



ევროკავშირი
საქართველოსთვის
The European Union for Georgia



HUMAN RIGHTS SITUATION OF LIFE-TERM AND HIGH-RISK PRISONERS IN THE PENITENTIARY SYSTEM

Main Findings and Recommendations



The publication has been produced by Institute of Democracy and Safe Development (IDSD) within the framework of the EU funded project “Monitoring Government’s Commitments and Promoting Penal Reforms through the Engagement of CSOs” which is implemented by Penal Reform International South Caucasus Regional Office together with its partner organizations – Rehabilitation Initiative of Vulnerable Groups and Human Rights Center.

The contents of this document is the sole responsibility of the Author and can in no circumstances be regarded as reflecting the position of either the donor or Penal Reform International, or its partner organisations.

The publication presents only key findings and recommendations. Full version of the research can be found at: www.penalreform.org.





CONTENT

HUMAN RIGHTS SITUATION OF LIFE-TERM AND HIGH-RISK PRISONERS IN THE PENITENTIARY SYSTEM

The Research Subject and Approach	4
Research Purpose and Methodology	4
1. Specific Issues Regarding Life-Term and High-Risk Prisoners	7
2. Rehabilitation and Social Reintegration of Convicts	9
3. Non-Discrimination	10
4. Isolation of Convicts	12
5. Regime and Living Conditions of Life-Term and High-Risk Convicts	13
6. Inspection/Search of Convicts	14
7. Electronic Surveillance	15



HUMAN RIGHTS SITUATION OF LIFE-TERM AND HIGH-RISK PRISONERS IN THE PENITENTIARY SYSTEM

The Research Subject and Approach

The present research subject is the human rights situation of life-term and high-risk prisoners in the penitentiary system. Persons sentenced to life imprisonment serve their sentence in a closed type and special risk facilities. High-risk prisoners are placed in the special risk penitentiary establishment. Therefore, the research study examines the peculiarities of execution of deprivation of liberty in closed type and special risk penitentiary establishments.

Within the scope of the research, the compliance of national legislative regulations and established practices with universal and European standards was studied. The human rights situation of the life- and long-term convicts was examined in the following context: living and accommodation conditions, contact with the outside world, surveillance, inspection, risk assessment and individual sentence planning methodologies, accessibility to and involvement in re-socialization and rehabilitation activities and programs, etc. The study reviews in detail only those issues of the Georgian legislation and the practice in the penitentiary system, which represent serious problems in terms of compliance with international standards.

The research study is based on three tasks of the penitentiary system: to provide public safety, or to protect the public from the persons convicted for criminal offenses; to observe proper order in penitentiary establishments; and to ensure rehabilitation/reintegration of the convicts. In addition, the document focuses on the need of protecting the principle of dynamic security, which means the attentive members of the staff who are communicating with the prisoners, are familiar with them, are aware of what is happening in prison, keep prisoners busy, in a positive meaning of this phrase, and can prevent risks. Further emphasis on dynamic security can prevent excessive restrictions on high risk convicts and convicts sentenced to life imprisonment. The approach, which this research study is based on, is that the concept of dynamic security should play an important role in carrying out the tasks of protecting public safety and proper order and ensuring fair balance in order to provide effective security and rehabilitation-reintegration.

RESEARCH PURPOSE AND METHODOLOGY

The main goal of the research is to analyse the compliance of the Georgian legislation and practice with the goal set by the international law, which is the correction and social rehabilitation of the convicts, and, in particular, with the norms and standards of the international law on prisoners' rights.

Total reintegration and rehabilitation of convicts includes many components. It includes, providing proper living conditions, education, vocational training and working experience, establishing constructive relationships between staff and prisoners, responding to the behavioural and dependence problems and, most importantly, meeting the basic needs of prisoners, which means protecting their basic rights and legal interests.

The human rights situation of persons placed in closed type and special high-risk establishments, including those sentenced to life imprisonment, are discussed in this research study primarily in the context of the fundamental principle of non-discrimination. These are the cases when the rights of life-term and high-risk prisoners, for example, the contact with the outside world, are restricted in discriminatory manner compared to other prisoners. In this study, discrimination is discussed in the context of indirect and direct discrimination. The study also reviews the compliance of the restrictions with international standards, which are generally applicable to all convicts, including life-term and high-risk prisoners. While these restrictions are not exclusively limited to life-term and high-risk prisoners, they directly influence their human rights situation and, therefore, are not left out of the research.

While assessing the compliance of the human rights situation with international standards, the research reviews the legislative norms¹ as well as the existing practice. The information about the practice was formally requested in writing from the Special Penitentiary Service of Georgia by the Institute of Democracy and Secure Development (IDSD). Also, information obtained by IDSD, within the “Report on the Implementation of the Chapter IV and V of the National Human Rights Action Plan”² (for 2016-2017) on the human rights situation of life-term and high-risk prisoners, was used. The Parliamentary Reports of the Public Defender from 2016³ and 2017⁴ and the information on the practical aspects of serving the sentence by the life-term and high-risk prisoners given in the 2015 Report⁵ of the Committee for the Prevention of Torture (CPT) and the Report⁶ of the UN Special Rapporteur, are also used for the research study.

The international standards, against which the legislative and practical aspects of serving the sentence by life-term and high-risk convicts are assessed, include relevant documents with legal or political force adopted on universal or European level. In particular, the following documents are used in the research study: United Nations Resolutions (e.g., Nelson Mandela

1 The Imprisonment Code and consequent sub-legislative acts.

2 Chapter 4. Protection of Human Rights in the Penitentiary System, available at: http://hrm.org.ge/sites/default/files/documents/%E1%83%97%E1%83%90%E1%83%95%E1%83%98%204%20-%2007.09.2018_ka.pdf; Chapter 5. Fight against Torture and Ill-treatment, available at: http://hrm.org.ge/sites/default/files/documents/%E1%83%97%E1%83%90%E1%83%95%E1%83%98%205%20-%2007.09.2018_ka.pdf.

3 Available at: <http://ombudsman.ge/uploads/other/4/4494.pdf>.

4 Available at: <http://ombudsman.ge/uploads/other/5/5139.pdf>.

5 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 1 to 11 December 2014, CPT/Inf (2015)42, 2015, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806961f8>.

6 Available at: <http://www.refworld.org/docid/56c436dc4.html>.

Rules⁷); Reports of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT); Recommendations of the United Nations Special Rapporteur; European Convention on Human Rights⁸ and the practice of the European Court of Human Rights; Resolutions and recommendations of the Committee of Ministers of the Council of Europe (e.g., European Prison Rules,⁹ Resolution on the Treatment of Long-term Prisoners,¹⁰ Recommendation Concerning Custody and Treatment of Dangerous Prisoners,¹¹ Recommendation on the Management by Prison Administrations of Life Sentence and other Long-term Prisoners,¹² Recommendation of the Prison Administration on Long-Term Prisoners, Recommendation Concerning Dangerous Offenders,¹³ Recommendation on Electronic Monitoring¹⁴); Standards of the Committee for the Prevention of Torture;¹⁵ Recommendations of other international organizations (PRI, APT).

Various guidelines and research have been used in the study, including the “Handbook for Dynamic Security and Prison Intelligence”,¹⁶ “Handbook on the Management of High-Risk Prisoners”,¹⁷ “Roadmap for the Development of Prison-based Rehabilitation Programmes”¹⁸ and others by the United Nations Office on Drugs and Crime; Council of Europe’s Guide on “The Prohibition of Torture”¹⁹ and “Handbook on European Non-Discrimination Law”,²⁰ document “On Management of High-Risk Prisoners”²¹ prepared by the organization Rehabilitation Initiative for Vulnerable Groups (RIVG), research “Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries”²² by Penal Reform International; “Report on the

-
- 7 UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution/adopted by the General Assembly, 8 January 2016, A/RES/70/1752015, available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.
 - 8 Available at: <https://matsne.gov.ge/document/view/1208370?publication=0>.
 - 9 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, available at: <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.
 - 10 Resolution (76)2 of the Committee of Ministers to member states on the treatment of long-term prisoners, available at: <https://rm.coe.int/16804f2385>.
 - 11 Recommendation Rec(82)17 of the Committee of Ministers to member states concerning custody and treatment of dangerous prisoners, available at: https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Umluvy/vezensvi/R_82_17_treatment_dangerous_prisoners.pdf.
 - 12 Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, available at: https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Umluvy/vezensvi/R_2003_23_management_of_life_sentence_and_long-term_prisoners.pdf.
 - 13 Recommendation CM/Rec(2014)3 of the Committee of Ministers to member States concerning dangerous offenders, available at: <https://pjp-eu.coe.int/documents/3983922/6970334/CMRec%2B%282014%29%2B3%2Bconcerning%2Bdangerous%2Boffenders.pdf/cec8c7c4-9d72-41a7-acf2-ee64d0c960cb>.
 - 14 Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring, available at: <https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%282014%29+4+on+electronic+monitoring.pdf/c9756d5b-be0e-4c72-b085-745c9199bef4>.
 - 15 Available at: <https://www.coe.int/en/web/cpt/annual-reports>.
 - 16 Available at: https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Handbook_on_Dynamic_Security_and_Prison_Intelligence.pdf.
 - 17 Available at: https://www.unodc.org/documents/justice-and-prison-reform/HB_on_High_Risk_Prisoners_Ebook_appr.pdf.
 - 18 Available at: https://www.unodc.org/documents/justice-and-prison-reform/17-05452_ebook.pdf.
 - 19 Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007ff4c>.
 - 20 Available at: https://www.echr.coe.int/Documents/Handbook_non_discriLaw_ENG.pdf.
 - 21 Part I, available at: <https://www.rivg.ge/media/1001537/2018/03/06/2f3906a210ed963918ac070a6ffe37ae.pdf>; Part II, available at: <https://www.rivg.ge/media/1001537/2018/03/06/84f2713019122540473c89853c4f964b.pdf>.
 - 22 Available at: https://www.penalreform.org/wp-content/uploads/2013/05/SCaucasus_life_conditions_2009_geo.pdf.

Implementation of the Chapter IV and V of the National Human Rights Action Plan (for 2016-2017)” and “Methodology of Monitoring Penitentiary Establishments”²³ both prepared by IDSD; Studies and guidelines developed by individual experts, for example, guideline on “International Standards on Imprisonment” prepared within the framework of the EU4Justice Program; “The Guide to Domestic Legal Remedies on Discrimination Cases in Georgia”²⁴ prepared within the joint project of the European Union and the Council of Europe; etc.

After assessing compliance of national legislation and practices with the above-mentioned international standards, the study provides specific recommendations for fulfilling Georgia’s commitments to the international community and eliminating the identified challenges and obstacles.

Finally, since the project aims *inter alia* at influencing policy development, this research does not leave out those issues that may not require to be resolved through international law at the moment, but have a future human rights protection perspective, as issues upon which universal or European consensus may be achieved in the near future. In particular, the study covers not only the legally or politically binding standards, but also international tendencies of liberalization of human rights standards. This way, research provides recommendations on the development of such policies, aimed at Georgia’s involvement in the efforts of the international community to further liberalize human rights standards in accordance with the fundamental principle of human dignity.

MAIN FINDINGS

1. SPECIFIC ISSUES REGARDING LIFE-TERM AND HIGH-RISK PRISONERS

1.1 Compliance of Life Imprisonment with International Law

Discussion about the relevance of the use of life imprisonment is part of democratization process, but so far, the life imprisonment, as the punishment for the gravest crimes, remains in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms.

In spite of this, there are number of factors that indicate towards the tendency of gradually abolishing life imprisonment as a sentence, as it was in case of gradual abolishment of the death penalty in the European region. In a number of states, both in Europe and in the rest of the world, life imprisonment has either been abolished or gradually revoked against persons

23 Available at:
<https://idsdge.files.wordpress.com/2018/06/e183a1e18390e183a1e183afe18394e1839ae18390e183a6e183a1e183a0e183a3e1839ae18394e18391e18398e183a1-e18393e18390e183ace18394e183a1e18394.pdf>

24 Available at:
<http://edu.gba.ge/wp-content/uploads/2015/06/Non-Discrimination-guidelines-Geo.pdf>.

of different categories. In such cases, governments are guided by the principles of justice and humanity.

The Georgian legislation provides for the exemption of categories of persons from life sentence according to their age. However, women can be sentenced to life imprisonment.

In the case of *Khamtokhu and Aksenchik v. Russia*, the Court concluded that the Russian legislation, which exempts women from the penalty of life imprisonment, reflects the evolution of the society in the penitentiary field. On the basis of the European and universal acts and the statistical data submitted by the Russian authorities, which showed a significant difference between the total number of women and male convicts, the European Court of Human Rights (ECtHR) concluded that there was a public interest, which justified the abolition of the sentence for women.

The Court states that, although it is possible that in order to facilitate the principles of justice and humanity, the state can exempt all categories of prisoners from life imprisonment, but this is not required by the Convention. However, in the opinion of the Court, the exemption of persons from life imprisonment depending on age and sex shows social progress in the penitentiary field.

Given how small the number of female life-term prisoners is in Georgia compared to the total amount of convicts, there is the public interest that women should be exempt from life sentencing, just like in Russia, based on the judgment of the Grand Chamber of the European Court of Human Rights.

RECOMMENDATION

Based on the above, it is recommended that the Government of Georgia conducts relevant research and consultations to determine whether it is appropriate to initially abolish the sentence of life imprisonment for women offenders and later to abolish this punishment altogether.

1.2 Life-Term and High-Risk Convicts in the Georgian Penitentiary System

The process of adequate provision of prisoners' rights in the penitentiary system of Georgia is somewhat hindered by the fact that the deprivation of liberty is still considered as just punishment or the provision of public safety through the isolation of the person from the outside world, and less attention is given to the development of re-socialization-rehabilitation concept. A clear example of this is the formalistic attitude towards the risk assessment and individual sentence planning system, which, as revealed in the course of the research, is reflected on the incomplete and incorrect production of statistics as well.

It is important for the penitentiary system leaders to understand that the risk assessment is not a single activity but a dynamic process, which, in addition to providing security and order, has another purpose of no less importance. It is an instrument of in-depth analyses of each prisoner's personality and behaviour, the proper use of which will have the greatest influence on the whole process of serving a sentence.

It is important to regularly analyse the risk assessment and re-evaluation tendencies and to evaluate the dynamics and reasons, as well as the influence of internal and external factors, on the transition of convicts from one risk category to another. Such analysis, on the one hand, will show the efficiency of the evaluation process with respect to its goals and purpose, and on the other hand, clearly demonstrate the results of the work carried out by the penitentiary service.

2. REHABILITATION AND SOCIAL REINTEGRATION OF CONVICTS

The regime of serving the sentence for the life-term and special risk convicts is far from international standards. Insufficient provision of certain rights, including prisoners' rehabilitation, educational and employment programs are still due to security and order purposes, while according to international standards and best practices, security measures are the most effective in the establishments, where a large part of the offenders' time is spent in meaningful and interesting activities, since in this case, the convicts feel less isolated from the society and therefore, have less desire to violate the law or cause disorder.

The sporadic nature of rehabilitation measures and their nonuniform distribution between the establishments has shown that the penitentiary system has no preliminarily defined plan of rehabilitation measures, which would be tailored to specific and real needs of convicts. And the types and consistency of the programs entirely depend on private initiatives.

The introduction of the individual sentence planning methodology to the penitentiary system of Georgia is undoubtedly noteworthy. However, the process has big flaws: a) As of September 2018, individual sentence planning covered only a small part of the convicts - 894 convicts (10.7% of the total prison population); b) Convicts do not take any part in the plan elaboration process, which is not in compliance with international standards.

RECOMMENDATION

The penitentiary system of Georgia should put much more effort in carrying out the necessary measures for re-socialization of convicts systematically and consistently. One of the essential means of re-socialization is that the daily lives of prisoners are loaded with a variety of activities that the prison administration offers in accordance with prisoners' own wishes and needs.

For the above-mentioned purposes, proactive efforts should be made to establish and deepen relations with the private sector in order to ensure that as many prisoners have access to educational and professional programs, as well as the employment opportunities, as possible.

The involvement of convicts in determining their needs, as well as at the stage of development of the action plan, is crucial, as this will lead to a more active involvement in the implementation of these activities. Consequently, it is desirable that the individual sentence planning methodology is reviewed in the nearest future, so that it is in compliance with the recommendations of the Committee of Ministers of the Council of Europe, and on the other hand, the process covers the full prison population as soon as possible, as provided by the order №33.

3. NON-DISCRIMINATION

3.1 Assessment by Monitoring Mechanisms of Discriminatory Treatment towards High-Risk Convicts

The Committee for the Prevention of Torture considers the penitentiary system of Georgia to be among the members of the Council of Europe, which are distinguished with a particularly strict policy towards persons deprived of their liberty.

Interference with the rights to personal and family life and the correspondence of the convicts is obviously for legitimate aims, which are the protection of the public order and the prevention of disorder and crime.

However, establishing a different and stricter regime of the contact with the outside world for the convicts placed in closed-type or special risk penitentiary establishments, solely based on their status, cannot have a reasonable justification under international law.

RECOMMENDATION

Prisoners placed in the special risk penitentiary establishments shall be entitled to the same number of visits and telephone calls as prisoners placed in other types of establishments. Short-term visits or the number of telephone calls must be restricted only when such communication is related to the crime. Also, it is important that persons sentenced to life are able to communicate with family members and friends through correspondence and visits with regular intervals, under appropriate supervision.

3.2 Direct Discrimination in the Name of Positive Discrimination

According to the ECtHR's *mutatis mutandis* discussions in the case of *Konstantin Markin v Russia*, not envisaging family visits for the convicts placed in closed-type and special risk establishments, including life-term prisoners, in the legislation, in contrast to women, is based on gender stereotypes and constitutes discrimination on gender grounds.

Legislative provision of different and more favourable treatment for women cannot be justified by positive discrimination. The different treatment imposed on women in relation to the contact with the family is clearly not directed to resolving the oppressed condition of women in the society or the “actual inequality” between men and women. Such distinction is based on gender stereotypes, while modern society is gradually evolving between women and men, for example, in relation to equally dividing the responsibilities towards the children.

RECOMMENDATION

It is recommended to envisage the right to family visits for the male convicts placed in the closed-type and high-risk penitentiary establishments, including the persons with life sentence.

3.3 Indirect Discrimination

In practice, infrastructural arrangements are only rarely considered for people with disabilities, which are placed in closed-type and special risk penitentiary establishments.

By the fact that the penitentiary system does not provide appropriate infrastructure in penitentiary establishments to satisfy the specific needs of persons with disabilities, such convicts suffer indirect discrimination because of their disabilities. Besides, when the “attitudinal and environmental barriers” are not eliminated and when there are not enough measures provided to protect the personal integrity and autonomy of the convicts, the restriction of individual mobility and lack of reasonable accommodation may have a dehumanizing effect, in case of long-term imprisonment, and may amount to violation of article 3 of the European Convention on Human Rights.

RECOMMENDATION

Infrastructural adaptation of all penitentiary establishments is necessary for the needs of persons with disabilities to eliminate “attitudinal and environmental barriers”, to prevent the restriction of individual mobility, ensure the autonomy and personal integrity of the convict and reasonable accommodation.

3.4 Constant Surveillance

Part 2 of article 12¹ of the Imprisonment Code envisages routine electronic surveillance and control of the convicted person placed in the special risk penitentiary establishment. This provision contradicts the standard set by the Committee of Ministers of the Council of Europe and the Committee for the Prevention of Torture, which state that it is unallowable for the technical means, which in this case are the means of static security to replace the dynamic security and be used routinely.

Carrying out the routine surveillance through electronic means violates the principles of necessity and proportionality, because the measure is used blankly, without any assessment. It is carried out only on the grounds that a person is placed at the special risk penitentiary establishment and in a way that no assessments are done on reasonability of electronic surveillance when determining the risk.

The basis for electronic surveillance is the norm of the law and, therefore, communicating to the convict for the effective protection of their rights would be senseless and only formalistic.

RECOMMENDATION

To eliminate routine surveillance and control by electronic means in a special risk penitentiary establishment.

4. ISOLATION OF CONVICTS

The Georgian legislation and the practice of the penitentiary system in regards to regime for the special risk prisoners is not in compliance with international standards.

In relation to persons sentenced to life imprisonment, Georgian legislation is practically analogous to the Bulgarian one, about which the European Court of Human Rights discussed in the case *Harachiev and Tolumov v Bulgaria*. The Code clearly states that a life-term prisoner should be placed in a closed-type establishment, where he spends the whole day in a cell and, in many cases, alone. This blueprint restriction, without the prospect of any appeal or improvement and the consideration of risks and threats from a particular convict and regardless their personality and behaviour, can be considered as inhuman and degrading treatment.

The only possible change of the regime, in case of life-term convicts, is making it stricter - some of the convicts can be placed in a special risk establishment as a result of risk assessment.

It is impossible to justify legislative or practical restrictions on all the prisoners at the closed-type or special risk establishments with a legitimate purpose and this purpose to be proportionate.

Based on the above, it can be said that the law and practice of Georgia about unconditional and solely status-based isolation of life-term or high-risk convicts from other convicts or the restriction of contact with the outside world for them, does not comply with international standards, is in violation of the requirements in article 8 of the European Convention on Human Rights and Fundamental Freedoms and, in some cases, may violate article 3 of the same Convention in conjunction with the non-discrimination principle.

RECOMMENDATION

Clearly and unambiguously define the cases of isolation of convicts, including those with life sentence, as well as the possibilities of restriction of rights, in the Georgian legislation.

According to the legislation, the relevant agency/body shall be assigned in each individual case to justify, through specific criteria, what legitimate aim does the isolation of the particular convict serve and why this aim cannot be achieved by using other measures.

5. REGIME AND LIVING CONDITIONS OF LIFE-TERM AND HIGH-RISK CONVICTS

The regime of serving the sentence of life-term and high-risk prisoners in Georgia is far from international standards. Even the right to walk for an hour, which these convicts are entitled to by law, is virtually lacking the sense in the situation where the walking space does not allow for any possibility for leisure, exercise or communication with other people.

Considering that the special risk convicts are restricted to have contact with the outside world and the law prohibits them from communicating with other convicts as well (except the cellmates), it becomes clear that they are in isolation for a long period of time, which is in contradiction with international standards and, in some cases, can be considered as ill-treatment.

The sporadic nature of rehabilitation measures and their nonuniform distribution between the establishments has shown that the penitentiary system has no preliminarily defined plan of rehabilitation measures, which would be tailored to specific and real needs of convicts. And the types and consistency of the programs entirely depend on private initiatives.

RECOMMENDATION

Infrastructures of all establishments should be arranged in the way so that during the everyday walks the convicts are able to exercise and engage in various sports.

The prison administration should make special effort in organizing or promoting group recreational and sports activities, for which the funds, equipment and base should be allocated.

By ensuring security requirements are met, life-term and special risk convicts should be allowed to communicate with each other and/or other convicts, both when being on fresh air and during recreational and sports activities.

6. INSPECTION/SEARCH OF CONVICTS

In regards to international standards, it is not only the Georgian legislation on the searches of convicts, which is problematic, but also the decision of the Constitutional Court of Georgia on 26 July 2018 in the case of *Nana Parchukashvili, the citizen of Georgia v. the Minister of Corrections*.

The provision of the Georgian law and practice regarding routine nature of full searches of convicts without individual risk assessments and specific reasons, while they are already subject to numerous security measures, including the regular partial inspections, and are placed in a protected and controlled environment, is not in compliance with international standards.

According to CPT standards the person should not be required to fully undress. This standard is not observed in Georgia.

The procedure of inspecting the belongings of convicts prescribed by the statutes is also problematic because it allows the convict's belongings to be checked without his/her attendance and without specific factual conditions and reasons.

In spite of the above-mentioned judgment of the Constitutional Court, which stated that the director's discretion to order full personal search was in violation of articles 17 and 20 of the Constitution, such norms continue to be in force in all statutes of closed-type and high-risk establishments (except for women's establishment, which the complaint was connected to).

RECOMMENDATION

The relevant orders of the Minister of Corrections of Georgia shall be amended to:

- Eliminate the full personal searches to be carried out in connection with certain abstract situations or to have a routine nature. The basis for conducting the mentioned search in each case shall be the reasonable doubt or information about the specific convict to be hiding specific illegal objects in the body cavities. In each such case there should be an obligation for the responsible person to issue a substantiated act in which there are specific reasons and grounds for the implementation of the measure;
- Conduct the full personal search procedure in the manner to ensure that the convict does not have to fully undress;
- Ensure the attendance of the convicts at the inspection of their belongings, except in cases when such is against the interests of the investigation or poses a specific and serious threat to the employees.

7. ELECTRONIC SURVEILLANCE

7.1 Term of Electronic Surveillance

The difference between the two-week maximum term, acceptable for the European Court of Human Rights, and the 3-month maximum term, provided for by the Georgian legislation, is obvious. Besides, it is not determined how much time should pass after the 3-months maximum period expires to restart the electronic surveillance.

RECOMMENDATION

In accordance with international standards, it is desirable to set the maximum term for surveillance at 2-weeks, with the possibility of extension of the term.

7.2 Justification of Surveillance Decision

The participation of the multidisciplinary group in the assessment of the necessity of using the surveillance measure would increase the standard of reasoning and justifying the decision of the prison director.

RECOMMENDATION

It is desirable to include the rule through the order saying that the director of the establishment should consult with a multidisciplinary group prior to assigning the surveillance measure in each specific case. This will increase the quality of reasoning and legitimacy of the decision made by the director. It is also desirable that the issue of surveillance is generally integrated into the risk assessment process of the prisoner done by the multidisciplinary group.

7.3 24-Hour Video Surveillance of the Cell, Including the Toilet

The procedure set by the order does not specify what is meant by visual supervision and what is meant by electronic surveillance; There is no distinction made between when visual surveillance is carried out and when – electronic surveillance. Both measures have the same grounds as provided in article 2 of the relevant approved order.

Unlike the response, received from the Special Penitentiary Service, and the Rule, approved by Order No. 35, the Imprisonment Code separates the audio and video surveillance and control from electronic surveillance and is subject to separate regulations in the legislation. Similarly, according to the statutes of penitentiary establishments, surveillance and control by audio equipment is permissible only if provided by the Georgian legislation. However, which normative act envisages the use of audio surveillance and control, is not revealed either through relevant acts or the correspondence received from the Special Penitentiary Service.

Paragraph 1 of article 3 of the Rule approved by the Order provides an incomplete list of the criteria that should be taken into account when restricting the right to privacy of a prisoner. Based on the general practice of the European Court of Human Rights and the CPT's general approach, these criteria include the following - lawfulness, necessity, proportionality, accountability and non-discrimination - and their full reflection either in general provisions or in paragraph 1 of article 3 is desirable.

RECOMMENDATION

It is desirable for the legislation to clearly explain and define visual and electronic surveillance; to clearly separate the grounds, namely when the less interfering measure - visual surveillance – is used and when it is necessary to carry out electronic surveillance; to explain whether electronic surveillance necessarily means control through audio equipment or considers the grounds of using audio equipment; to fully consider the criteria for the use of 24-hour surveillance measure (lawfulness, necessity, proportionality, accountability and non-discrimination) and the obligation to pixelate relevant areas to ensure the right to privacy of the prisoner is fully provided.

7.4 Placing More than One Convict in the Cell under Electronic Surveillance

By subjecting more than one prisoner under electronic surveillance, the administration is aware that both accused/convicted persons are prone to violent behaviour, as these are the grounds for their surveillance. Of course, the placement of these two persons together cannot be considered as the appropriate measure, which should prevent harm imposed by one onto another. The same reasoning applies when only one of the prisoners is prone to violent behaviour.

Also, in case one person is a threat to himself/herself, and the surveillance is conducted for this reason, placing another person with him/her, even just for legitimate interests of the first prisoner, is an excessive burden for the second one, because it is not his/her duty to protect the legal interests of other prisoners. The latter is the duty of the administration, which should not be implemented on the expense of restricting the prisoner's rights.

RECOMMENDATION

It is desirable that article 7 of the Rule approved by the Order incorporates the obligation to assess the risks, which may accompany the placement of more than one prisoner in the cell where electronic surveillance is carried out, and to prohibit placing more than one prisoner together when there is real and direct threat to an individual's life or health.

7.5 Informing about Surveillance

If a person does not know that a surveillance or an audio-video recording is performed against him, as provided in paragraph 2 of article 4 of the Rule approved by the Order, s/he will be deprived of the right to appeal the decision of using the measure interfering with his/her right. This generates suspicions about the extent to which the act of interfering in the right to privacy of the accused/convicted person is in line with the principle of the rule of law, as required by the practice of the European Court of Human Rights.

According to paragraph 2 of article 1 of the order the electronic surveillance “cannot mean secret surveillance or eavesdropping”. Therefore, it is illogical not to inform the accused/convicted person on the use of surveillance towards him. The fact that the informing is not mandatory can hinder reaching the very legitimate aim for interference with the right to privacy in the sense that when a person knows that his/her supervision is being undertaken, s/he will change his/her behaviour and, secondly, not informing the person takes away the constitutional right to appeal the legitimacy of the interference with his/her right, guaranteed by the Convention, to the Court.

If there is a special reason, which despite of the above discussed reasoning still justifies for the person not to be informed about the surveillance, it is necessary to ensure that at least the post-factum notice is provided.

In the event when the data subject is not informed about the automatic collection of data, this deprives him/her the right to carry out the rights guaranteed by chapter 4 of the Law of Georgia on Personal Data Protection (the right of data subjects to request information; the right of data subjects to request for correction, update, addition, blocking, deletion and destruction of data; withdrawal of consent; the right to appeal), which have been included in the Law in line with the standards of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

RECOMMENDATION

It may be that the formulation of paragraph 2 of article 4 of the Rule may contribute to the arbitrariness in the way that it excludes the realization of the right to appeal to the Court and, therefore, it is desirable to change or remove it.

7.6 Term for Saving the Video Recording

A 120-hour term envisaged by the Georgian legislation for keeping the video recording is also problematic in connection with international standards on the prevention of ill-treatment.

RECOMMENDATION

It is recommended that the draft Order takes into consideration the recommendation given by the Public Defender of Georgia on increasing the term of keeping records for at least 10 days and the recommendation of the Committee for the Prevention of Torture on keeping the recorded materials, in exceptional cases, for an indefinite term.

7.7 Night Surveillance

The order does not envisage the details of the surveillance during the night. The surveillance is in compliance with CPT standards if the infrared surveillance camera is installed to avoid strong lighting during the night.

According to the information received from the Georgian Special Penitentiary Service, cameras installed in the cells have the night vision function. Consequently, this aspect of the surveillance practice is consistent with the international standard, however, the legislation does not specify that the cameras installed in cells must have an integrated night vision function.

RECOMMENDATION

It is recommended to ensure that the obligation to technically ensure the night vision is of a normative nature.

7.8 Appealing Surveillance and Personnel Training

It is desirable that the Rule approved by the Order envisages the right to appeal the electronic surveillance to a court and the necessity of the protection of the right to privacy, including data protection, as well as the need for training personnel on communications and technical matters.

7.9 Independent Inspection

Regular governmental inspection of the agencies responsible for electronic surveillance is of fundamental importance to ensure independent monitoring.

7.10 Technical Specifications

The technical specifications must be determined according to which the system of surveillance should be selected and installed. This may have a principal importance for the usefulness and legitimacy of surveillance.

RECOMMENDATION

It is recommended that either the Rule approved by the Order or the additional act determines the technical specifications of electronic surveillance, which would minimize the alteration of the video recordings and maximize the implementation of the aims set by electronic surveillance.

The complete version of the research study can be found at www.penalreform.org.

