



ევროკავშირი
საქართველოსთვის
The European Union for Georgia



ინიციატივა მონაცვლადი ჯგუფების
რეაბილიტაციისათვის
Rehabilitation initiative for
vulnerable groups



CLASSIFICATION OF CONVICTED PERSONS, RISK ASSESSMENT

DESK RESEARCH





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წინამდებარე სამაგიდო კვლევა მოამზადა ორგანიზაციამ „ინიციატივა მონწყვლადი ჯგუფების რეაბილიტაციისათვის“ (ავტორი: ბაქარ მეტრეველი). კვლევა ჩატარდა ევროკავშირის ფინანსური მხარდაჭერით, „ციხის საერთაშორისო რეფორმის სამხრეთ კავკასიის ოფისის პროექტის – „სასჯელალსრულებისა და პრობაციის რეფორმების ხელშეწყობა და მონიტორინგი სამოქალაქო საზოგადოების ჩართულობით“ ფარგლებში. დოკუმენტის შინაარსზე სრულად პასუხისმგებელია ავტორი და ტექსტში გადმოცემული მოსაზრებები არცერთ ვითარებაში არ შეიძლება ჩაითვალოს დონორის, „ციხის საერთაშორისო რეფორმის“ ან მისი პარტნიორი ორგანიზაციების პოზიციის გამომხატველად.

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Introduction

The important function of the penitentiary system is the classification of prisoners by risk level in order to allocate and separate them, proper risk assessment, re-evaluation, selection of appropriate living conditions/ regime and subsequent placement, because the rights and living conditions of prisoners, on one hand, and the achievement of the purpose of punishment, on the other, greatly depend on these issues. Therefore, these issues are deemed important by international regulatory standards, as well as national legislation.

Main Findings

In the years of 2014-2017, active dynamics are noticeable, significant changes have been made, the introduced system of classification of convicts is in line with relevant international standards. But there are still some gaps.

- The involvement of a convict in the risk assessment and re-evaluation process is not guaranteed, by which the 2006 recommendation of the Committee of Ministers of the Council of Europe, on preliminary consultation with prisoners before allocation or transfer to another prison, is disregarded.¹
- The basis for the re-evaluation of the security risk of a low risk convict is determined to be the evident change in the convict's behaviour or attitude or other circumstances and/or unjustifiability of keeping the convict in the same type establishment (entered into force in April 2017).² This rule is ambiguous and includes risks of officials acting in bad faith. The clause about the unjustifiability of keeping the convict in the same type establishment is of a general nature, as there is no further explanation what circumstances were meant by the legislator and what specific circumstances or conditions constitute the fact of unjustifiability. Also, the clause about the evident change of behaviour or attitude lacks clarity. There is no explanation or specification of the circumstances that can be considered as evident changes or what is meant by behaviour or attitude and what should be considered by an executor of this norm.
- The norm (entered into force in September 2017), which establishes that, in case of evident negative change in the behaviour or the attitude of the convict or when keeping the convict in the same type of establishment is unjustifiable, the director of the establishment has the authority to temporarily, for no more than 20 days, transfer the convict to a closed type establishment for risk re-evaluation, carries the same ambiguity and risks, is of a general nature and has no further explanation.³ This rule in its form looks like an interim measure. It violates the rules of the penitentiary system about aggravating the already determined legal regime for specific purpose, as this measure is not a disciplinary punishment, special conditions of the establishment, a security measure or toughening the type of the establishment, which can be carried out only after 20 days. If we translate the circumstances described in this edition into real action, we will most likely get the basis for the use of disciplinary measure, including solitary confinement, transfer into cell-type dwellings and/or use of disciplinary detention. In addition, it is logically designed only for low-risk convicts, as convicts with other risk levels are already in a closed type establishment or under stricter regime. However, the law does not specifically indicate for which risk category of convicts it is designed for.
- Based on the information requested and received for this study, it has been revealed that the recommendations made by the Public Defender in 2015-2017 about informing the convict about the start of the risk assessment process, allowing the convict to submit additional documentation at any stage of the process, involving the main doctor of the establishment and the head of the medical department in the process and considering the health condition of the convict during the decision-making process are not acknowledged and implemented.⁴
- There are drastic changes in the system in connection with the approaches of determining the security risk of the convicts. This conclusion is made due to the evident change in the data dynamics between the categories of the semi-open and the closed type establishments. If by the end of 2014 (total number of convicted persons – 8865) there were 2451 convicts in the category of semi-open type, by the end of 2017 (total number of convicted persons – 7975) the statistical data shows 5204 convicts of the same category, while the number of convicts in the category of closed type was 6076 by the end of 2014 and 2106 by the end of 2017.

1 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (European Prison Rules), para 17.3.

2 Order No 70 of the Minister of Corrections of 9 July 2015 on approving the "Rules for Determining the Risk Types of Convicts, Risk Assessment Criteria, Risk Assessment Rules and Re-evaluation Rules, Rules and Conditions of Transferring the Convicts in the Same or Another Type of Prison, as well as the Activities and Authority of the Risk Assessment Team", art 16.2.

3 Ibid, art 14.1³; Code of Imprisonment, art 47.2².

4 A letter of the Ministry of Corrections of Georgia N MOC 8 18 00766016 of 20 August 2018, para 4.

Recommendations

- Develop and introduce the norms for the full involvement of convicts in the risk assessment and re-evaluation process;
- In order to avoid vagueness and prevent risks, annul or amend the rules set for re-evaluation of low risk convicts as a result of evident change in their behaviour, attitude or other circumstances and/or about the unjustifiability of keeping the convict in the same type establishment;
- Annul the norm, which gives the authority to the director of the establishment to transfer a convict to a closed type establishment for maximum 20 days in order to conduct risk re-evaluation;
- Implement the recommendations made by the Public Defender of Georgia in 2015-2017: to inform the convict about the initiation of the risk assessment process; to grant convicts with the right to submit additional documentation at any stage; to involve the main doctor of the establishment and head of the medical department in the process and to consider the health condition of the convict during the decision-making process.

