, interviews were held with the leaders of all the services of penitentiary institution who have a contact with prisoners because of their job (director of the institution, head of the security service, representatives of the regime service and social service). Cooperation

with the head of the institutions and other representatives of the administration was constructive and there was no handicapping or any other hindering circumstances during the working process.

During the research process it was also envisaged to interview representatives of the Committee for Human Rights and Civil Integration and the Committee for Legal Issues of the Parliament of Georgia, representatives of judiciary, Prosecutor's Office, Ministry of Justice and Penitentiary Department, and with the lawyers who have participated in the trials with the verdict of guilty and where the sentence was life imprisonment.

In reference to the meetings, the letters were sent in advance to the mentioned governmental bodies, from which there was a feedback from the Supreme Court, the Office of the Persecutor General and the Court of Appeal. There were no responses from other instances listed above. Based on the responses, the meetings were planned in August, although due to the events that took place in Georgia the meetings were postponed except with the meeting with a judge from the Supreme Court, Levan Murusidze<sup>66</sup>.

The meeting was requested with the deputy heads of Penitentiary Department and the head of Social Service of Penitentiary Department. The meeting was arranged and held with the deputy head on social issues and the head of Social Service Department. As for the first deputy head, there was no answer to the above-mentioned request. The request was left unanswered by the Ministry of Justice as well.

One of the components of the research was to elaborate the national legislation and review it in regards to the compatibility to the international standards.

The regional conference was held with the participation of the representative of international and local organizations and governmental structures in order to review and discuss the results of the research.

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<sup>66</sup> The interview took place on August 22, 2008.

# The History of Death Penalty in Georgia

The death penalty was abolished in Georgia in 1997. More specifically the process of abolishment passed the following stages: 54 convicts were pardoned based on the decree of the president of Georgia # 387, issued on 25 June 1997. Those convicts were sentenced with the highest measure of punishment, the “death penalty”. Based on the decree #387 of the President of Georgia issued on 25 July 1997 the prisoners with capital punishment were pardoned and their punishment was replaced by 20 years of detention. On 11 November 1997 Georgia formally abolished the death penalty by adopting the law #1069-I on “the Abolition of Capital Punishment – the Death Penalty”. The mentioned law – vaguely, but still – announced the existence of a form of punishment -the life imprisonment, which was formally adopted as one of the forms of punishment through the Criminal Code of Georgia. Later it was adopted in 1999 and entered into force in May, 2000. As for the Constitution of Georgia, the change was made only in 2006. This change formulated II part of Article 15 of the Chapter II as follows: “the death penalty is abolished in Georgia”.

The Criminal Code of Georgia, which was adopted on 30 December 1960 by the Supreme Council of the Soviet Socialist Republic of Georgia and entered into force on 1 March 1961, envisaged capital punishment as an exclusive penalty. Capital punishment was foreseen for especially grave crimes in aggravated circumstances, namely, the Article 42 of the Code defined the cases when judges could use this measure of punishment, namely, the Article was formulated the following way: “capital punishment – shooting, as a special measure of punishment until its complete abolishment, can be imposed for the crime against the state in the cases envisaged in this Code, for intentional murder in aggravated circumstances, which is stipulated in the Articles of this Code that define the responsibility for intentional murder, and in certain cases envisaged by the legislation of the Republic of Georgia – also for some other especially grave crimes”.

Capital punishment could not be imposed to a person who has not yet reached the age of eighteen by the moment of committing the crime, and to women who are pregnant either at the moment of committing the crime or by the moment of being sentenced. Capital punishment could not be used against women who are pregnant at the moment of executing the sentence”.

Below is the list of crimes given in the Criminal Code which envisaged the supreme measure of punishment – death penalty:

1. Chapter I – **Crime Against the State:**

- Article 65 ‘Treason’
- Article 66 “Espionage”
- Article 67 “Terrorist Act” (Part IV)
- Article 68 “Terrorist Act against a representative of a foreign country” (Part I)
- Article 69 “Sabotage”
- Article 78 “Banditry”
- Article 78<sup>1</sup> “An action that disorganizes the work of penitentiary institutions” (Part III)

2. Chapter II – **Crime against a person’s life, health, freedom and dignity.**

- Article 104 “intentional murder committed in aggravated circumstances”;

All the convicted defendants with the capital sentence as a supreme measure of punishment, were placed at Tbilisi Investigation Isolator #1 (later the Prison #5), in the cells that were located in the cellar-type (underground) part of this prison. The cells were mostly for one person only, but due to the shortage of cells it was allowed to have two

convicted defendants in the same cell. These cells were small damp places with no windows, no natural light or ventilation. According to the legislation in force at the material time, those convicted for capital punishment were not allowed to have visits and walks. They were taken out of the cells from one to 3 o'clock to the nurse, whose room was located on the same floor of the same building. Taking them out this way was done on purpose, so that when the convicts were taken out for execution this would not be unexpected, for them and thus they would not be disobedient. The convicted defendants had three meals, though the food contained low calories.

Usage of these cells as a place for keeping prisoners was prohibited on the basis of the recommendation developed as the result of the monitoring carried out by the European Committee for Prevention of Torture (CPT) on May 6-18, 2001. Namely, in CPT report, which was published in 2002, described cells in which the life-time convicts were placed in following way: “a living space of a prisoner would not be more than even 1.7 m<sup>2</sup>.<sup>67</sup> Besides, ordinary cells were dark, dirty and had no fresh air. Sometimes they were filled with the piles of garbage and their condition was so poor that it was hardly possible to describe it properly”. At the end of the visit the delegation asked the Government of Georgia to stop using the cellar.

On 25 July 1997, the President of Georgia issued the Ordinance #387 “on Pardoning the Persons Sentenced to Special Measure of Punishment – Death Penalty”. In accordance with the Ordinance, all the people, who had been convicted by this period and were sentenced to the supreme measure of punishment – death penalty, and who were waiting for execution were pardoned. With the same Act on Pardoning, the sentences of all the capitally sentenced and then pardoned people were replaced with the sentence of deprivation of liberty for 20 years. For the given period there were 54 convicts of such kind in the penitentiary system.

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<sup>67</sup> Report to the Georgian Government on the visit to [Georgia](#) carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001, paragraph 75

On 11 November 1997, the Law “on abolishing the special measure of punishment – death penalty”, (Law # 1069 I-s) initiated by the President of Georgia, was adopted. This law finally abolished this measure of punishment in Georgia, and with the same law amendments was introduced to the Criminal Code, Criminal Procedural Code and Code on Execution of Punishments, in particular, the words “capital punishment or” were removed from respective Articles. Later, on 22 July 1999 the capital punishment was completely abolished by the new Criminal Code which has been in force since June, 2000.

## **The conditions of imprisonment for life sentenced prisoners**

### **Criminal Proceedings**

Prisoners with life-term imprisonment, located at the institution of penitentiary system of Georgia belong to the category of prisoners who were sentenced to life imprisonment by the court since 2000. After entering the new Criminal Code into force, where life imprisonment was defined as punishment, death sentence was replaced with life imprisonment. However, at the time of this change there wasn't any prisoner sentenced to death penalty as their sentences were replaced with 20 years imprisonment already before.

As for the question about the type of crime for which a person can be sentenced to life imprisonment in the reality of Georgia, there is a clear answer provided by the results of the real case study. Namely, these are the people who were sentenced for the crime of “intentional murder in aggravating circumstances” - Article 109 of the Criminal Code of Georgia, and drug related crime, Article 260 of the Criminal Code of Georgia “illegal production, preparation, purchase, storage, transportation, sending or selling of narcotic substances, its analogy or precursor” – Part III – these are the Articles of the Criminal Code of

Georgia which are found in absolute majority of lifetime convictions. The issue about the bias while applying this or that measure of punishment goes beyond the scope of the project, but the answers were provided during the interviews in regards to its application, based on the opinions of the individuals against whom this punishment has been used and also the individuals by whom it has been used.

During the interview with the judge from the Supreme Court Levan Murusidze<sup>68</sup> he clarified actual cases of application of this punishment and his attitude towards application of this sentence. He pointed out that in general, the Parliament defines the policy of criminal justice in Georgia. However, application of this type of punishment should take place in extreme cases. He mentioned that he has never used such type of punishment against a person with clear criminal record, for example, in a case of robbery committed by a group of people which ended with a dramatic result - death of 2 victims, life imprisonment was the sentence for only 2 people of the group who had prior conviction for robbery. The judge was asked how reasonable it was in his point of view to have a precedent of using this sentence against women, and he answered that in general it is desirable not to use such sentence against women, however, the nature and gravity of the committed crime should be considered.

According to the interviews with the prisoners, there are following attitudes among themselves towards application of this sentence: one of two surveyed women was categorically against the measure of punishment used against her and points out that it was not done objectively as far as she thinks that there is no sufficient evidence in her case and even the copy of the judgment was not handed over to her. As for the surveyed men, their majority think that the investigation against them and the court were not objective and thus, consequently, the applied sentence is not objective. Namely, various circumstances are named as the grounds of the bias, for example, the majority say that “the witnesses nominated by them were not summoned and questioned

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<sup>68</sup> The interview took place on August 22, 2008.

at the trial”; or “none of the objections were accepted, despite numerous appeals of the lawyer”; “the court did not consider the fact of treatment at a mental hospital, the lawyer requested a psychiatric expertise, but it was not accepted”. One of the surveyed makes reference that he was tortured at the police station in 1998: “they cracked my teeth at the police, beat me up and when I asked to see Elene Tevdoradze<sup>69</sup>, they transferred me to Mtskheta and tortured for 21 days”. Almost all surveyed people points out that the court of upper instance did not change the sentence of any of them and none of these people were taken to the court of upper instance to personally attend a trial. However, the local legislation and the international standards provided them such a right. According to article 76 of the Criminal Procedure Code, the defendant has the right to participate “in court hearings at appeal and cassation instances and protect his/her interests independently or through a defense lawyer”, in addition, point 3 of the Article 14 of the International Covenant on Civil and Political Rights defines, that: “in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees: (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing”. In addition, article 558 of the Criminal Procedures Code of Georgia states that “Parties of trial at the Court of Cassation” – “participants of case hearing at the Court of Cassation – is a prisoner in custody based on his motion and with the court resolution”. So, it should be mentioned that despite the request of the prisoner or the lawyer’s motion the court has a flexible mechanism for not having the prisoner attend the case hearing at the Court of Cassation, i.e. the court had made a decision not to let the prisoner attend the case hearing. This contradicts European Convention on Human Rights, article 6(1) “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”; and UN CCPR, article 14(d) – “To be tried in his presence, and to defend himself in person or through legal assistance of

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<sup>69</sup> Head of the Committee for Human Rights and Civil Integration of the Parliament of Georgia (by the time mentioned by the prisoner)

his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it. Based on the statements made by prisoners they feel that there were significant shortcomings in criminal proceedings.

In reference to proceedings of criminal cases the cases of two more surveyed people are worth pointing out. These people committed crimes in 1997 and 1998 and they were sentenced to life imprisonment by courts. In both cases, the crime committed by them was qualified with the Article 104 of the Criminal Code, which envisaged the highest measure of punishment, death penalty, however, on 25<sup>th</sup> of July of 1997 the President of Georgia issued the Ordinance #387 according to which all the people who were sentenced to the special measure of punishment – death penalty by that time, were pardoned and their sentence was changed to deprivation of liberty for 20 years. On 11 November 1997 the Law of Georgia #1069 I-s “on abolishing the capital punishment as a special measure of punishment” was adopted. On 22 July 1999 a new Criminal Code was introduced. It replaced old Criminal Code and at the same time introduced new type of punishment - life imprisonment. This new Criminal Code was the one that was used against the last two respondents, and they were sentenced to life imprisonment, which is directly in conflict with the requirements of Article 2 and Article 3 of the same Code, namely, according to Article 2 (1) “Operation of Criminal Law in Time”, the “criminality and punishability of an act shall be determined in accordance the criminal law in force at the time of commission of that act”, i.e. the Criminal Code, which was effective in 1997 – 98. Moreover, according to Article 3 (1) “Retroactivity of Criminal Law”, criminal law, which revokes criminality of an act or makes punishment harsher, shall have retroactive force”. Despite the above mentioned, new Criminal Code was used against both of them, which resulted in imposition of heavier penalty. Such decision is also in conflict with the requirement of Article 15 (1) of the Covenant on Civil and Political Rights: “nor shall a heavier penalty be imposed than the

one that was applicable at the time when the criminal offence was committed”.

Despite the arguments, provided by the prisoners at the time of filling out the questionnaires, that indicate on many violations, according to their clarifications the judiciary, prosecutor’s office and investigative bodies do not consider their claims, or everything remains unchanged. One of such examples provided by the prisoners is: “the court has granted only one motion out of 60”; “I used to file applications since the investigation started, but they removed the applications from my personal file and no response was ever given”.<sup>70</sup>

### **Conditions of serving the life imprisonment at the penitentiary system of Georgia**

Male prisoners are mostly located in the cells for 4-6 people of the Prison #6. The cells are completely filled and correspondingly, the number of inmates is 4-6 prisoners per cell. Cells are equipped with beds and cupboard (for keeping food). There is no closet for prisoners; also a table, chairs, beddings and linen (which they purchase themselves in most cases at the shop functioning on the territory of the institution). The prisoners have following dining utilities at the cell: a plastic plate, a glass, a spoon and a fork.

When asked whether the current conditions were suitable for the prisoners to serve a long-term sentence such as life imprisonment in an adequate condition, all of them unanimously pointed out that the conditions are absolutely unacceptable for serving such sentence. The similar position was taken by the administration of the Penitentiary Department at the meeting with the research group<sup>71</sup>. This evaluation was expressed with special severity at the last interview when the prisoners had already been transferred to the newly constructed building

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<sup>70</sup> Interviews conducted by Georgian researchers Group in July, 2008

<sup>71</sup> The meeting took place on 18 September 2008 with the Deputy Head of Penitentiary Department and the Head of Social Service

of the Prison #6, where there are metal covers fixed at windows (which was already taken off on the last visit), which in fact not only limits but also excludes the existence of fresh air, natural light and ventilation in the cell, because of which, as prisoners say, there is a close air and poor light in the cells.

They also make reference to the area of the cell, which, according to their statement “although there are 6 places, is not foreseen for 6 persons and they are very narrow”. “there is no walking area, the ventilation is out of order, the lavatory is half-open”; “It is very hard to see one and the same people in these conditions, in the closed space. They have installed the blinds<sup>72</sup> and there is neither light nor air coming inside. There is no system of artificial ventilation installed at all, and the artificial lights are not enough”; these conditions are in conflict with the requirements of paragraphs a) and b) of the Article 11 of the UN Standard Minimum Rules for the Treatment of Prisoners, according to which: “in all places where prisoners are required to live or work: (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight”. In addition, according to the prisoners, the argument of poor conditions is the circumstance that the floor is made of concrete and they clarify that “it is impossible to live on concrete and it is hazardous for health”.

Prisoners can use the bathroom once a week. This happens regularly and they express fewer complaints. However, some of them mentioned that this is not enough and it would be better to have a shower in the cell. The paragraph 19.4 in the title Hygiene of the European Prison Rules define that: “Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene”.

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<sup>72</sup> During monitoring the conditions in August, 2008 the research group found that the blinds were already uninstalled

As it has already been mentioned, supplying with linen is problematic and the prisoners buy the linen themselves at the shop of the institution. The condition of those prisoners who cannot and will not be able to afford the linen themselves in the future is uncertain. As for washing the linen, all of them point out that they wash linen themselves and dry them in the cell, because the “washing quality of common laundry is unsatisfactory”. As for drying them in the cell that is distinguished with the lack of air, this creates additional problems to the health of prisoners.

The prisoners go out walking for an hour every day except Saturday, when they “have bath”. The prisoners explain that there are certain problems, as far as the prisoners who have been transferred to the new building say that the “walking area is very little” and “the new walking yard is very little in Prison #6 – hardly there is room for 3 people”. However, the prisoners from the same cell go walking at the same time and their number usually is 4-6 prisoners. During checking the living conditions it was revealed<sup>73</sup> that the new walking area is about the same size as the old one and it may be considered as enough space to walk 4-6 prisoners at the same time. The prisoners point out that the prisoners of such category should have a possibility to be on a fresh air for at least 2-3 hours a day. There is no possibility to do some exercises during the walking time.

Therefore these conditions are in conflict with the European Prison Rules, which clarify in the part “Exercise and Recreation”, that “27.3 properly organized activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes. 27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment”.

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<sup>73</sup> The checking was conducted by the members of the research group and the prison administration

## Nutrition

Majority of the respondents provide good assessment of nutrition, although there are cases when they negatively assess the quality of cooking and point out that “buckwheat has too much water, pasta is not boiled well”. It should be mentioned here that all the respondents noted that the nutrition quality has improved recently, i.e. after (considering the period of interviews) appointment of the acting head. However before, according to respondents there were cases when the food was spoilt.

Another issue that many respondents have pointed out was inaccessibility of the dietary food. Namely, one of the respondents stressed that despite having diabetes he is not included in the special registry. The existence of such prisoner was also confirmed by the prison doctor<sup>74</sup>. The European Prison Rules define in the Chapter ‘Nutrition’, in the paragraph 22.6 that “The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds”.

As for additional food, inmates can get parcels with juices and fruit. They can purchase additional food in the local shops, though many of them cannot afford it as far as they do not have the relevant means in the family and the family members cannot transfer money to their accounts. They were most furious while expressing the protest about not being able to get cucumber, tomato, coffee and tea by parcel or at the shop that has been forbidden by verbal instruction, though there is no legal act concerning this prohibition. All of them were very troubled because of prohibition of coffee and tea. It should be mentioned herein that such prohibitions were not observed at other penitentiary institutions at the moment of conducting the survey and it should also be mentioned that such prohibitions are not regulated by the Georgian Law on Imprisonment.

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<sup>74</sup> Please, see chapter on Medical Services. Interview with the doctor was conducted on 10 July 2008

## Medical Services

The respondents provide different assessment of medical services. Some respondents say it is satisfactory, some think it is of average quality and others say it is bad. Namely, the doctor does not have certain days for visits, though, if asked for, they come without problem, or the officer on duty takes the prisoner.

As for the performance of the personnel, they provide positive evaluation of them, but as for the medicines, all the surveyed person point out that it is not satisfactory. In frequent cases the doctors do not have needed medicine and the prisoner's family members have to supply them.

The dentist's service was identified as a separate problem. In particular, there is a dentist at the institution, who does not have a so called dentist's 'drill'. Prisoners said that they have to pull out their tooth although the tooth may not need to be pulled out, but it is impossible to treat it, so frequently getting rid of the tooth is the only solution. Lack of the equipment was also identified as a problem by the prison doctor<sup>75</sup>.

Paragraphs (2) and (3) of the Article 22 of the Chapter for Medical Services of the UN Standard Minimum Rules for the Treatment of Prisoners state that: "(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. (3) The services of a qualified dental officer shall be available to every prisoner".

As for the transfer to the civil hospital, there was only one prisoner out of all the life sentenced prisoners at prison #6 transferred to the civil hospital. He had undergone a surgery. This is the only precedent of a similar kind<sup>76</sup>. One of the respondents pointed out that "it is a real

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<sup>75</sup> Interview with the doctor was conducted on 10 July 2008

<sup>76</sup> Interview with the doctor was conducted on 10 July 2008

problem to have a private doctor entering the prison; it is only possible to consult with a doctor who works for the penitentiary.

The chief physician of the Prison #6 has pointed out during the interview that the health condition of the prisoners is stable. There has been only one prisoner with mental complications and one prisoner with tuberculosis, who had the course of medical treatment. One patient had undergone a surgery and was transferred to city hospital, another prisoner has diabetes and is being regularly checked, though the patient himself pointed out during the interview that he is not registered as sick prisoner and is not given special dietary food, which contradicts the statement of the doctor.

According to the explanation of the head of establishment #5, medical service is operating for 24 hours a day and in case of need and in emergency the prisoners will be transferred to city hospital.

The respondents provide positive assessment for the sanitary-hygiene conditions, although one of the respondents mentioned that “potable water is not really drinkable and sediments settle to the bottom and it gets musty”.

All the surveyed respondents mentioned that they did not have any medical check-up when they entered the institution. They had only external examination, and as one of the respondents said that he had various bodily injuries at the moment when he was taken to the prison. These were not examined or registered.

According to the head of the regime department, the convicts have medical check-up upon entering the prison and are also informed about their rights and responsibilities. The operator on duty informs inmates on the rights and responsibilities and asks them to sign the document. If the prisoners choose, they may read their rights and responsibilities themselves. The inmates of prison #6 do not confirm this fact. According to the director of establishment #5 the prisoners are presented their rights and responsibilities, which are also posted in the cells, upon their arrival at the establishment. Also the prisoners are met

by a social worker and a psychologist in order to provide them with consultation. The prisoners are also given a medical check-up.

### **Contact with the outside world**

Life time convicts are allowed to meet their family members four times a year for the duration of 1 hour. One of the respondents stated that this time is limited only to 45 minutes. The respondents discuss the problem of meeting with their family members in 4 contexts:

- a) The visit takes place in rooms which are separated by glass, which is considered to be absolutely unacceptable. One of the respondents described the process of the visit in following words: “we do not have a direct contact with our family members, as far as there is a glass window between us”.
- b) Absolute majority of prisoners is very concerned because of prohibiting the long-term visits and say that in fact this process created the grounds for ruining their families, or, if it has not happened so yet, it will necessarily happen in the future.
- c) Restricting the circle of individuals who can visit the inmates. This in fact means that these people will never be able to meet close relatives such as: aunt, uncle, cousin, etc.
- d) Finally, there was a special emphasis given to the amendment to the law in 2007 (2006 17 10, #3630), according to which the administration should be notified 5 working days in advance about the prisoner’s visit, which creates problems to the people having come from remote places who do not have a possibility to go to the place of serving the sentence twice in 5 days, and this creates economic and physical problems as well.

European Prison Rules state in the paragraph 24.4 that “The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible”. Nonetheless the existing system of having possible contact with the family clearly contradicts with the mentioned standard, , which, in

addition to creating a gap in regards to the rules used in practice, also represents a gap in the legislation regulating on imprisonment in Georgia. Amendments introduced in 2006 provided stricter, more limited and complicated conditions for prisoners to be able to have contact with their families.

The opinion of interviewed representatives of the administration differ in terms of the visits to the prisoners, specifically – the deputy head in social issues clarifies that “the short visits are carried out using the glass separator, so that the prisoners feel the significance of the crime they have committed”, as for the long visits, he explains that “long visit is a good mechanism for prison management but if the management is not structured, i.e. there is a possibility of corruption than its administration becomes harder , therefore I do not support long visits”.

According to the head of the social service of penitentiary department – the terms for the visit should vary between the visits with and without the glass window. Prison administration must be given the discretion to decide the type of visit any inmate should have, based on their behavior. As for prohibiting long visits, he explains, that those types of visits are prohibited in order to avoid the forbidden items being handed over to the prisoner.

The director of the prison states that the prisoners meet their family members four times during the year. There was no case of prohibiting the visit, the director is entitled to grant the prisoner with one addition visit and so it is fact happening.

The prisoners do not express any complaints about meeting the external people which is envisaged in the law, namely a lawyer, religious representative, also the representative of public defender. However, one of the respondent who was of Armenian origin, said that he did not have a chance to meet the representative of his religion.

The prisoners with life sentence do not have problems with using telephones, i.e. the people at the Prison #6 can use telephone with one day intervals for 15 minutes each time, though the prisoners say that 15

minutes are not enough. As for the institution for women, the prisoners with life sentence do not have problems with using the telephone.

The prisoners have relatively easy access to press and media. This means that the prisoners, both men and women have TV-sets in their cells and they have access to newspapers in case they are provided by family members. Inmates do not have a radio receiver. There is a library at both institutions that is accessible for prisoners.

## **Applications and Complaints**

Majority of respondents point out that there is a possibility to lodge applications and complaints and there has been no problem in this regard neither at Institution #5 for women nor at Prison #6. The majority answered “it is possible to send” and all of them pointed out that those applications and complaints are sent through the representatives of social service. However, there were exceptions in this regard. Namely, two men pointed out that “in fact they are not delivered if the contents refers to the administration”, “complaints are received and sent once a week, which is not satisfactory, In many cases we cannot get into contact with the officers of social service, because controllers do not call them”<sup>77</sup>. As for female prisoners, they have not mentioned any problems at the Prison #5. However, the topical problem stated by them referred to the period when they were at Prison #2, where, as they mentioned, there was a psychological pressure, and the applications did not go out of the building”.

The fact that the applications and complaints are sent out of prison #6 once a week is confirmed by the prison administration.

Absolute majority of prisoners stated that all of them had appealed a court decision; though all prisoners state - “I have not received an adequate answer”.

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<sup>77</sup> UN Standard Minimum Rules for the Treatment of Prisoners, rule 36(1),

## **Relationship with the Personnel**

The inmates at the penal institution #5 and the Prison #6 say that their relationship with the personnel and treatment from their side is positive. They point out that they have frequent contact with the personnel and this relationship is normal and not characterized with problems. However, reference should be made to the treatment and attitude at the Prison #2 towards female prisoners. Both of them pointed out that they were located not in the unit for female prisoners, but in the units where the program Atlantis was being implemented, and the prisoners involved in this program were male prisoners, and the personnel were mostly men. They say that they were “under psychological pressure and fear; and they were not taken to have bath for 6 months”. One of them was accommodated in the cell with mentally sick prisoners.

The interviewed prisoners do not state any problems in terms of the relationship with the personnel, which may interfere in their relationship, although it is worth mentioning that there are no specially qualified staff members in the establishments where prisoners of such category are detained<sup>78</sup>. Special attention was drawn to the issue of personnel during interviewing prison administration.

According to the director of the establishment #5 “there is no special selection of personnel for the prisoners of such category. They are provided with service by ordinary prison staff members, who are not trained or prepared in any special way. Relationship between the prisoners and the staff members is normal; there are no limitations or tensions in their relationship.”

The administration of prison #6 gives the similar explanation: “there are no separated personnel that work with the life sentenced prisoners. They are the staff members of ordinary regime and security. The personnel are chosen by the administration from the existing staff. The best staff members are chosen and sent to prisoners of such category. The chosen staff is outstanding with their work history, characteristics and the knowledge of work with prisoners of such category. The

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<sup>78</sup> Interview with the administration of prison #5 in July, 2008

relationship is normal between the prisoners and staff members and there were no cases of disagreement.

## **Pardon and possibility for early release from prison**

All the surveyed respondents knew that the prisoner who was sentenced to life imprisonment by the court, have the right to address the president for being pardoned, or to be released before serving the term. However, only few respondents knew that they may have a possibility for early release after serving less than 25 years. The answers of respondents to this question were as follows: “According to my version, pardon in 15 years, and early release in 25 years”; and regarding the first version clarifies herein that 15 years is a sufficient time and more time is not needed; the next answer “15-20 years”; “the right to send for pardon 20-25 years”. Answers to the last question, in most cases, sounds like a recommendation and they provide their own versions about after what time the cases of the prisoners of such category should be reviewed, as far as the socially dangerous nature of these prisoners is reduced after some time. For example: “right to request the review of cases after every 5 years” or “the need to review cases every 10 years”. As for the prisoners who did not know about these rights, they pointed out that they did not know it, as far as they had not been informed about their rights and obligations.

There were different answers from the side of prisoners and the personnel to the question: what these people thought about period within which it would be reasonable to review a criminal case with the purpose of reducing the punishment for the prisoner. The opinion of the judge<sup>79</sup> has to be mentioned here: regarding the question asked to him during the interview he clarified that after ten years it would not be reasonable to think about reduction of the sentence for the people who had committed especially grave crime. However, this can be 15 years,

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<sup>79</sup> The Judge of the Supreme Court of Georgia, Levan Murusidze interviewed in August, 2008.

though the law should define who will be granted with this authority (judiciary, penitentiary institution, etc.).

Considering the answer received on the question – it is not determined by law when the life sentenced prisoners get the possibility to be pardoned and released. What is your opinion and is 25 years of imprisonment an adequate time for the prisoner to be pardoned? – The opinion of the penitentiary department administration is not similar.

The deputy head of the Penitentiary Department – the foreign practice and experience in terms of pardoning and other types of privileges is desirable and acceptable according to different positive indicators. e.g.:

- a) obeying the working routine
- b) studying hard
- c) other indicators that during the imprisonment period reveal if the prisoner is oriented towards improvement

Taking this data into consideration after certain period of imprisonment has passed it should be possible to move the prisoner to another prison with less strict regime.

For example, in women's case the age and/or the health condition of the prisoner should be taken into account and the personal opinion of the prison administration should also be considered.

If there will be penal institutions of new category created in Georgia (closed, semi open and open), the prisoners should go through the closed institution and afterwards the decision has to be made individually for each person in detention, which institution should they be moved to in order to continue their imprisonment.

The Director of establishment #5 – 25 years are too long to apply for pardon. It should be differentiated according to their behavior or their case.

Administration of prison #6 – the prisoner should have the right to apply for pardon based on the reference of the administration after presumably 20 years of imprisonment.

As education, employment and other types of rehabilitation programs are not available in the penal system of Georgia, generally and for the life sentenced prisoners, specifically, it is practically impossible to evaluate the prisoners with the above mentioned criteria. Therefore other alternatives have to be found, which will make the possibility to discuss the issue of the privileges towards the prisoners more flexible.

## **Local legislation and international standards**

After the capital punishment was completely abolished on 22 July 1999 a new Criminal Code was elaborated. This code is in force since June, 2000. Code introduced a new measure of punishment – life imprisonment in the criminal justice system of Georgia. In fact, this measure was an alternative to the capital punishment, as far as this measure was used for the crimes that would have been sentenced to death penalty. However, it should be mentioned that its scope has been broadened significantly and it was used for more crimes than capital punishment used to be.

Moreover, it is noteworthy that unlike the capital punishment where a judge was limited by the law in regards to usage of this punishment, in case of the life imprisonment there is a very little limitation provided for judges by the law, namely, in accordance with the Article 51 “Life Imprisonment” of the Criminal Code, the standards of its application are defined: “1. life imprisonment can be applied only in case of especially grave crimes. 2. Life imprisonment cannot be used in relation to the person who was under 18 by the moment of committing the crime, or who has turned 60 by the moment of being sentenced”. Below

is the list of the Articles where the life imprisonment can be used in accordance with the new Criminal Code:

1. Chapter XIX – **Crime against Life**<sup>80</sup>
2. Chapter XXIII – **Crime against Human Rights and Freedoms**<sup>81</sup>
3. Chapter XXX – **Crime against Civil Security and Order**<sup>82</sup>
4. **Crimes Related to Narcotics**<sup>83</sup>
5. Crime against the State, Chapter XXXVII – **Crime against the Constitutional Arrangement of Georgia and the Fundamentals of Security**<sup>84</sup>
6. Chapter XXXVIII – **Terrorism**<sup>85</sup>

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<sup>80</sup> Article 109 “Intended murder in aggravated circumstances” (Part III)

<sup>81</sup> Article 143<sup>2</sup> “Trafficking of Minors – amendment #3530 made on 25.07.06” (Part IV)

<sup>82</sup> Article 227<sup>2</sup> “Unlawful Takeover, Destroy or Damage of a Stationary Platform” (Part III; amendment #3542 made on 25.07.06)

<sup>83</sup> Article 260 “illegal productions, preparation, purchase, storage, transportation, sending or selling of narcotic substances, its analogy or precursor” (Part III, amendment #3530 made on 25.07.07); and Article “illegal import of narcotic substances, its analogy or precursor in Georgia, illegal export from Georgia or international transit” (Part IV, amendment #3530 made on 25.07.06)

<sup>84</sup> Article 308 “Violation of territorial integrity of Georgia” (Part II; amendment #2937 made on 2804); and Article 318 “Sabotage” (Part III; amendment #2937 made on 28.04.06)

<sup>85</sup> Article 323 “Terrorist Act” (Part III; amendment #3530 made on 25.07.06); Article 324 “Technological Terrorism” (Part II; amendment #3542 made on 25.07.06); Article 324<sup>1</sup> “Cyber Terrorism” (Part II; amendment #3530 made on 25.07.06); Article 325 “Attack on Political Officials of Georgia” (amendment #3530 made on 25.07.06); Article 326 “Attack on a person or entity enjoying the services of international security” (amendment #3530 made on 25.07.06); Article 330 “Takeover or blocking of the facilities of strategic or special importance” (amendment #3530 made on 25.07.06); Article 331<sup>1</sup> “Financing of Terrorism” (amendment #3530 made on 25.07.06)

7. Crime against humanity, Chapter XI.VII – **Crime against the peace, security of humanity and the international humanitarian law**<sup>86</sup>

The legislation on criminal procedures defines certain norms which set certain limitations on various stages of legal proceedings. Namely, in accordance with the Article 81 “Mandatory Defense”, the body carrying out the proceedings is forbidden to accept a refusal of a suspect, defendant and convict to appoint a defense lawyer, if the suspect, defendant and accused has committed a crime for which a life imprisonment can be applied (article 81.d);

Article 284 “Bringing a Charge”, defines participation of a prosecutor in the process of examination, namely Part 3 “for the cases of the people who can be sentenced to life imprisonment, also, if the defendant or his representative provides a motion that a prosecutor’s participation in the examination is obligatory” (Amendment #2265 made on 16.12.2005).

The legislation on criminal procedures forbids to solve the issue of canceling, shortening or continuing the investigation, namely, the part 4 of the Article 473 defines that “it is impossible to cancel or shorten the investigation at court, if the defendant is under 16, is mentally handicapped or is charged with the crime that can be sentenced to deprivation of liberty for more than 15 years or to the life imprisonment in accordance with the Criminal Code of Georgia...” Besides, the legislation on procedures sets certain limits for judges in making their decisions, namely the Article 500 “rule on deliberation of judges and on making decisions by them for particular issues of the case”, part 4, “the issue is solved with ah simple majority of votes. The decision on

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<sup>86</sup> Article 404 “Preparation or conduct of an aggressive was (Part II; amendment #2937 made on 28.04.06); Article 407 “Genocide” (amendment #2937 made on 28.04.06); Article 408 “Crime against Humanity” (amendment #2937 made on 28.04.06); Article 409 “Ecocide” (Article II, amendment #2937 made on 28.04.06); Article 411 “Intended violation of the norms of international humanitarian law during the armed conflict” (Part II)

applying life imprisonment as a measure of punishment should be made by judges unanimously”.

Legislation of Georgia ‘on Imprisonment’ defines the conditions for placing the convicts with life imprisonment at the place of serving the sentence, and also the conditions for serving the sentence. It should be mentioned here that the legislation provides very brief and dry regulation for the conditions of the convicts with life imprisonment, and this refers only to where the convicts of such category should be placed, how many visits they are entitled to and what kind of disciplinary penalty can be used against them despite the seriousness and special nature (duration) of the crime they have committed.

In addition, we should consider that, in accordance with the law, these convicts are isolated from the convicts of other category, and the law sets special standards for controlling them - namely, this law and the part 1 of the Article 77 “Peculiarities of living of convicts with life imprisonment” defines in which conditions the convicts with life imprisonment can be placed: “1. convicts with life imprisonment are located in the cells of 24-hour detention, where the permanent visual control is possible”, which clearly points out that convicts of this category are considered a special category according to the law, despite this the law does not provide clarifications about the conditions for their living, contact with the outside world, possibilities of rehabilitation, education and employment, specifics of medical services, etc.

There are also very few clauses of the provision that regulate peculiarities of functioning of the prison, i.e. specifics of functioning of the institution, in one division of which the convicts with life imprisonment should be placed. If we assume that other than the standards described separately in the law, all other rights and conditions are analogous to the conditions of other convicts, which does not correspond to the real situation revealed after the research, even in this case there is a significant discrepancy provided by the analysis of legislation and its comparison with international standards, namely with the “Prison Rules” adopted on 11 January 2006 by the Committee of Ministers of the Council of Europe, and with the United Nations

Standard Minimum Rules for the Treatment of Prisoners adopted in 1955.

## **Placement**

Article 22 (1) ‘Placement of Convicts in Isolation’ of the Law of Georgia on Imprisonment clarifies who is provided an isolated placement at a penitentiary institution, and its subparagraph ‘d’ indicates that “convicts with life imprisonment” are placed separately from the others. This requirement is in conflict with the standards mentioned above as far as the paragraph 18(8) of Prison Rules and rule 8 of the Minimum Rules, where the placement of prisoners according to categories is discussed, do not recognize such differentiation.

The Article 76 “Convicts serving their sentence at prison” of the Law of Georgia on Imprisonment defines that “1. A person who has been sentenced to life imprisonment should serve a sentence at prison ...” However, here is no indication about: in which regime of the prison the convicts of such category should serve their sentence, and the conditions of which regime are relevant to their conditions, as far as according to the same legislation the prison is divided into two regimes: common and strict ones (Article 78, types of regimes at prison).

## **Discipline and Punishment**

International standards define that a disciplinary penalty should be applied as an extreme measure, and besides the Prison Rules set the requirement in relation to which standards should be considered by the national legislation. Namely:

“57.2 the national legislation should define that:

- a. A prisoner should immediately be informed in the language that s/he understands and s/he should be provided a detailed information about the crime s/he is charged with;

- b. A prisoner should have an adequate time and possibility to prepare for the defense;
- c. A prisoner should be able to defend himself on his own or through a defense attorney, when the interests of justice requests so;
- d. A prisoner should be authorized to require presence of attendants and request their examination, and;
- e. A prisoner should have a free access to an interpreter if s/he cannot speak or understand the language that is used during court hearing.”

Article 77 (3) of the Law of Georgia on Imprisonment is in conflict with this requirement, which clarifies that “for violating the regime and bylaws the following punishments can be imposed for the convicted (this means the prisoners with life imprisonment) as a disciplinary penalty: a) reprimand; b) prohibition of receiving and sending mail; c) placement in the punishment cell for the term of 3 up to twenty days”. Same irrelevant clarification is provided in the law the rule of applying the disciplinary penalty against all convicts in general (Article 30), where there is no mentioning about the rule of appealing and the instances that a convict can approach for the right to have a defense, interpreter, etc.

It should be mentioned that during the interviews the convicts pointed out that for applying a disciplinary penalty to the convicts with life imprisonment, they are transferred to the Prison #7 instead of transferring them to the punishment cell at the same prison.

The initiative, which has been introduced by the amendment made to the Law of Georgia on Imprisonment of June 29, 2007, differs from all the international standards and the requirements of the local legislation. With this amendment five new articles were added to the law (30<sup>1</sup>; 30<sup>2</sup>; 30<sup>3</sup>; 30<sup>4</sup>; 30<sup>5</sup>). This amendment introduced the institute of administrative imprisonment, according to which a convict can be a subject of 90 day penalty and this term is not included in the total term

of the sentence, i.e. it is added to the sentence defined by the court verdict.

## **Living Conditions**

In the part about living conditions, there is no separate review of living conditions of the convicts with life imprisonment. Besides, the norms envisaged in the general standards are not harmonized with international standards. Namely, according to the Article 33 (4), “there should be a window at a dwelling place which provides natural light and ventilation”. However, there is no indication about what requirement should be met by such light and ventilation, as it is in the Minimum Rules, namely the Rule 11, (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.

## **Contact with the outside world**

European Prison Rules define following standards for relations with the public:

“24.4. The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible. 24.5. Prison administration should assist prisoners to maintain adequate contact with outside world and provide respective support to them”.

Law of Georgia on Imprisonment, where the amendments were made in 2006, provided stricter, more limited and complicated conditions for prisoners to be able to have contact with their families. It has abolished long-term visits with the members of the family. The same law indicates that “convicts with life imprisonment have the right to have no more than 4 visits per year (amendment of 28.04.2006)”.

It has to be pointed out that the duration of the visit shall not exceed 1 hour. A person willing to visit a prisoner should inform the administration 5 days in advance. This standard does not really support

to maintain family relationships; on the contrary, it provides favorable grounds for ruining these relationships. The current practice should also be taken into consideration here: the convicts meet the family members in a room with partition where they have no possibility to have a direct contact. It should be mentioned that the legislation has significantly limited the type of people who have the right to meet the convict. Article 48 (1) ‘Meeting with Family Members and Close Relatives’ of the Law on Imprisonment defines the type of people who can come for visit: “spouse, parent, grandmother, grandfather, child, grandchild, adoptee, sister, brother, also the people whom with the convict used to live and have a common economy during 2 years before imprisonment. This paragraph is in conflict with the requirements of the Rule 37 of the Minimum Standards, according to which “prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits”. However, as it has already been mentioned, in accordance with the Georgian legislation it is absolutely impossible to have relationships with friends and relatives who are not family members.

### **Medical Services**

The legislation of Georgia defines general standards of medical care for convicts, though it does not indicate the presence of doctors with special qualification to be able to work at the institution where the convicts with life imprisonment are placed. Unlike the requirements of the European Prison Rules, where it is indicated that a penitentiary institution should necessarily have a psychiatrist, dentist and oculist, these directions are absolutely irrelevant to the reality that the convicts are facing in practice as it has been stated during the interviews.

### **Employment and Education**

The Law of Georgia on Imprisonment does not clarify whether it is permitted for the convicts with life imprisonment to get education and employment, regardless of the duration of the sentence. The law does not give indication about an opportunity for convicts to be involved in

rehabilitation programs, which significantly complicates adaptation of the convicts of this category to the process of serving the sentence, and their preparation for serving such a severe punishment.

## Recommendations

Based on the information provided above, there are following recommendations from the research group:

1. The right of attendance at case hearings at courts of all the instances of the person, who might be the subject of life-term imprisonment, should be clearly defined in the Criminal Procedural Code of Georgia, so that he is provided with the possibility to defend himself effectively.<sup>87</sup>
2. In the legislation of Georgia (law of Georgia on Imprisonment) there is no separate paragraph that defines the conditions for serving the sentence for life sentenced prisoners: the regime of serving the sentence, living area, arrangement of the living space and other living conditions, condition of the cell and equipment. We suggest this to be considered and defined in the law. This is important in order to support the creation of an effective setting for the life sentenced prisoners to serve their sentence<sup>88</sup>.

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<sup>87</sup> article 76 of the Criminal Procedure Code; Article 14 of the International Covenant on Civil and Political Rights; Article 558 of the Criminal Procedures Code of Georgia; European Convention on Human Rights, article 6(1); UN CCPR, article 14(d)

<sup>88</sup> *Recommendation Rec(2003)23; §4; §21 – Council of Europe, Committee of Ministers; Prison life should be arranged so as to approximate as closely as possible to the realities of life in the community (normalization principle); to offer adequate material conditions and opportunities for physical, intellectual and emotional stimulation; to develop a pleasant and user-friendly design of prison premises, furniture and decoration;*

3. The infrastructure of the penitentiary institutions where inmates with life-term imprisonment are accommodated needs to be rearranged in a way to be adequate for serving a long-term sentence<sup>89</sup>.
4. To establish a systematic and flexible mechanism of reviewing cases of prisoners with life-term imprisonment with the purpose of possible use of privileges or change regime<sup>90</sup>.
5. Improve the light and ventilation (both - natural and artificial) in the cells of life sentenced prisoners of Institution #6, so that there is no threat posed to the health of prisoners<sup>91</sup>.
6. To provide the possibility for long-term visits to the prisoners with life sentence and arrange the infrastructure for ensuring such visits<sup>92</sup>.
7. To provide dietary food according to the outcomes of the assessment carried out by medical staff<sup>93</sup>.

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<sup>89</sup> *Standard Minimum Rules for the Treatment of Prisoners, part 2, rule 60(1)* - “The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.”

<sup>90</sup> *Committee of Ministers, Recommendation Rec(2003)23, paragraph 11* - “Sentence planning should start as early as possible following entry into prison, be reviewed at regular intervals and modified as necessary

<sup>91</sup> *UN Standard Minimum Rules for the Treatment of Prisoners, rule 11 (a and b)*

<sup>92</sup> *European Prison Rules state in the paragraph 24.4 - The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible; Recommendation Rec(2003)23 – Council of Europe, Committee of Ministers; letters, telephone calls and visits should be allowed with the maximum possible frequency and privacy.*

<sup>93</sup> *The European Prison Rules define in the part II, Chapter ‘Nutrition’, paragraph 22.6 - “The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds”*

8. To make the procedure of applying for the presidential pardon accessible for the life-sentenced prisoners before they serve 25 years of their sentence as it is regulated currently<sup>94</sup>.
9. To reduce the period of imprisonment after which parole can be granted.
10. To take the measures by administration of prison #6 to create the mechanism of accepting and forwarding applications and complaints of the life sentenced prisoners on daily basis<sup>95</sup>.
11. The conditions of settlement and the treatment of the life sentenced prisoners at Prison #2 to be examined.
12. To introduce the practice of involving the prisoners with life-term imprisonment in rehabilitation and educational programs at penitentiary institutions<sup>96</sup>.
13. To arrange employment sites where the prisoners with life-term imprisonment will have a possibility to have a paid job<sup>97</sup>;

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<sup>94</sup> *Presidential Decree on Pardon #277, 19 July 2004.*

<sup>95</sup> *UN Standard Minimum Rules for the Treatment of Prisoners, rule 36(1)- "Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him."*

<sup>96</sup> *The European Prison Rules, rule 106 - A systematic programme of education, including skills training, with the objective of improving prisoners' overall level of education as well as their prospects of leading a responsible and crime-free life, shall be a key part of regimes for sentenced prisoners; All sentenced prisoners shall be encouraged to take part in educational and training programmes; Educational programmes for sentenced prisoners shall be tailored to the projected length of their stay in prison."*

<sup>97</sup> *Recommendation Rec(2003)23; §10 – Council of Europe, Committee of Minister; Participation in work, education, training and other activities that provide for a purposeful use of time spent in prison and increase the chances of a successful resettlement after release.*

14. To arrange the yards for prisoners with life-term imprisonment so that they have a possibility to work out and get involved in physical activities<sup>98</sup>.
15. To improve the level of medical service, supply of medicines and relevant medical equipment. Also to discuss the creation of a flexible mechanism of transferring the life sentenced prisoner to a medical institution and the issue of possibility of calling the private doctor by the prisoner or the family member in case of need<sup>99</sup>.
16. The staff working with life- and long-term prisoners should pass special training necessary for their duties as they need to deal with the specific difficulties<sup>100</sup>.

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<sup>98</sup> *European Prison Rules - "Exercise and Recreation", 27(3-4) – "properly organized activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes. Prison authorities shall facilitate such activities by providing appropriate installations and equipment"*

<sup>99</sup> *The UN Standard Minimum Rules for the Treatment of Prisoners - rule 22(2-3)*

<sup>100</sup> *Recommendation Rec(2003)23; §37.a. - Council of Europe, Committee of Minister;*

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