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Rehabilitation initiative for  
vulnerable groups



# COMPLAINTS PROCEDURE IN THE PENAL SYSTEM

## ANALYSIS OF THE POLICY DOCUMENTS

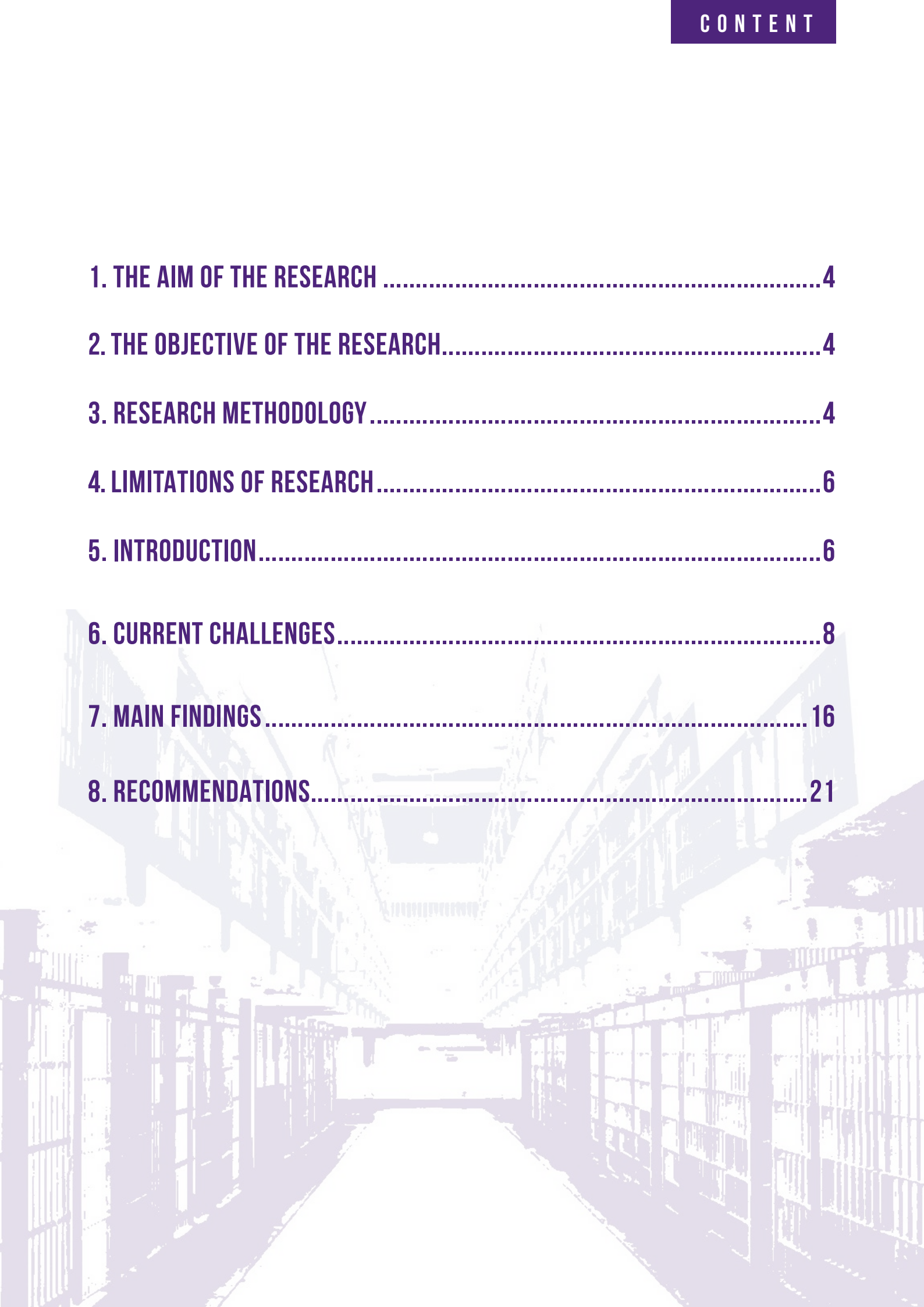
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## 1. THE AIM OF THE RESEARCH

The aim of the research is to assess the process of planning and implementing the public policy related with appeal mechanism in the penitentiary system during 2015-2018.

## 2. THE OBJECTIVE OF THE RESEARCH

Objectives of the research are:

- To assess positive and negative trends in respect with planning the implementation of public policy;
- To assess the structure of action plans and the process of developing and complying with them;
- To develop recommendations in respect with public policy planning and implementation.

## 3. RESEARCH METHODOLOGY

Obligations taken on by Georgia at the international level and the state policy documents were assessed for the research objectives, which apply to the classification of convicted individuals and assessing the risks of threat.

Obligations claimed by Georgia were assessed within the scope of the research in the association agenda of Georgia-EU (2014-2016 and 2017-2020). Besides, it was assessed what sorts of obligations were reflected in the state policy documents developed by Georgia. These documents are:

- a) National strategy of human rights of 2014-2019<sup>1</sup>;
- b) Action plans of human rights protection of 2014-2015, 2016-2017 and 2018-2020<sup>2</sup> (respective chapters);
- c) Criminal law reform strategies plans of 2015, 2016, 2017 and 2018<sup>3</sup> (penitentiary systems reform chapter);

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<sup>1</sup> “Decree of the parliament of Georgia of April 30, 2014 on approving the National Strategy of Human Rights Protection of Georgia (for 2014-2020).

<sup>2</sup> Decrees of the Government of Georgia N 445 of July 9, 2014, N 338 of July, 2016 and N 182 of April 17, 2018.

<sup>3</sup> Strategies of 2015, 2016, 2017 and 2018 of the Penal Code reform approved by the inter-agency coordination board of the criminal law reform.

- d) Criminal law reform strategies plans of 2015, 2016, 2017 and 2018<sup>4</sup> (part of the action plan of the penitentiary system reform);
- e) Strategy of 2019-2020 of development of penitentiary and crime prevention system<sup>5</sup>;
- f) 2019-2020 action plan (general assessment) of developing the penitentiary and crime prevention systems <sup>6</sup>(general assessment).

When assessing the state policy documents, main focus was made on analysing the action plans. Plans were assessed according to the following components: relevance of components of action plans; compliance with action plans and action plans structure.

## Relevance of components of action plans

Assessing the components of action plans was carried out according to the following sources: **manual research** - classification of convicted individuals and assessing threat risks in the penitentiary system; annual reports of the public defender of Georgia; research carried out by various organizations and the normative base for action.

Based on the mentioned sources, purposes, tasks and activities reflected in action plans were assessed in terms of their relevance and to what extent they responded to the existing challenges in the specific reporting period (years of 2015, 2016, 2017, and 2018).

## Complying with action plans

Assessing compliance with action plans was carried out according to the following sources: public information requested from state agencies; compliance reports of human rights protection government plans of 2014-2015 and 2016-2017<sup>7</sup>; Progress reports of the criminal law reform VII (2015), VIII (2016), IX (2017); annual reports of the public defender and active normative base.

## Structure of action plans

The structure of action plans, namely, objectives and activities (envisaging indicators and responsible agencies) will be assessed according to the so-called **S.M.A.R.T** principle, which encompasses to what extent the components were reflected in the plan - S (Specific) = specific (concrete, detailed, well defined); M (Measurable) = measurable (figures, amount); A (Achievable) = achievable (manageable); R (Realistic) = realistic (envisaging resources); T (Time-bound) = written out in time (should have a definite term for compliance, the so-called deadline). Main tendencies, positive and negative sides reflected in plans were assessed in this respect.

<sup>4</sup> Action plans 2015, 2016, 2017, and 2018 of criminal law reform approved by the inter-agency coordination board of the criminal law reform.

<sup>5</sup> Decree N 385 of February 22, 2019 of the Minister of Justice of Georgia on “Strategy of developing the penitentiary and crime prevention system and approval of the action plan of 2019-2019-2020”, Appendix N 1

<sup>6</sup> Strategy of developing the penitentiary and crime prevention system and Decree N 385 of February 22, 2019 of the Minister of Justice of Georgia on “The approval of the action plan of 2019-2019-2020”, Appendix N 2.

<sup>7</sup> Compliance reports of 2014-2015 and 2016-2017 of government action plans of human rights protection.

## 4. LIMITATIONS OF RESEARCH

In the process of carrying out the research, public information was requested from the Ministry of Justice of Georgia which concerned carrying out activities (in certain cases, tasks) reflected in state policy documents (action plans). The given information would be used as the supplementary instrument for assessing the respective points of action plans. Public information was not provided by the Ministry of Justice of Georgia due to which analysis was made according to other sources.

## 5. INTRODUCTION

Nothing has been planned so far in respect with the research question **in the Association Agenda of EU and Georgia**. However, in general, it envisaged in the directions of justice and torture and severe treatment existence of the full-scale, independent and efficient mechanisms of appeal, which ensures in-depth, transparent and independent investigation.<sup>8</sup>

**National Human Rights Strategy of Georgia<sup>9</sup>**, applies to the issues of submitting by the prisoners the requirements of the appeal and other ones at the level of the general goal and objective.

The strategy states principles of ensuring human rights which set the frameworks and create directions. Namely, these principles are:

1. Non-violation of human rights by the state;
2. Protecting human rights from being violated by other persons;
3. Establishment of the system of giving the possibility to individuals to realize their own rights;
4. Respectively informing the people about their rights.

Principles 2-4 are significant for submitting the appeal. They ensure creating the possibility on behalf of the state to submit the appeal and the obligation to respond to them respectively.

It is significant for the mechanism of appeal that the national strategy envisages establishment of the system of corrections and probation which is commensurate with international standards. To carry out the above-mentioned, it considers as one of the objectives improvement of the system of appeals and investigation to ensure its adequacy and efficiency.

Along with the above-mentioned, the strategy aims at establishing the system enabling avoidance of human torture and other forms of non-respective treatment, which will obviously not be achieved without a well-structured mechanism of appeal.

As it will be shown in the analysis of action plans, out of mentioned principles, aims and objectives, the plans will mainly reflect the aspects of the principles of informing respectively and improving the system of appeals which also include several specific objectives and measures to ensure submission of the appeal.

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<sup>8</sup> Georgia-EU association agenda (2014-2016), justice, severe treatment and torture.

<sup>9</sup> Decree of April 30, 2014 of the parliament of Georgia on approving the “National Strategy of Human Rights Protection of Georgia (2014-2020)“.

It is significant that by the national strategy, the parliament also defines the mechanism of monitoring compliance with the strategy and tasks the government of Georgia to create government human rights protection action plans of Georgia of 2014-2015 and further years to achieve the aims set by this strategy, which define specific works to be carried out for the implementation of the mentioned aims, terms of carrying them out, indicators and responsible institutions for their compliance.<sup>10</sup>

Besides, together with other significant regulations, it is underlined that the “qualitative criteria submitted by the administration of the government of Georgia to the parliament, action plan compliance assessment qualitative criteria should be based on the general and thematic reports and recommendations of the public defender of Georgia, international and non-government organizations. Opinions expressed by the mentioned subjects on the general and thematic issues of human rights protection should be envisaged both at the beginning of the reporting period and at the end.”<sup>11</sup>

**The inter-agency coordination board to carry out criminal justice reform** was created by the decree of the president of Georgia of 2008<sup>12</sup>. It is authorized to develop and implement the criminal law reform taking into consideration international standards as well as coordinate inter-agency activities in the field of criminal law. Representatives of government agencies as well as those of non-government and international organizations are included in the coordination board. The board approved the criminal law reform strategy and the action plan which is updated annually. The strategy formulated within the scope of the mentioned board does not include the specific direction of the mechanism of appeal. However, at the information level there are no indications of several already implemented changes or the planned ones.

**2015 strategy** gives information about the fact that “within the scope of the penitentiary reform, the rights of prisoners significantly improved. To be more specific, administrative dealing got simplified and the terms of discussing the appeal got reduced. 10 days are given for the appeal/application submission and increasing this term in a special case is possible only on the basis of proven decision.” **The 2016 strategy** also repeats the same.

**In the strategy of 2017 it is also indicated as a piece of information that** unlimited availability of the mechanism of appeal as the instruments of both internal and external monitoring to protect the rights of convicted individuals/the defendant. The internal mechanism got strengthened by creating the new structural division, which is responsible for systematic monitoring.<sup>13</sup> Also, according to the strategy, it is planned for the circle of people, with whom/from whom prisoners’ correspondence should be sent/received in an unlimited manner, without any checking or holding and the local board of the ministry will be added to this circle. Also, “procedures of sending the confidential appeal are being refined – the penitentiary establishment ensures confidentiality of the appeal”.<sup>14</sup>

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<sup>10</sup> *ibid*, Mechanisms of strategy compliance and its monitoring.

<sup>11</sup> *ibid*, Mechanisms of strategy compliance and its monitoring.

<sup>12</sup> Decree №591 of the president of Georgia of December 13, 2008.

<sup>13</sup> 2017 criminal system reform strategy, corrections system reform.

<sup>14</sup> 2017 strategy of the criminal law system reform, 7.1.

**2018 strategy** also gives information about unlimited availability of the mechanism of appeal and, in this respect, general essence and activities of the newly established, monitoring implementing structural unit of the ministry.<sup>15</sup>

**Development strategy of 2019-2020 of the penitentiary and crime prevention system**<sup>16</sup> does not refer to the system of appeal and, respectively, does not envisage planning any measures in this respect.

In the circumstance of such scarce strategies it is obvious that no special expectation of attaching great attention to the direction of the mechanism of appeal by the action plans is created. However, despite this, plans still envisage certain special measures.

## 6. CURRENT CHALLENGES

### Introduction

According to both international and acting national legislation, the convicted individual/the convict has the right to make a request and/or the appeal towards the penitentiary establishment to protect his/her own rights, to ensure their implementation and request from administration carrying out any action or abstain from action. The mentioned right, with the guarantees of its implementation, is actually brought to the rank of freedom and serves as the fundamental right of prisoners which, to a certain extent, balances the pressure caused by restriction of freedom/restriction. The right of the prisoner to request implementation of the action defined by the law and appeal against already implemented action or inactivity, is one of the fundamental issues in the penitentiary system. Ensuring safe and efficient availability of implementing the mentioned rights serves as the significant guarantee from the penitentiary system to respect the rights of prisoners and protect them. Respectively, well-structured and efficient functioning of the mechanism of the request and appeal is a significant indicator to assess the penitentiary system.<sup>17</sup>

National legislation regulating submitting and reviewing the demand and the appeal mainly corresponds with international standards and defines specific important rules. However, practice illustrates that regulatory norms are not sufficient for detailed organization of issues and leaves possibilities for disregarding main principles, first of all, in respect with the principles of appeal confidentiality.

As a result of monitoring and assessing the public defender, it becomes obvious that the problem of criminal sub-culture still remains within the system, which is a significant problem not only in terms of implementing the right of appeal but also proper functioning of the penitentiary system in general as well as achieving the aims of imprisonment and punishment.

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<sup>15</sup> 2017 strategy of the criminal law system reform, introduction.

<sup>16</sup> "Development strategy of the penitentiary and crime prevention system and on approving the the action plan of 2019-2020", Decree N 385 of February 22, 2019 of the Minister of Justice of Georgia, appendix N 1.

<sup>17</sup> Code of Georgia on Imprisonment, chapter - XVI; Minimal standard rules of UN on treating prisoners (rules of Nelson Mandela); UN rules on protecting the underage individuals with restricted freedom (Havana Rules); Recommendation of the Minister's Committee of the Council of Europe REC (2006)2 related with the European rules of prison towards member states (European rules of prison); recommendation of the committee of ministers of the Council of Europe CM/Rec(2008)11 on European rules for under-age law violators submitted to sanctions or measures.



It becomes clear on the basis of the information requested for the given survey that the administration of the establishment informs prisoners in writing about the procedures of the right to appeal, submitting and reviewing it as well as the free legal advice and the services of the interpreter only at the time of being housed in the establishment by the rule of one-off familiarization and placing the publications at the library of the establishment about the rights of prisoners.<sup>18</sup> This implies that the international obligation on placing/putting up prisoners at the prominent place does not get fulfilled.<sup>19</sup>

Despite the requirement of the code of imprisonment, the form of the appeal is not approved. Also, neither the form of the confidential appeal envelope is approved by any act.<sup>20</sup>

In respect with safe implementation of submitting the request and the appeal, the normative base and practice of confidentiality of the request and the appeal is unsafe and problematic.<sup>21</sup>

Existence of official statistical data is the most significant issue. There are no official data in the public space about the amount of requests and appeals (the information about the amount is given in the desk survey), content, procedural details (including, timely fulfillment of procedures, keeping confidentiality, demand of the attorney and the legislative representative and meeting/not meeting them, requesting other legislative consultation, satisfactory or non-satisfactory decisions, verification of obtained decisions, further appeal in the superior or other establishments and other ones which is a clear basis for detailed study and analysis of various key issues and making respective conclusions, improving the normative base and practice. The mentioned condition was caused by taking out from the code of imprisonment the obligation of the department which envisaged discussing and analyzing the demands and appeals together once in 6 months, preparing a respective report and submitting it to the manager.<sup>22</sup>

The public defender of Georgia actively discusses the existing challenges about submitting the demand and the appeal in the survey period.

**In 2014 annual report the public defender** reviews the issues of the demand and appeal of defendants/convicted individuals, intensity of use, attitude of prisoners towards the essence of their use, informing them.

In the opinion of the public defender, non-respective response to appeals by the establishment is obvious.<sup>23</sup> The same opinion is developed when reviewing the issues of security and non-adequate reaction to demands and appeals is regarded as “one of the reasons leading to “non-favorably disposed”, “conflicting” and “tense” relations between prisoners and employees of the establishment.<sup>24</sup>

The public defender positively notes that the Ministry of Probation and Corrections developed the draft decree about assessing and reassessing the risks of the convicted individuals and in

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<sup>18</sup> Desk survey – the mechanism of appeal in the penitentiary system, basic findings.

<sup>19</sup> UN minimal standard rules of treating prisoners (Nelson Mandela Rules) - Rule 55.3.

<sup>20</sup> Desk survey – mechanism of appeal at the penitentiary system, basic findings.

<sup>21</sup> Ibid. Basic findings.

<sup>22</sup> Ibid, basic findings.

<sup>23</sup> Report of the public defender of Georgia on the condition of human rights and freedoms protection in Georgia in 2014, p. 21.

<sup>24</sup> Ibid, p. 41.

case of approving them, the demand of its numerous recommendations throughout years is achieved - to ensure the decision of moving the convicted individual (defining-changing the type of punishment) with the right of appeal.<sup>25</sup>

The decision about using measure of disciplinary punishment throughout years, according to the information of the public defender was appealed against only three times. The public defender underlines the attitude of convicted/accused individuals towards the right of appeal and states that, in their opinion, appeal is not recommended.<sup>26</sup>

The public defender indicates at the example of the penitentiary establishment of underage individuals that the convicted individuals are not provided respectively with the information about the rights of request and appeal and procedures of carrying them out. As a result, he uses the example of non-existence of the fact of appeal against disciplinary measure in the same establishment throughout the year.<sup>27</sup>

The public defender indicates to interesting statistics: the amount of correspondence sent throughout the year from all corrections establishments by means of complaint boxes equals 3 135 units out of which 97% is sent only from 2 establishments (50%-from establishment N17 and 47%- from N15 establishment).<sup>28</sup>

The public defender report does not contain information about realistic implementation of procedures of submitting demands and appeals about realistic implementation or results of submission procedures of requests and appeals.

The public defender does not issue recommendations and proposals on the basis of 2014 annual report on the requirements of the public defender and the appeal, unless we consider the recommendation given to the minister of corrections about ensuring confidentiality of correspondence in general.<sup>29</sup>

**The 2015 annual report of the public defender includes** a separate chapter to the request and mechanism of appeal, which indicates giving high importance to the issue on his behalf.<sup>30</sup>

The public defender indicates the special sociological survey carried out in 14 penitentiary establishments **“The mechanism of discussing demand/appeal of Georgia.**

The public defender reviews in the survey special significance of mentioned mechanism and practical problems. S/he states that during the survey regulatory normative base was analyzed in respect with international standards, interviews were provided with the representatives of administration of the establishment and content analysis was carried out on the basis of random selection of registered demands and appeals. It mentions low efficiency of the mechanism and states that impressions of prisoners exceed the realistic level of being informed as well as the fact that timely response to demands and appeals is not provided, prisoners do not give respective reaction to the mechanism of having the mentioned right and mechanisms of implementation,

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<sup>25</sup> Ibid, p. 47.

<sup>26</sup> Ibid, p. 79.

<sup>27</sup> Ibid, p. 130

<sup>28</sup> იქვე, გვ. 150.

<sup>29</sup> Ibid, p. 150-151.

<sup>30</sup> Report of the public defender of Georgia on the condition of protecting human rights and freedoms in Georgia in 2015, p. 156.

the list of rights is not provided and they do not have the mentioned written information/documentation in cells. Positively notes availability of financial needs necessary for submitting the request and the appeal and readiness of administrations (establishment, department, ministry) for envisaging and improving some problematic issues.<sup>31</sup>

The public defender especially emphasizes and reviews widely the problems of the mechanism of submitting confidential appeals. S/he states that in reality the mentioned mechanism does not work; s/he indicates that every third prisoner did not receive (as being informed by prisoners) the registration number; in the majority of cases, confidentiality is not maintained when giving appeal numbers and envelopes. Numbers are provided to prisoners in cells whereas identities are noted down at the time of handing the envelopes. In this respect, there is a reported indication to an even more severe condition in closed types of establishments since use of the box of complaints by the prisoners here is impossible without the accompanying person. Also, in a number of establishments the box of appeals falls within the scope of surveillance cameras and breach of confidentiality is observed when assistance is provided by the social worker upon drawing up the complaint in the cell with attendance of the security employee.<sup>32</sup>

The public defender states that the box of appeals gets into the focus of surveillance video cameras in establishments N6, N7, N8, N9, N18. However, he also defined that the Ministry of Corrections and Probation acknowledges only the violation of N9 penitentiary establishments and expresses readiness to improve the situation in this establishment.<sup>33</sup>

The public defender also indicates the practice of giving the addressee correspondence from the office in open state as well as general analysis of demand/appeals by the penitentiary system and preparation of the general report and considers that the mentioned analysis will enable assessment of reasons leading to dissatisfaction in establishments.<sup>34</sup> S/he indicates that, practically, no timely response to demand/appeal is made and neither the complainants are informed about extension of the term. Provision of only the interim response is made in a timely manner which involves the remand/appeal about receiving by the addressee. Negatively assesses the failure of the medical department of the ministry and general inspectorate to define with a normative base the terms of reviewing the appeal.<sup>35</sup>

The public defender focuses on the attitude of prisoners themselves towards submitting requests/appeals. S/he indicates that in frequent cases abstaining of the representatives of administration is mainly reported due to the pressure. However, sometimes even prosecutors, investigator or other prisoners are involved too. Also, self-censorship is reported since prisoners consider that appealing against anything will lead to deterioration and complication of their condition.<sup>36</sup>

The public defender reviews the decisions made about demand/appeals and states that substantial problems exist in this respect as well since the refusal is not substantiated; the issue

<sup>31</sup> Ibid, p. 156-157.

<sup>32</sup> Ibid, p. 157-158.

<sup>33</sup> Ibid, p. 158.

<sup>34</sup> Ibid, p. 159.

<sup>35</sup> Ibid, p. 160.

<sup>36</sup> Ibid, p. 160.

is not studied fully, no additional evidence is obtained and envisages; decisions are based on mainly positions of the representatives of the administration.<sup>37</sup>

The public defender summarizes confidential and non-confidential responses of addresses to demand/appeals and compares their amounts. It gets obvious that there is a substantial difference. Responses of addresses to confidential appeals amount to 37% whereas for open ones it is 52%. Besides, it is indicated that the administration does not leave solutions to the prisoners in the cell, which prevents them from realizing decisions while studying them and carrying out the right of appeal.<sup>38</sup>

**Eventually, the public defender submits to the Ministry of Corrections and Probation 36 recommendations, 5 proposals to the parliament of Georgia and one to the chief procuracy of Georgia.**<sup>39</sup>

### **Annual report of 2016 of the public defender of Georgia**

The defender indicates that in 2016 only 43 orders about imposing disciplinary measure by the prisoners were appealed against in the court whereas in the penitentiary establishments overall 4838 disciplinary measures were used against prisoners (in 2015 prisoners appealed against 38 orders in court).

„Out of 43 cases given above: in 7 ones the suit was partially satisfied and in 4 ones – fully. In 9 cases the suits of prisoners were not satisfied. In 7 ones the court left the suit not discussed, in 2 cases the prisoners were refused to get the suit due to not filling in the gap in the fault, in 4 cases the whole process was seized, in 3 cases the results is unknown whereas review of 7 suits is still in progress in court. So, based on the above-said, it can be stated that although compared with the previous year, the practice of appealing against disciplinary punishments slightly increased but the prisoners rarely appeal against the order of imposing disciplinary punishment. This may be due to a number of factors, including, lack of information about one’s own rights”.

Specifically, in respect with the **mechanism of reviewing the demand/appeal**<sup>40</sup>, the public defender underlines recommendations given by him/her to the Ministry of Corrections and Probation by the annual report of 2015 and states that majority of them is impossible to follow. The recommendation issued in respect with informing prisoners is partially complied with. However, there are some unsolved problems as well.

The public defender indicates that the following is still unsettled within the system:

- Handing to prisoners documentary information, including, in the form of normative acts. It is stated that in a number of cases, prisoners request the office of the public defender to provide normative acts of prisoners;<sup>41</sup>
- Increasing the role of the social worker. It states that their role should increase in terms of informing the prisoners, providing them with respective consultation and support;<sup>42</sup>

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<sup>37</sup> Ibid, p. 160.

<sup>38</sup> Ibid, p. 161-162.

<sup>39</sup> The mentioned proposals and recommendations will be given in an unchanged manner in the part of analysis of plans.

<sup>40</sup> Report of the public defender of Georgia on the condition of protecting human rights and freedoms in Georgia in 2016. p. 158.

<sup>41</sup> Ibid, p. 159 – 160.

<sup>42</sup> Ibid, p. 160.

- The issue of receiving in a timely manner the number of requests/appeal registration. It states that in some establishments the prisoner is requested to write a separate request to receive the above-mentioned; <sup>43</sup>
- The issue of free access to the envelopes of the confidential appeal;<sup>44</sup>
- The issue of keeping confidentiality during carrying out submission of the confidential appeal;<sup>45</sup>
- The issue of inability to use respectively the box of appeals in the closed establishment;<sup>46</sup>
- The issue of defining the term of solving the medical type of appeals/applications;<sup>47</sup>
- The issue of not defining the term of reviewing the appeal by the general inspectorate of the Ministry of Corrections and Probation;<sup>48</sup>

The public defender also notes that there are problems as well in respect with verification of handing the request/complaint by prisoners to the representatives of the establishment and requires creation of the document verifying the mentioned fact.<sup>49</sup>

At the background of the above-mentioned issue, the public defender again issues numerous recommendations and proposals, including, repeating 11 recommendations defined by the report of 2015 and additionally gives out 5 recommendations and 2 proposals,<sup>50</sup> which will be discussed below.

### **Annual reports of 2017 and 2018 of the public defender**

Nothing is stated in annual reports of the public defender of 2017 and 2018 about the issues of demands and appeals of convicted and guilty individuals. The condition of complying or not complying with the recommendations and proposals issued by the previous report is not assessed.

### **Legislation changes in 2014-2017 look as follows:**

**On November 2, 2015** the decree N 517 of the minister of corrections and probation on “Carrying out the Right of Convicted/Accused Individuals to meet with the defender/lawyer” was approved, which does not directly envisage any stipulations regarding the mechanisms of demand/appeal and only generally organizes the technical side of carrying out the meeting. However, it defines an interesting rule, which envisages meeting only one prisoner under defense upon entering the establishment of the defender/attorney if prisoners under various defenses do not take part on one and the same criminal law case.<sup>51</sup>

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<sup>43</sup> Ibid, p. 162.

<sup>44</sup> Ibid, p. 162.

<sup>45</sup> Ibid, p. 163 – 164.

<sup>46</sup> Ibid, p. 163 – 164.

<sup>47</sup> Ibid, p. 164.

<sup>48</sup> Ibid, p. 164.

<sup>49</sup> Ibid, p. 162.

<sup>50</sup> Ibid, p. 164 – 166.

<sup>51</sup> Decree N 157 of the Minister of Corrections and Probation on “Using the Right of Convicted and Accused Individuals to Meet with the Defender/Attorney”, Articles 5-6.

**On July 1, 2015:**

- Receiving any such right which is the authority of the penitentiary administration to grant, became the basis for the demand. Before this reading, the request could be made only on the issues belonging to discretionary authority of the penitentiary administration, granting the defendant/convict rights; <sup>52</sup>
- The norm was abolished which set that the reply given to the request was not subject to appeal;<sup>53</sup>
- The term of submitting the appeal from revealing the basis got reduced and was defined by the period of one month instead of three ones which was used before.<sup>54</sup>
- Changes were made in the addressee of the appeal. The minister of corrections and probation was defined as the receiver of appeal referral for the actions of the chairman of the penitentiary department;<sup>55</sup>
- The stipulation about the inability of the person under the immediate subordination of the one implementing the appealed action in the appeal of the complaint and only about the possibility of participation of the superior was cancelled. With the present reading it is prohibited to make sure that only the person committing the action takes part; <sup>56</sup>
- It was determined that the appeal should be submitted only in the manner defined by the minister instead of the letter or any filled-in form; <sup>57</sup>
- It was determined to open, close and seal the box of complaints at the end of every day instead of the end of the working day;<sup>58</sup>
- The social worker of the establishment of complaints registration and record-keeping ensures registration and stock-taking of appeal. According to the old version, it was the social department whereas the social worker was responsible for recording;<sup>59</sup>
- In special instances, extending the term of reviewing the complaint was possible with only 10 working days instead of one month; <sup>60</sup>
- The obligation of the penitentiary department which envisaged common review of requests and appeals as well as their analysis, preparation of a respective report and submitting it to the head and the minister at least once in six months was abolished. It is obvious that the mentioned stipulation served as the basis for statistics about the demand/appeal.

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<sup>52</sup> Code of Imprisonment of Georgia, Article 95.1.

<sup>53</sup> Ibid, Article 95.6.

<sup>54</sup> Ibid, Article 96.1.

<sup>55</sup> Ibid, Article 98.2.

<sup>56</sup> Ibid, present version Article 98.4, Old version, Article 98.2.

<sup>57</sup> Ibid, Article 99.3.

<sup>58</sup> Ibid, Article 100.4-5.

<sup>59</sup> Ibid, Article 100.7.

<sup>60</sup> Ibid, Article 103.1.

**On June 1, 2017:**

- Receiving any right which is granted under the authority of the penitentiary establishment became the basis for the request. Before this publication, the demand could have been made only about the issues related with the discretionary authority of penitentiary administration, on granting the rights to the defendant/convicted individual;<sup>61</sup>
- Issues of releasing before the term expiry and moving to another establishment came out of the area of regulation of the demand;<sup>62</sup>
- Instead of 48 hours, the term of sending the appeal to the addressee was defined by not later than the coming working day. Respectively, the term was mainly reduced. However, it was possible to send the appeal received on Friday by the end of Monday; <sup>63</sup>
- Terms for receiving and destroying such a confidential appeal was defined which do not have the indication of the receiver. <sup>64</sup>

**Existing information**<sup>65</sup> proves complexity of the issues and non-existence of general approaches in practice, which is expressed in a large difference between fixed amounts among various establishments.

**For example**<sup>66</sup>:**The following was submitted to establishment N2:**

- 2014 (the amount of prisoners in December -1505) – 24334 requests and 254 appeals;
- 2015 (the amount of prisoners in December 1398) – 26251 requests and 254 appeals;
- 2016 (the amount of prisoners in December -1166) – 24733 requests and 226 appeals;
- 2017 (the amount of prisoners in December -1020) – 21957 requests and 185 appeals.

**The following was submitted to establishment N17:**

- In 2014 - (the amount of prisoners in December -1968) – 115 requests and 2 appeals;
- In 2015 (the amount of prisoners in December 1901) – 174 requests and 0 appeals;
- In 2016 (the amount of prisoners in December -1890) – 149 requests and 0 appeals;
- In 2017 (the amount of prisoners in December -1878) – 72 requests and 0 appeals.

**The following were submitted to the establishment N18:**

- In 2014 (amount of prisoners in December-77) – 44 requests and 0 appeal;
- In 2015 (amount of prisoners in December - 110) – 425 requests and 0 appeal;

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<sup>61</sup> *ibid*, Article 95.1.

<sup>62</sup> *ibid*, Article 95.5.

<sup>63</sup> *ibid*, Article 102.1.

<sup>64</sup> *ibid*, Article 104.3.

<sup>65</sup> Desk survey – the mechanisms of appeal in the penitentiary system, basic findings.

<sup>66</sup> Desk survey – the mechanisms of appeal in the penitentiary system, public statistical information.

- In 2016 (amount of prisoners in December - 90) – 1731 requests and 2 appeals;
- In 2017 (amount of prisoners in December -111) –1849 requests and 1 appeal.

## 7. MAIN FINDINGS

Overall, general directions connected with the mechanism of appeal was quite well envisaged in the national strategy, government action plans and those of the criminal law system reform. However, specific components of these directions in action plans were mainly general in content or did not set requirements of high standards towards responsible agencies. As for the strategies of the criminal law system reform, they, in fact, did not contain any significant components.

It can be stated that the national strategy and action plans were planning improvement in respect with the mechanism or appeal in terms of international standards, which in fact included analysis of regulatory norms and practice, identification of drawbacks and implementation of respective changes as well as ensuring availability of the mechanism for prisoners, appeal envelopes and raising awareness of prisoners through printing/giving out to them information brochures and providing consultation trainings.

It is important that providing with planned envelopes and raising awareness, i.e. printing/issuing brochures and posters in fact serve as obligations envisaged by the local legislation of the penitentiary administration and international standards<sup>67</sup> and envisaging them thorough plans and implementing on the basis plans did not represent at all any special necessity, especially, in the circumstances when the legislative base in the reporting period in this direction has not been improved and refined.

At the background of recommendations and proposals issued during the surveyed period, the normative base did not get improved apart from several exclusions. As for wiping out the drawbacks existing in practice, no respective information exists in the public space. It is worth noting that after 2016 there is no information either in the public defender’s reports about complying with its recommendations and proposals whereas the reports of several previous years numerously state several challenges and drawbacks existing in the system.

Provided that organizing acts defining the state policy itself and organizing planning of its implementation, i.e. national and criminal law reform strategies do not contain any defining stipulation about the mechanism of appeal, if we do not consider general records defined by the national strategy, no great expectations should have been present towards policy implementing acts, i.e. action plans. If, in general, we assess the situation, what triggered the mechanism of appeal was the public defender of Georgia and other monitoring implementing agencies rather than the state itself. Therefore, it was significant to comply with their recommendations and proposals, which almost did not get done at the normative level despite the fact that, as it was stated at the beginning, according to the national strategy, it was stipulated that qualitative criteria of assessing compliance with the action plan should have been based on general and thematic reports of the public defender of Georgia and international and non-government organizations as well as their reports and opinions expressed about general and topical issues

<sup>67</sup> Code of Imprisonment of Georgia, article 97; 99.1; 108.1; UN Minimal Standard Rules on Treating the Prisoners (Nelson Mandela rules), Rule 55.3.



of human rights protection by the mentioned subjects should have been envisaged both at the beginning of the reporting period and at the end.<sup>68</sup>

Therefore, based on the above-mentioned, it can be stated that the plans partially disregarded the national strategy.

## Government action plans of human rights protection

### Plan of 2014-2015

In general, the plan was relevant and did not reflect challenges in the system. Proper directions were reflected but in a very limited amount and not specified accordingly. Focus was made on improving legislation, in general, in respect with interational standards and with the same purpose, enhancing legislative guarantees of prisoners through printing information brochures/posters and handing them to prisoners and providing appeal envelopes to them as well as those of confidential appeals and access to appeal procedures.

In terms of compliance, all directions were partially complied with.

### Plan of 2016-2017

The government plan of these years, compared with that of the preious ones, was relatively **relevant**. New activities as well as the new objective, which, in the general aim of the previous year, specified a new objective and activity related with the mechanism of appeal. Respectively, the given plan did meet the challenges. However, according to the indicators and compliance, it was still insufficient and to a certain extent, not serious, which is made obvious by the great difference between them and the report of the public defender.

The plan again involved the component of raising awareness of prisoners which, in the part of printing the brochures, was added by consultation meetings that have been carried out in respect with compliance in the form of the training about rights. The component of information posters got taken away from the mentioned component, which did not get shown in the compliance of previous years and, presumably, administration violated international standards in this direction.<sup>69</sup> the plan also involved the component of improving availability of appeal procedures, which envisaged detection of the drawbacks of the existing mechanism and implementation of respective changes.

In terms of compliance, all directions were partially complied with.

### Plan of 2018-2020

The given plan as well is almost similar. It envisages raising awareness of prisoners through only printing brochures/handing them out and giving educational consultations and improving availability of appeal procedures through detecting drawbacks of the existing mechanism and making respective amendments.

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<sup>68</sup> Ibid, Mechanisms of complying with the strategy and its monitoring.

<sup>69</sup> UN minimal standard rules on treating prisoners (Nelson Mandela Rules ), Rule 55.3.

In general, the plan is relevant. However, indicators do not set high standard requirements and specific measurements.

In respect with compliance, it is impossible to make assessment dues to not finalizing the cycles.

### **Criminal law reform system action plans**

**In general, the criminal law reform action plans directly repeat the government action plans.**

### **2015 plan**

In respect with the mechanism of appeal, the plan was relevant in terms of directions. However, it lacked general and specific measurements. It involved the direction of changes of the general legislation/improvements, enhancing legislative guarantees of prisoners – by means of the existence of effective mechanisms of appeal, raising awareness – by means of printing brochures and handing them out and educational consultations and availability of procedures – providing with envelopes.

In respect with compliance, it can be said that the plan was partially fulfilled whereas it respect with enhancing legislative guarantees of prisoners, it is impossible to assess compliance.

### **2016 plan**

The given plan is almost the same as that of the previous year.

In terms of compliance, it can be said that it did not get fulfilled in the component of change in the legislation whereas in terms of raising awareness, it can be regarded as mostly complied with and regarding envelopes – partially complied with.

### **2017 plan**

The given plan as well served as the similar one to those of 2015 and 2016.

In terms of compliance, it was partially fulfilled in the direction of changes in the legislation and partially in terms of raising awareness and the direction of providing with envelopes may be regarded as complied with.

### **2018 plan**

The given plan was the most limited and irrelevant since it involved only the direction of awareness raising whereas the information was given on its compliance in the compliance report.

### **Ministry of Justice Penitentiary and Prevention Action plan of 2019-2020**

The mentioned plan does not envisage any components about the mechanism of appeal.

## Relevance of plans

Government and criminal law reform plans (2014–2020) towards the mechanism of appeal were distinguished by general relevance. In general, it had proper directions. However, specific and obvious tasks were not given to responsible agencies, which left the possibilities for failure to comply with aims and objectives or set such low standard requirements that led to losing the point in their relevance. Besides, specific activities, measures and objectives were completely insufficient. The aims, objectives, activities and indicators were not specified by measurable components and it was impossible to have specific expectations or if measurable activities were specified and planned, low standard tasks were set (e.g.: printing of 400 brochures) or everyday obligations (e.g. providing with envelopes) imposed by law over the responsible agency long before.

Therefore, there were not sufficient directions. Despite the fact that brochures were printed, procedures of handing them are unclear provided that according to the compliance report, they used to be placed in the library of the establishment and handed to the prisoners as requested. As for the mentioned procedure, it is not given in regulatory acts and leaves a lot of open spaces for being violated by the implementing individuals or complying with the inefficiently (late, at insufficient amount, etc.). Also, the content of brochures themselves is unclear as well as the procedures and prisoners; rights given in them or the guarantees for carrying these right out. Also, it can be said about trainings that besides the fact that it is completely unclear who goes through these trainings, for what reason, on what cases and at what terms, it is completely unknown what the used methodology, intensity and content are as well as sufficiency and other components of defining efficiency. The same can be stated about providing the confidentiality space with envelopes. In the years when the public defender used to pay attention to the issues, despite being envisaged by the plan, there still remained numerous problems related with the above-mentioned (2015–2016).

Therefore, based on the above-mentioned, in fact, it remains unknown whether the principles of ensuring human rights envisaged by the national strategy were followed and the objective defined by the same strategy to ensure adequacy and efficiency and about the improvement of the system of investigation was achieved.

### Overall,

**Aims:** were mainly relevant, though general.

**Objectives:** were also mainly relevant, though general.

**Activities:** were general, insignificant in certain cases and irrelevant.

**Indicators:** were mainly general, insignificant, did not set realistic measurements/and set low standard requirements, which promoted to the loss of value of aims and objectives.

In certain cases, indicators and activities were overlapped and/or repeated one another.

## Structure of Plans

**Indicators** - As it was indicated upon assessing the indicators, when assessing the action plan it is important to make sure that aims and objectives are formulated according to the so-called SMART principles. Namely, each aim and activity should be **specific**, which implies that they have to be specifically formulated, detailed, the action to be carried out should be well defined;

**measurable**, which implies that it should be possible to measure the activities and aims and reflecting them in figures and amounts; **attainable**, respectively, its compliance should be possible; **realistic**, which implies that taking into consideration resources, it should be possible to implement them; **timebound**, there should be a set deadline for completing the activity and achieving the aim. It also needs to be stated that the **indicators** of assessing the aims and objectives can measure only performance of a separate activity (performance indicators). It may also be possible to assess impact or outcome indicators, which demonstrates to what extent the aim given in the action plan was achieved. The plan should envisage the responsible agency for achieving a separate activity and aim as well as define the source of funding of the activity. Indicators should meet all five conditions of SMART indicators.

Action plans discussed in the survey (in respect with the mechanism of appeal) mostly can not satisfy the indicated requirements. In the majority of cases, objectives, activities and indicators are too general and not specifically formulated and structured. For example, there is no indication of specifically which recommendations of which international organization should be envisaged to improve the indicated legislation, how should periodic and systematic review and analysis be carried out, etc.

None of the discussed components of the plan had a fully well-structured indicator. The measure 4.1.5. of the 2018 action plan of the criminal law system reform “Raising awareness of convicted individuals/the accused in respect with appeals, disciplinary and administrative procedures on their rights” can serve as the positive as well as faulty example. The second indicator – “600 beneficiaries involved in trainings about the rights of convicted individuals/the accused”. The measure is general. Specific directions are expressed – appeals, in respect with disciplinary and administrative procedures but there is no mention at all about what the responsible agency has to realistically implement and raise awareness of prisoners. The indicator states specifying the mentioned indicator and states that training needs to be provided for 600 beneficiaries. In this case, the indicator involves the activity itself and sets the measurement – 600 beneficiaries. However, it is not accompanied by other specific measures, who/what category of prisoners go through training, how and what criteria will be used to select those trainers who will conduct it, etc, including, what directions of rights should be envisaged.

Technically, to assess the existing drawbacks of the first indicator, enables responsible agencies to subjectively address all those issues which the plan responds to and, as a result, there may arise the risks of corruption or other irrelevant decisions and the objective may not get achieved in the parallel manner – raising awareness of prisoners.

## Compliance outcomes

The status of completing separate activities in the reports of government action plans is mostly defined as complied with or partially done so. The same applies to the information (without the status) in progress reports of the system of criminal law. However, in reality, they are mostly complied with or partially done so. Besides, there are cases when there is no information in any of the reports related with compliance.

Within the scope of the research, the Ministry refused to provide additional information in respect with compliance. Reports of compliance with the plans, public defender’s reports and the normative base of the period under investigation serve as the source for compliance assessment, which, in fact, realistically and in the best manner reflects compliance development and directions.

## RECOMMENDATIONS:

- To reflect in detail in action plans a realistic, objective and comprehensive analysis of recommendations and proposals issued by the public defender and other agencies implementing monitoring as well as normative acts respective to the changes based on it;
- To reflect in the strategies clear directions of measures to be taken towards the mechanisms of appeal, which on its behalf serve as the basis of their relevant reflection in action plans;
- To use the SMART Principle when developing action plans and make sure that indicators and objectives are specific, measurable, attainable, realistic and time-bound;
- To reflect in the action plan only those issues which can make a realistic impact on the processes taking place in the system. Respectively, it is purposeful that the indicators measure not only the results of activities but also their impact on the whole system;
- To make sure the plans give a detailed formula of calculating indicators to make sure the impact of activities on the target group are measured realistically;
- To make sure specific and clear components are given in the plans, which would give accountable agencies an exact and clear direction and exclude the possibility of deviating from the plan on the basis of subjective motifs.;
- To exclude in the plan the definition of usual everyday activities included in the competence of a specific responsible establishment;
- To task the special penitentiary service (ministry of justice) on the basis of the superior normative act to maintain public statistics about the appeals and satisfying/not satisfying them, taking into consideration the directions of requirements and the object of dispute, primary and superior appeals and other significant components.

