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# DISCIPLINARY PROCEEDINGS IN THE PENITENTIARY SYSTEM

## ANALYSIS OF THE POLICY DOCUMENTS

Author **Bakar Metreveli**



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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 disciplinary proceedings 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 in respect with specific research issues in **the EU association agenda**. However, the system of justice and more specifically, the penitentiary one, commensurate with international standards recognized by modern European law, envisages well-running disciplinary activities based on protection of human prisoners and those of prisoners, which will keep the balance between interests of order and security and the rights of violators themselves.

**The National Strategy of Human Rights Protection of Georgia**<sup>8</sup>, does not apply directly to the issues of disciplinary record keeping. However, it declares the principles of ensuring human rights, which set specific frameworks and create directions, including, for the given piece of work. These principles are those of:

1. Not violating human rights by the state;
2. Protecting human rights from being violated by other persons;
3. Establishing a system giving people the opportunity to realize their own rights;
4. Informing people respectively about their rights.

As it will be obvious from the analysis of action plans, out of the mentioned principles, only the last – the one of informing respectively is reflected in the plans in terms of disciplinary record-keeping of prisoners. However, the issues of compliance remain unclear.

Based on the national strategy, the parliament also defined the mechanisms of the complying with the strategy and tasks the government to create government action plans of human rights protection for 2014-2015 and further ones, which define specific works to be carried out for implementing the above-mentioned objectives, terms for their fulfilment, indicators and institutions responsible for compliance.<sup>9</sup>

Besides, together with other significant regulations, it is clearly indicated that qualitative criteria for assessing compliance with the action plan submitted to the parliament of Georgia by the administration of the Government of Georgia, should be based on general and thematic reports and recommendations of international and government organizations and the public defender of Georgia. What also needs to be envisaged is opinions expressed on general and thematic issues stated by the mentioned subjects in both the beginning of the reporting period and after its expiry,<sup>10</sup>

<sup>8</sup> Decree of the Parliament of Georgia of April 30, 2014 on approving the “National Strategy (2014-2020) of Human Rights Protection of Georgia”.

<sup>9</sup> *ibid*, mechanisms of complying with the strategy and its monitoring.

<sup>10</sup> *ibid*, Mechanisms of complying with the strategy and its monitoring.

On the basis of the degree of 2008 of the president of Georgia<sup>11</sup>, **the criminal law reform implementing inter-agency coordination board** was created. It is responsible for developing and implementing the criminal law reform envisaging international standards as well as coordinating inter-agency activities in the field of criminal law. Representatives of government agencies as well as non-government and international organizations and independent experts are included in the composition of the coordination board. The board approves the strategy and the action plan of criminal law, which is being implemented annually. The strategy formulated within the scope of the given board does not include the disciplinary direction of prisoners specifically. However, indications are given at the information provision level on several already implemented changes.

**The strategy of 2017** gives the information about reducing the term of placing in the stated solitary cell. The same is repeated only **in the strategy of 2016 and that of 2017 yet again repeats it** and gains information about the changes prepared in respect with disciplinary/administrative imprisonment.

**The strategy of 2018** defines nothing and gives no information about the issue under investigation. **The same also applies to the strategy of 2019-2020 of developing the penitentiary and crime prevention system**<sup>12</sup>.

Obviously, in the circumstances of such strategies, there is no expectation of taking into consideration the direction of disciplinary work of prisoners by the action plans. However, the plans still contain the details, which are worth being analysed by the state in order to fully analyse the attitude towards the research direction.

## 6. CHALLENGES IN THE PENITENTIARY SYSTEM IN TERMS OF DISCIPLINARY WORK OF PRISONERS

Various challenges were reported in 2015-2018 in terms of disciplinary dealing of the prisoners of the penitentiary system. In a number of cases, respective measures were made by the state in a number of cases to wipe them out. Besides, there were challenges and the state did not make any substantial steps to tackle them and throughout years, it remained a problem. Furthermore, one of the main challenges which is related with wide discretion of rights and responsibilities of authorized/responsible persons, which leads to the risks of unjustified and arbitrary action and gives the possibility to have such actions, is not even recognized as a challenge and the problem to be wiped out.

As it was mentioned above, since 2015 (as it was the case before), a wide discretion of rights and responsibilities of decision-maker persons is singled out, which enables them to act arbitrarily, creates high risks of transgressions and prevents formation of united practice/standards. It is not defined which specific name shall be selected for which specific violation as well as the full list of actions regarded as disciplinary violation (free space is left for being regarded as disciplinary

<sup>11</sup> Decree N 591 of December 13, 2008 of the President of Georgia.

<sup>12</sup> Decree N 385 of February 22, 2019 of the Ministry of Justice on the "Strategy of Developing the Penitentiary and Crime Prevention System and Approving the 2019-2020 Action Plan", Appendix N1.

violation). The same applies to the case of disciplinary incentives. Reports and recommendations of the public defender of Georgia indicate the mentioned circumstances and the necessity for developing united guiding principles<sup>13</sup> whereas the Ministry of Corrections and Probation (now already a special penitentiary service under the system of the Ministry of Justice of Georgia) considers that the norms and rules that already exist are enough and it is not purposeful to develop any guiding principles now.<sup>14</sup>

At the legislative and normative level, no refining of rules and procedures of disciplinary judicial dealing and raising of standards was carried out. Including, in respect with defining the fact, gaining and retaining evidence, in respect with guaranteed protection of prisoners' rights.<sup>15</sup>

- The penitentiary system did not maintain statistics of repeated commission of disciplinary offences in the surveyed years on sentencing such significant disciplinary punishment as being placed in the solitary cell.<sup>16</sup> Respectively, it lacks the possibility to look broadly at the problem, define the effect of using the punishment, care about preventing future violations and purposefully taking care of them according to the plan following international standards and the recommendations of various protection organizations. For example, on using the placement in the solitary cell only in extreme cases.
- Throughout reporting years, systemic regulatory rules of disciplinary encouragement are not improved, principles of use are not defined and homogenous practice is not attained. The Ministry of Justice considers that systemic improvement of disciplinary encouragement is expressed in offering various measures envisaged within the scope of individual planning of punishment for the convicted individuals and in the use of the measure of encouragement towards them for taking part in it.<sup>17</sup> The given factor clearly illustrates that the Ministry does not consider the issue problematic and/or does not see this and does not grant respective significance, which may lead to diminishing (even more) the mechanism of disciplinary encouragement and/or increasing the practice of using it improperly/illegally.

Changes are observed in using the measures of disciplinary punishment and encouragement in practice. Cases of using disciplinary measures from 2014 to 2017 increased annually from 1846 to 3644. In case of disciplinary encouragement, increase is observed only from 1560 to 1643. Throughout these years, maximum amounts are showed in case of punishment – 4806 in 2016 and in case of encouragement in 2014, it amounts to 2305.

The practice of disciplinary/administrative imprisonment is completely non-homogenous. According to official statistics, nine cases were reported whereas according to the desk survey as such, the amount of cases reaches 13. The mentioned figure/figures indicate use of mechanisms of punishment and inefficiency of its use. Provided that out of reported imprisonments only two convicted individuals account to eight cases. Each of them were subject to disciplinary/administrative imprisonment 4-4-times in 2015 (establishment N7)<sup>18</sup>.

<sup>13</sup> Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in 2014, p. 84; Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in 2015, p. 84; Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in 2016, p. 141; Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in 2018, p. 43.

<sup>14</sup> Desk survey – disciplinary dealing in the penitentiary system, basic findings.

<sup>15</sup> Ibid. Basic findings.

<sup>16</sup> Ibid. Basic findings.

<sup>17</sup> Ibid. Basic findings.

<sup>18</sup> Ibid, main findings.



The dynamics of placing the person in the solitary cell is positive (decreasing), substantial decrease is observed, in 2014, out of 1151 cases to 381 ones in 2017.

Often, proposals and recommendations of the public defender are not followed. At the background of small positive changes, problematic issues increase and throughout years, recommendations and proposals that have not been complied with are accumulated. Including:

- Complete restriction of communicating with the family by the person being imposed the punishment;
- Placing the prisoner with mental problems in the solitary cell;
- On implementing the judicial procedure by means of the oral hearing, etc.

Out of implemented significant legislative changes, there are the ones, which directly apply to international norms recognized in the country and improve national standards. In addition, there are the ones that are directed towards reducing the standards of protecting the convicted/charged individuals.

Specific changes will be discussed in the action plans and compliance analysis part.

**According to annual reports of the public defender of Georgia**, there are numerous severe problems and challenges in the direction of disciplinary dealings of prisoners, which the public defender responds to with numerous proposals and recommendations.

**In 2014** the public defender gives the Ministry of Corrections and Probation the following recommendations on<sup>19</sup>:

- Guiding principles of using disciplinary punishment with the view of using disciplinary punishment in a similar way in all corrections establishments;
- Using the disciplinary punishment only as the extreme and ultimate measure;
- Using the right granted by law by the prisoner placed in the solitary cell (taking a shower, walking, giving items of hygiene) on developing the form of the registration roster and introducing it in all establishments;
- Taking all necessary measures with the view of excluding placing of the mental patient in the solitary cell;
- Ensuring the doctor's visit to the prisoner placed in the solitary cell in accordance with point 6, article 88 of the Code on Imprisonment;
- Providing maximum support to the social division of the establishment with the view of ensuring various disciplinary issues;
- Using various incentives more frequently to ensure more involvement in various activities.

In addition, the proposal to the parliament of Georgia: <sup>20</sup>

- On reducing the maximum term of administrative imprisonment up to 15 days;

<sup>19</sup> Report of the public defender of Georgia on the condition of human rights and freedoms in Georgia in 2014, p. 83–84.

<sup>20</sup> Ibid, p–84.

- On making all the respective amendments to the code of imprisonment with the view of providing all the guarantees of just judiciary discussion on allocating administrative punishment in the judicial process of allocating administrative imprisonment.

**In 2015**, the public defender gives the following recommendations to the Ministry of Corrections and Probation on:<sup>21</sup>

- Guiding principles of using disciplinary punishments with the view of using homogenously the disciplinary punishments in all corrections establishments;
- Using disciplinary punishment only as the ultimate means;
- Using placing in the solitary cell only in a special case;
- Taking all the necessary measures to exclude placing of the mentally ill prisoner into the solitary cell;
- Taking all the measures with the view of excluding restriction of contact with the family of the prisoner when using disciplinary punishment;
- Excluding various restricted punishments for prisoners in the establishment N 7;
- Using frequently forms of incentives in establishments N3, N7, N9, N11 and N19.

In addition, the proposal to the parliament of Georgia: <sup>22</sup>

- On restricting the right to have telephone conversations and receive-send personal correspondence as well as restricting the entitled short date as cancelling the disciplinary punishment;
- On restricting the rights of having short and long-term dates, telephone conversation and buying food products for the prisoners placed in solitary cells and removing the norms from the code of imprisonment;
- The code of imprisonment on having a TV and the radio receiver as making amendments regarding the definition of the right and not the privilege and abolishing these rights as the forms of encouragement;
- On recognizing the restriction of TV/radio receiver in the form of disciplinary sanction as inadmissible;
- To reduce the maximum term of administrative imprisonment to 15 days.

**2016** recommendations and proposals are extremely significant and alarming in terms of their content and volume and, therefore, will be given in an unchanged form:

**Recommendation to the Minister of Corrections and Probation of Georgia:**<sup>23</sup>

- “To develop guiding principles of using disciplinary punishments so that to be able to use

<sup>21</sup> Report of the public defender of Georgia on the condition of protecting human rights and freedoms in Georgia in 2015, pp. 84–85.

<sup>22</sup> Ibid, p. 85.

<sup>23</sup> Report of the public defender of Georgia on the condition of protecting human rights and freedoms in Georgia in 2016, pp.-141–142.

disciplinary punishments in an identical manner in all establishments of the penitentiary department;

- To take all the necessary measures to ensure timely and adequate notification of prisoners about the procedure of disciplinary measure and the rights; Besides, to give sufficient amount of time and possibility to hire the attorney, give explanations, have witnesses and evidence (including, requesting records made by surveillance cameras and study them), and ask employees of the establishment questions on the basis of the reporting of which disciplinary measures are taken;
- To use disciplinary punishments as the ultimate measure;
- To use placing in the solitary cell as the disciplinary punishment only in special cases;
- To take all the necessary measures to make sure prisoners with mental health problems are not placed in the solitary cell;
- To take all the necessary measures to make sure contact with the family is not fully restricted when using disciplinary punishment;
- To take all the necessary measures to make sure the multidisciplinary team works with the prisoners placed in the de-escalation room with the respective strategy and these prisoners are not imposed any disciplinary punishment while being in the de-escalation room;
- To let the general inspection study the practice of preventing the use of de-escalation rooms with the view of punishing the prisoners of de-escalation rooms (as the alternative of placing them in the solitary cell as the form of punishment) within the scope of systemic monitoring; ;
- To ensure development of legislative changes in the “Code of Imprisonment”, according to which prisoners with disciplinary punishment will not be restricted the right to use the right of having a video date; to submit the draft changes to the government for initiation in the parliament;
- To ensure development of legislative changes in the “Code of Imprisonment”, according to which administrative (disciplinary) imprisonment, as the form of punishment, will be abolished completely and if this measure of punishment still applies, its duration will be reduced to maximum 15 days; to submit the draft changes to the government for initiation in the parliament;
- To ensure frequent use of forms of encouragement in all establishments of the penitentiary department;
- To take all the necessary measures to make sure forms of encouragement towards convicted individuals are used more frequently with the view of participating in rehabilitation activities;
- To ensure that within the scope of systematic monitoring, general inspection regularly conducts inspections in penitentiary establishments with the view of avoiding the cases of imposing disciplinary punishments arbitrarily and illegally, using punishments in a non-proportionate manner and restricting contact with the outer world completely.
- To ensure development of the draft of legislative changes in the Code of Imprisonment according to which the restriction of receiving and sending personal correspondence and telephone conversations will be taken out from the code as well as that of having a short-term date as the type of disciplinary punishment;

- To ensure development of the draft of legislative changes in the Code of Imprisonment according to which the prisoner placed in the solitary cell is not restricted to have short and long-term dates, telephone conversations, buying food products; submitting the draft changes to the government for initiation in the parliament;
- To ensure development of the draft of legislative changes in the Code of Imprisonment according to which, having a TV and the radio receiver will be the right of the accused person/ convict and using this right will not depend on the consent of the director; to submit the draft of amendments to the government for initiation in the parliament;
- To ensure development of the draft of legislative changes in the Code of Imprisonment according to which the restriction on using TV and the radio receiver will be lifted off as the disciplinary accountability measure.“

**Proposal to the parliament of Georgia:** <sup>24</sup>

- To make amendments to the “Code of Imprisonment” according to which the restriction on receiving-sending correspondence of personal nature and having telephone conversations will be abolished as well as that of having entitled short dates as the type of disciplinary punishment;
- To make amendments to the “Code of Imprisonment”, according to which the prisoner placed in the solitary cell is not restricted to have short and long-term dates, telephone conversations and buying food products;
- To make amendment to the “Code of Imprisonment” according to which having TV and radio receiver will be the right of the convicted/accused individual and using this right will not depend on the consent of the director; ;
- To make amendment to the “Code of Imprisonment” according to which the restriction of TV and the radio receiver will be abolished as the measure of disciplinary responsibility;
- To make amendment to the “Code of Imprisonment” according to which the prisoners with imposed disciplinary charges will not be restricted the right to use the video date;
- To make amendment to the “Code of Imprisonment” according to which administrative (disciplinary) imprisonment, as the form of punishment, will be fully abolished and in case this measure of punishment is applied again, its duration will be reduced to maximum 15 days.“.

**In the report of 2017**, the public defender again indicates the problems of failure to comply with its recommendations and proposals and makes an additional proposal to the parliament of Georgia to makes amendments to the code of imprisonment on conducting the disciplinary law dealings only in the form of oral hearing.

Although **the report of 2018 of the public defender**<sup>25</sup> is not distinguished by the multitude of recommendations, it still critically concerns the issues and underlines several significant problems. It considers that the existing system of disciplinary dealing fails to retain law and order in the establishment and protection of basic rights of prisoners. Despite the recommendations issues before, no guiding principles of imposing disciplinary punishment have been developed

<sup>24</sup> Ibid, p. 142-143.

<sup>25</sup> Report of the public defender of Georgia of 2018 on the condition of human rights and freedoms in Georgia, p. 42-43.

and no rule of conducting disciplinary law dealing through oral hearing was set, which would create essential minimal guarantees for the system of just disciplinary responsibility.

It considers as the problem the fact that:

- The legislation does not define the obligation of using disciplinary punishment as the ultimate measure;
- Other alternative mechanisms of conflict prevention, mediation or dispute resolution are not defined at the level of legislation and practice,” which would be directed towards establishing constructive and positive relations based on trust between the prisoners and personnel in compliance with international standards<sup>26</sup> and, by so doing, aim at improving the behaviour of prisoners;
- There again exist risks of violation and non-proportionate aspect of punishment;
- Even minimum standards of fair justice are not followed by which international standards are also undermined;<sup>27</sup> the order on imposing disciplinary punishment is reinforced only by the explanations of the employees of the establishment and the report and prisoners themselves practically do not take part in disciplinary judicial procedures;
- In certain establishments, frequent use of the solitary cell is a problem; neither the cases of placing the prisoners with mental health in the solitary cell have been wiped out, etc.

Reports of the public defender according to reporting years clearly illustrate that the dynamics is unchanged, at the background of small positive changes problematic issues further increase and throughout years recommendations and proposals not complied with get accumulated.

**The report of 2018 (10-21 September) of the visit to Georgia of the European Committee of Restricting Torture and Inhumane or Humiliating Treatment** related with the issues of disciplinary work of prisoners is interesting and significant.<sup>28</sup> The committee notes that despite its recommendation on the visit of 2014, the punishments related with the face-to-face meeting, telephone conversation, correspondence and media means (TV/radio) are retained as being of disciplinary nature. In this context, the committee repeats its opinion related with restriction of contact with the family. It considers that this has to be made in any form of punishment only in case the violation is related with such contact and its implementation is possible only in the shortest period of time (maximum during one month). **The committee calls for the authorities of Georgia** to make respective amendments to the code on imprisonment.

The committee states that the rules of placing the prisoners in disciplinary isolation rooms (solitary cell, cell type of dwelling place, disciplinary prison cell) have not changed. Namely, they still have access to the library and outside training facilities. Besides, as it was the case in the past, the prisoners placed in cells of disciplinary isolation will be taken away automatically the right to contact the outer world. The committee calls for the Georgian authorities to improve the above-mentioned drawbacks. <sup>29</sup>

<sup>26</sup> Mandela’s Rules, Rule 38 (2), sub-point 1. “c” of rule 76.

<sup>27</sup> Rules of European Prison, Article 59.

<sup>28</sup> Report on the visit to Georgia of the European committee on torture and inhumane and humiliating treatment or restricting punishment, September 10-21, 2018.

<sup>29</sup> Report on the visit to Georgia of the European committee on torture and inhumane and humiliating treatment or restricting punishment, September 10-21, 2018. P. 46-47.

The committee notes that formal disciplinary punishments, including, placing in the disciplinary cells, were used which, in principle, is a welcoming fact. However, this indicates the biggest concern that the de-escalation rooms might be used for punishment meaningfully.

It is obvious that the opinions of the committee are commensurate with the opinions and recommendations of the public defender of Georgia.

## 7. MAIN FINDINGS

Overall, the national strategy, government plans, criminal law reform strategies and plans towards the issues surveyed were largely omitted.

It can be stated that in terms of disciplinary dealing, the state has not planned anything and it simply envisaged giving information to the prisoners on disciplinary measures within the framework of the mechanism of appeal and it only got limited by providing information

The only realistically specific and business part was activities of protecting human rights envisaged by activity 5.1.4.2. Of the intergovernmental action plan of years of 2016-2017 of human rights, which envisaged studying the United States principles. However, different from multi-year opinions of the public defender and the demand, the state should refuse to follow the recommendation. Taking into consideration the circumstances within the penitentiary system (which are related to the competence of the authorized personnel of administration, training and retraining quality, labour remuneration of employees and other substantial and significant staff problems), the attitude of the ministry of justice may be proper. However, in the long-term perspective, the argumentation given is not sufficient at all. The main and decisive argument and motif here should be not the subjective possibility to formulate proper principles but objective purposefulness. In order to preliminarily define the principles of punishment and promotion, besides criminal and administrative law violations legislation, the military disciplinary statute may be used as the example, which also works in the closed system where discipline (both punishment and promotion) should put the armed contingent in order. The given statute specifically outlines which punishment is applied to which violation.<sup>30</sup>

Against the background of the produced but unfulfilled recommendations and proposals, the legal framework has almost not been improved. The state did not even plan to improve anything in terms of disciplinary work, except the changes on administrative/disciplinary imprisonment, which with the volume/frequency of its practical application is not a big challenge as such.

Respectively, at the end of the years to be surveyed, the public defender considers that the existing system of disciplinary proceeding cannot maintain order in the establishment and protect basic rights of prisoners. Despite the recommendations issued before, no guiding principles of imposing disciplinary punishment were developed and no rule of conducting disciplinary proceedings through oral hearing were set, which would create minimum essential guarantees for the system of just disciplinary responsibility. Again, the legislation does not define the obligation of using the disciplinary punishment as the ultimate measure;

At the level of legislation and practice, other alternative mechanisms of conflict prevention,

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<sup>30</sup> Decree N 615 of November 3, 2014 of the government of Georgia on approving the military disciplinary statute.



mediation and dispute resolution have not been introduced, “which would be focused on establishing constructive and trust-based positive relations between the personnel and prisoners and by doing so lead to behaviour correction of prisoners” and comply with the international standard<sup>31</sup>; there are still risks of violation and non-proportional punishment; even minimum standards of fair court are not followed during criminal proceedings which also lead to violating international standards; ;<sup>32</sup> the order to impose disciplinary punishment is strengthened by only explanations of the staff of the establishment as well as reports and prisoners do not practically take part in disciplinary proceedings; in certain establishments frequent use of the solitary cell serves as the problem; the cases of placing the prisoners with mental problems have not been wiped out as well.

The fact that the issues of disciplinary incentives are not mentioned in either the strategies of plans is significant and alerting.

Acts defining state policy and organizing its implementation as well as the national and criminal law strategies do not contain any specific stipulations on disciplinary issues specifically. Respectively, in the circumstances of such a strategy there obviously should not be great expectations in respect with policy implementing acts, i.e. action plans. If assessed generally, the public defender of Georgia as well as other agencies implementing respective monitoring to act as the driving force of development in the disciplinary direction. Therefore, it was significant to comply with their recommendations and proposals, which almost were not met at the normative level despite the fact that as it was mentioned at the beginning, according to the national strategy<sup>33</sup>, it was set that qualitative criteria of complying with the action plan should have been based on the recommendations and references of the public defender of Georgia, general and thematic reports of international and non-governmental organizations and be envisaged for general and thematic issues of protecting human rights by the mentioned subjects both at the beginning of the reporting period and upon its expiry.<sup>34</sup>

Based on the above-mentioned, it can be stated that the plans completely overrode the national strategy.

## **Government action plans of human rights protection**

### **Plan of 2014-2015**

In general, the plan was not relevant and did not reflect the challenges in the system. Proper directions were given but with a limited amount and not specified enough. Focus was made on improvement of legislation, in general, printing of information brochures and giving them to prisoners.

In terms of compliance, they were partially met both in terms of the first and second components.

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<sup>31</sup> Rules of Mandela, Rule 38 (2), Sub-point 1. “c” of rule 76.

<sup>32</sup> Rules of the European prison, article 59.

<sup>33</sup> Decree of the parliament of Georgia of April 20, 2014 on approving the “National Strategy of Human Rights Protection of Georgia” (2014-2020).

<sup>34</sup> Ibid, mechanisms of strategy compliance and its monitoring.

## 2016-2017 plan

The government plan of these years are relatively relevant and contain the only immediate disciplinary issue in terms of content which is completely specific reflected in the plans of reporting years which met the requirement of the national strategy on taking into consideration recommendations of the public defender. Similar to the previous year, it was planned to improve the regulatory norms of the system in general and print information brochures and give them to prisoner as well as identify the drawbacks about the condition of rights of convicts and hold educational consultations and meetings for prisoners about the rights, which eventually was reflected in providing trainings. In addition, it was planned to carry out needs analysis of formulating the united guiding principles of disciplinary punishment.

In terms of compliance, the plan has not been met in the part of identifying drawbacks of regulatory norms towards improving legislation and the defendants. They were partially complied with in the component of printing/giving the brochures and training and, most importantly, they were met but with the outcome of compliance, it contradicts the position of the public defender in respect with formulating united guiding principles of disciplinary punishment.

## 2018-2020 plan

The given plan also continues the general line of previous ones in respect with the improvement of legislation as well as printing brochures and conducting educational trainings. As in the case of previous years' plans, those of 2018-2020 are general, limited and fail to respond to the existing challenges.

In terms of compliance, nothing was carried out in respect with improving legislation throughout 2018. It is impossible to assess the rest due to the failure to complete the cycle.

### Criminal law reform action plans

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

## 2015 plan

In respect with maintaining disciplinary record keeping of prisoners, similar to the government action plan of 2014-2015, it included two directions: generally improvement/changes in legislation and raising awareness with printed brochures being given out.

In terms of compliance, it can be said that the plan was partially complied with.

## 2016 plan

Similar to the previous years and the government action plan, it follows the line of improving the acting legislation, in general, which, along with giving out the brochures, is added by educational consultations-trainings.

In terms of compliance, it can be stated that nothing has been done in the change of legislation component whereas in terms of raising awareness, it may be considered as mostly done.

## 2017 plan

The 2017 criminal law action plan repeats the plan of the previous year with one difference – in the component of change in legislation it uses as indicator reports of international organizations and the public defender.

In terms of compliance, it has been carried out with a slight progress in respect with changes in legislation, specifically, in terms of administrative/disciplinary imprisonment whereas in respect with awareness raising, it may be considered mostly complied with.

## 2018 plan

Only the awareness raising direction is left in the plan of 2018 of the criminal reform in the direction of disciplinary dealing of prisoners.

In terms of compliance-, it is impossible to assess due to having no information.

## 2019-2020 action plan of penitentiary and prevention nature of the Ministry of Justice

The action plan of the development strategy of 2019-2020 of the system of penitentiary and crime prevention does not envisage the disciplinary issues of prisoner, which, it may be said, is alerting taking into consideration the report of 2018 of the public defender.

## Relevance of plans

Government and criminal law plans (2014–2020) were distinguished by ignoring the challenges in respect with disciplinary record keeping. The part, which was given, generally, had proper directions. However, no specific and clear tasks were given to the responsible entities, which led to failure to meet the aims and objectives or set the requirements of such low standard that their relevance was completely lost. Besides, specific actions, measures and objectives were insufficient. In fact, the plans included the aims and objectives of only two directions with one exclusion. The first one envisaged improvement of legislation and internal regulations in all issues, in general whereas the second one – printing of information brochures on disciplinary procedures (together with other rights), giving instruction and conducting training on rights and by so doing strengthening legislative guarantees of prisoners.

Except insufficiency of directions, they were completely general and did not give the possibility for having expectations of a specific outcome. Despite the fact that brochures were printed, it is unclear what the procedures of handing them are since, according to the compliance report, they would be placed in the libraries of the establishment and given to prisoners as requested. The mentioned procedure is not written out in regulatory acts and leaves many open spaces for implementing persons for violating it or doing inefficiently (late, at insufficient amount, etc.). In addition, the content of brochures themselves is unclear as well as the procedures and rights of prisoners or guarantees of implementing those rights reflected in it. Besides, it can be stated that apart from the fact that it is absolutely unclear who goes through trainings and for what purpose,

what cases and at what conditions, their content, teaching methodology, intensity, sufficiency and other components to determine efficiency are completely unknown. Their content, teaching methodology, intensity, sufficiency and other components defining efficiency are completely unknown.

Respectively, printing of brochures/giving them/plans on introduction and teaching the rights may not be considered the guarantee of keeping to and implementing one of the principles of ensuring human rights - "Respectively, informing the person on his/her rights" defined by the human rights protection national strategy.

#### **Overall:**

**Aims:** were mainly relevant but general.

**Objectives/priorities:** were also mainly relevant but general.

**Activities:** were general, in most cases, with no purpose and irrelevant.

**Indicators:** were mainly general, insignificant, did not set real measures and/or requirements of low standard, which undermined the aims and objectives completely. However, there were some positive exclusions.

### **Structure of plans**

**Indicators** - As it was indicated upon assessing indicators, when assessing action plans, it is essential that aims and objectives be formulated following the so-called SMART principle. To be more specific, each aim and activity have to be **specific**, which means that they have to be formulated specifically, in detail, the action to be implemented has to be defined well, **measurable**, which means that activities and aims have to be measured, reflected in figures and amounts, **achievable**, respectively, they should be possible to be achieved. Aims and activities have to be **realistic**, which envisages that they should be possible to be carried out envisaging existing resources; **time-bound**, there has to be a set deadline for complying with activities and achieving the aim. It also needs to be mentioned that the **indicators** of assessing the aims and objectives may measure only compliance with a separate activity (performance indicators). It is also possible to have the indicators of impact or solution, which demonstrates to what extent the aims set in the action plan were attained. The plan should also state the responsible agency for a separate activity and achievement of the goal and the source of funding of the activity have to be defined. Indicators should comply with all the five terms of the SMART approach.

Action plans discussed in the survey (in respect with disciplinary issues of prisoners) mostly fail to meet the given requirements. In most cases, the aims, objectives, activities and indicators are extremely general, not specified and formulated. For example, no mention is made of which recommendations of the international organization should be taken into consideration specifically with the view of improving the indicated legislation, how the periodic and systemic review and analysis should be made, etc.

None of the discussed components of plans had a completely structured indicator. Activity 5.1.4.2 of the government action plan of 2016-2017 and its indicators in a positive and at the same time faulty example. In this case, a specific activity is planned with specific indicators compared with others. "Analysis of international and existing practice should be carried out with the view

of formulating a uniform approach towards using the disciplinary punishment in respect with the persons with restricted freedom/in captivity in all corrections establishments applying the indicators: “Survey outcomes/recommendations”, “public defender’s reports”.

Activities are not fully specific and with their content meet both the national strategy requirement and numerous demands of the public defender. In addition, the second indicator is specific and it indicates to the report of the specific body. However, it may also be required to give more specificity in respect with specifying the report/reports, which would be non-objective criticism. However, the first indicator is general, it is not indicated what trait is mentioned whether this survey already exists or needs to be carried out in future or who should implement it at what standards, etc.

Technically, to assess the first indicator, the mentioned deficiencies gave way to the responsible entity to light-heartedly address the issue and using surface-level arguments (which were given in the compliance report), say no to numerous requirements of reports envisaged by the second indicator. Respectively, the given example illustrates how significant it is to envisage specific details when developing the indicator and how possible it is for small details to cause decision making at low standard of justification during compliance.

## Compliance outcomes

The status of completing separate activities is mostly defined in the reports of meeting the plans as complied with or partially complied with. However, in reality, in most cases, there are those qualified as not complied and partially complied with.

Within the scope of the survey, the Ministry refused to provide additional information about compliance. Reports of complying with the plans serve as the source of assessment as well as public defender’s reports and the normative base of the reporting period, which, in reality, reflects most objectively and well development and directions of compliance.

## RECOMMENDATIONS:

- To embed in detail in action plans realistic, objective and multidimensional analysis of recommendations and proposals issued by the public defender and other entities carrying out monitoring;
- To reflect in strategies clear directions of measures to be carried out of the issues of disciplinary measures record-keeping, which will serve as the basis for relevantly reflecting them in action plans;
- To envisage the SMART principle, indicators and objectives are specific, measurable, attainable 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 and, respectively, it is purposeful to make sure that the indicators measure not only the outcomes of activities/work but also their impact on the whole system;

- To make sure the plan gives a detailed formula of calculating the indicator so that to measure realistically the impact on the activities of the target group;
- To make sure strategies and action plans include detailed and clear policy and measures targeted towards wiping out the impact of criminal sub-culture;
- To make sure the plans contain specific and clear components which will give an exact and simple direction to responsible entities and exclude the possibility of deviating from the plan based in subjective motifs;
- To exclude definition of everyday activities within the competence of the specific responsible establishment in the plan;
- To task the special penitentiary service (Ministry of Justice) act to keep the deadlines in the process of assessing and reassessing the risks of responsible establishments and maintain public statistics about officials and fulfilling other key responsibilities with the superior normative.



