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THE HUMAN RIGHTS SITUATION OF MINORITIES AND FOREIGN CITIZENS IN THE PENITENTIARY SYSTEM



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The purpose of this research study is to examine the rights of prisoners, namely foreigners and stateless persons, as well as minorities (religious, ethnic, sexual) in the penitentiary system.

The research study was conducted based on the regulations set by the legislation, international standards and practice analysis, including the reports prepared by various organizations and experts regarding the mentioned vulnerable groups. Within the scope of the study, letters requesting public information were sent to all establishments to determine the human rights situation of these vulnerable groups in Georgia's penitentiary establishments.

The answers received from penitentiary establishments show that the statistical data is not produced regarding the foreign citizens and minorities (religious, ethnic, sexual), which would include information about various rights of these prisoners being observed and/or their everyday conditions in the penitentiary establishment. Therefore, the issues, such as the contact with the outside world, security measures, isolation, self-isolation, use of disciplinary punishments and increased risk of violence, could not be evaluated during the research process, as, according to the information provided by the Special Penitentiary Service and penitentiary establishments, such static data is not being processed. Furthermore, the number of prisoners representing minority groups (ethnic, religious, sexual) is not known to the penitentiary establishments. Consequently, not only the legal measures taken towards these persons, but also their quantitative registration is not documented.

The existing situation reveals that the penitentiary system does not monitor the rights of foreign citizens or prisoners representing minority groups (religious, ethnic, sexual), who may be in disadvantageous conditions compared with other prisoners. The absence of the monitoring system means that there is no identification of the challenges regarding the rights of the named groups and, therefore, there is no necessary work carried out to resolve them. This established approach leads to having other prisoners similarly treating minorities (religious, ethnic, sexual) and foreign prisoners, which in certain cases may be the neglect of their needs and legitimate interests.

It should also be noted that the objectives and measures, set forth by the Human Rights Action Plan (2018-2020)¹ in the chapter regarding accused, convicted and former prisoners, are general and do not envisage specific measures, which should be implemented in direct connection to prisoners representing minority groups (religious, ethnic, sexual). As to the foreign citizen prisoners, the rights to be informed about their rights and obligations and have

¹ The Resolution N182 of the Government of Georgia of 17 April 2018, Annex 1.

information about prison regime in the language they understand, and the rights to legal consultations and legal assistance are provided.² However, only this provision cannot, of course, answer the needs and challenges that prisoners in this group have in the penitentiary system.

According to international standards,³ the protection of and different treatment towards vulnerable groups is not discriminatory if it is adjusted to the special needs of individual prisoners. The penitentiary system is obliged to use positive discrimination mechanisms for these persons, in order to compensate the unequal condition of these groups - to develop and introduce appropriate legal guarantees and relevant practice and, to the extent possible, facilitate the realization of legal rights for these people.

The essential problem in the penitentiary system for ethnic minorities and foreign citizens is the language barrier, which makes it impossible for these prisoners to communicate effectively with the administration of the establishment and with other prisoners, which in turn leads to different treatment. The European Court of Human Rights has declared it admissible and is currently reviewing the case about ineffective treatment and communication with an applicant in his/her own language. This amounts to degrading treatment and falls under the area protected by article 3 of the Convention.⁴

² Ibid, Task 4.5.3

³ Nelson Mandela Rules, Rule 2.

⁴ *Rooman v. Belgium* No. 18052/1, judgment of 18/07/2017 (under examination).

