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RISK ASSESSMENT AND CLASSIFICATION IN THE PENAL SYSTEM

ANALYSIS OF THE POLICY DOCUMENTS

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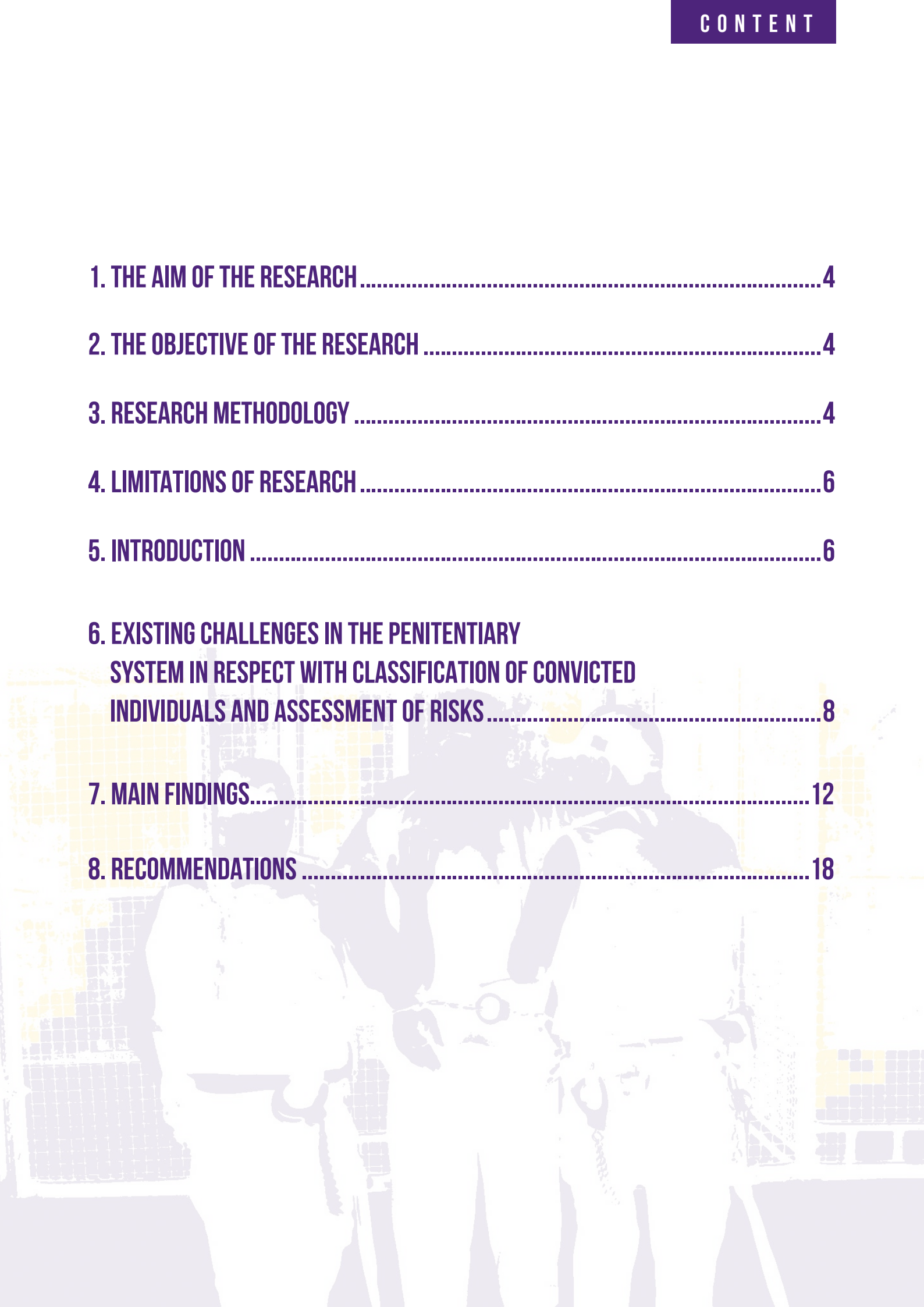
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1. THE AIM OF THE RESEARCH

The aim of the research is to assess the process of planning and implementing the public policy related with classification of the sentenced individuals and evaluation of the risks of threat 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 2014-2019¹;
- b) Action plans of human rights protection of 2014-2015, 2016-2017 and 2018-2020² (respective chapters);
- c) Criminal law reform strategies plans of 2015, 2016, 2017 and 2018³ (penitentiary systems reform chapter);

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

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

³ 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 2018⁴ (part of the action plan of the penitentiary system reform);
- e) Strategy of 2019-2020 of development of penitentiary and crime prevention system⁵;
- f) 2019-2020 action plan (general assessment) of developing the penitentiary and crime prevention systems ⁶(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 2016-2017⁷; 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.

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

⁵ 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

⁶ 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.

⁷ 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 specific has been planned so far **in the Georgia-EU Association agenda** towards research issues. However, the system of justice commensurate with international standards recognized by modern European law, specifically, the penitentiary system envisages the system operating properly and the one of placement and classification based on human rights protection whose main basis is assessing the threat risks of the convicted individual by means of effective and multidisciplinary instruments.⁸

National strategy of human rights protection of Georgia⁹, principles of human rights provision among which the principles of not violating human rights by the state, protecting human rights from being violated by other individuals and establishing the system of giving opportunity for realizing their own rights for people ensure necessity of establishing the classification system based on just assessment of risks of threat of the convicted individual in the penitentiary system.

The national strategy defines strategic directions, including, “Formulating mechanisms for caring about former prisoners and the system of corrections and probation commensurate with international standards”,¹⁰ the aim of which is: “To establish the system of corrections and probation commensurate with international standards, improving conditions in the establishments of corrections and probation, ensuring availability of efficient and timely medical service for prisoner, supporting re-socialization of the convicted and former prisoners”.

Through the national strategy, the parliament also defines the mechanism of monitoring compliance with the strategy and obliges the government of Georgia to design action plans of the government 2014-2015 and for further years of human rights protection which define specific works to be carried out for implementing the mentioned aims, the terms of meeting them, indicators and institutions responsible for compliance.

Besides, together with other significant regulations, it is stressed and underlined that “qualitative criteria of assessing compliance if the action plan should be based on general and thematic reports of the Public Defender of Georgia and international non-governmental organizations”. Opinions expressed on general and topical issues of human rights protection by the mentioned subjects should be envisaged both in the reporting period of after its expiry.

⁸ Minimum standard rules of EU on treating prisoners (Nelson Mandela rules, rule 93.1, 93.2, 94.

⁹ Decree of April 30, 2014 of the Parliament of Georgia on approving the National Strategy (2014-2020) of Human Rights Protection of Georgia”.

¹⁰ Ibid. Strategic direction 5.

On the basis of the decree of the president of Georgia of 2008¹¹, the interagency coordination board/council to implement the criminal law reform should be established. It is authorized to develop and implement the criminal reform taking into consideration international standards as well as coordinate the inter-agency activities in the criminal law field. The coordination board includes representatives of both government and non-government organizations and independent experts. The strategy and the action plan of criminal law had been approved by the council which is updated on annual basis. The strategy formulated within the limits of the mentioned board, includes such a direction as the strategy of the reform of the corrections system whereas one of the directions of this strategy is risks based classification.

In the 2015 strategy, the essence of the reform of the penitentiary system encompasses pursuing the line of assessing the risks and needs within the scope of specialized trainings for the system employees, developing an individual plan of going through punishment for each prisoner by the multidisciplinary team is being planned at the newly opened establishment N 16 taking into consideration their risks. It is also envisaged by the strategy to move to the practice of assessing the risks and distributing them according to classification based on behaviour of the convicted in the establishments with various risks. The document states: “This will enable to focus more on re-socialization-rehabilitation and prevention of the repeated offence which would completely change the approaches existing before and resembling soviet practices according to which the establishment of restricting freedom is regarded as only the place to go through punishment.” It is also indicated that respective distribution of risks and introduction of individual planning of going through punishment will enable to better mobilize the resources of the penitentiary system in the direction of re-socialization-rehabilitation of the convicted.

Therefore, it is clear that assessing the risks of the convicted and classifying them accordingly following the strategy, serves to re-socialize and rehabilitate the convicted and prevent the recurrence of the crime.

Similar records are observed in **the 2016 strategy**.

The 2017 strategy states that: “Convicted individuals are with the view of ensuring security measures and keeping a strict regime in penitentiary establishments as well as reducing the risk of repeated crime, convicted individuals are classified according to the risks of threat - **low, medium, increased and high** in accordance with Decree N 70 of July 9, 2015 of the Minister of Corrections and Probation. This process is the most significant for the rehabilitation/socialization of the convicted, effective fight against criminal sub-culture in penitentiary establishments and bringing violence to minimum among prisoners. “

The above-mentioned clearly illustrates that according to the strategy, assessing the risks and classifying them accordingly, first of all, ensures security, aims of following the terms and conditions of the regime and reducing the risks of crime recurrence and only after this underline its importance towards rehabilitation-re-socialization of the convicted individual.

2018 strategy also contains records similar **to 2017**.

The strategy of 2019-2020 of the development of the system of preventing penitentiary and crime prevention system¹² concerns classification of convicted individuals and assessment

¹¹ Decree №59 of the president of Georgia of December 13, 2008

¹² “Strategy of Developing the System of Penitentiary and Crime Prevention and on Approving the Action Plan of 2019-2020, Decree of the Minister of Justice of Georgia of 22 February, 2019 N385, Appendix N1.

of risks within the scope of only individual planning of serving the sentence and managing each convicted individual according to risks and needs.

In this direction the strategy declares the principle: “Managing every person with restricted freedom according to his/her individual risks and needs, in accordance with the plan of serving the sentence and through implementing rehabilitation activities which are based on the mentioned risks and needs” and sets as its strategic aim “To reduce repeated crime and, as a result, prevent crime through efficient rehabilitation and reintegration in penitentiary and probation systems” (**strategic aim B**), which defines that the outcome should be “implementation of efficient methodology of individual assessment, including, classification, planning punishment and managing the case”(**outcome B1**).

In accordance with the mentioned strategy, obviously, it is a welcoming fact that the ministry will base management of convicted individuals, their classification and other significant processes on the instrument of risk assessment.

6. EXISTING CHALLENGES IN THE PENITENTIARY SYSTEM IN RESPECT WITH CLASSIFICATION OF CONVICTED INDIVIDUALS AND ASSESSMENT OF RISKS

Classification of convicted individuals is regarded as an essential component of managing and controlling the behaviour of convicted individuals on behalf of the penitentiary system whereas classification of convicted individuals themselves is essential to be based on exact analysis of risks and needs.¹³

In research years of 2015-2018, active dynamics is reported, significant changes are carried out, and a completely new system of classification of convicted individuals for Georgia is introduced commensurate with international standards. However, drawbacks of its functioning are observed, which is mainly expressed in extension of time of general implementation and problems and specific ones in terms of legislative guarantees of convicted individuals.

Until 2015 there was no united modern system of assessment of risks of threats of the convicted individuals in the penitentiary system of Georgia, which would be depended on studying the risks of a specific convicted individual based on the multidisciplinary principle of studying the risks.

In 2014 work has already started on the new system of classification and assessment of risks, which was expressed in adding “low risk freedom restricting establishments” and “freedom restricting establishments of special risk” as separate types of establishments, which in 2018 were added by the establishment of restricting freedom to prepare for release.

Starting of changes also was expressed in developing the draft of the order on assessing the risks of the convicted at the Ministry of Corrections and Probation, re-evaluating them, types of

¹³ Report of the Public Defender of Georgia on the condition of protecting human rights and freedoms in Georgia in 2014. p. 45.

risks, transferring the convicted into the same or another type of establishment¹⁴, which, despite certain drawbacks of the project¹⁵, was unequivocally welcoming and necessary.

The new system of risks assessment and re-assessment got enacted and operating in 2015, which was defined by the above-mentioned decree of the minister of corrections and probation¹⁶, who planned to finish primary assessment of the risks of the convicted for the first of January of 2017. However, it was not implemented and got extended until June 1. ¹⁷ Eventually, the ministry could not finish primary assessment even within this timeframe and the information about realistic timeframes of complying with this obligation is not accessible in the public area.

It is worth noting that the Ministry of Corrections and Probation (merged with the Ministry of Justice in 2018)¹⁸ neither carried out assessment of risks including the year of 2017 nor maintained statistics of re-assessing it.¹⁹ It is well-known that in 2015 it was possible to define the risks of only 105 convicted individuals²⁰, which in itself is very little.

Recommendations of the public defender of Georgia appeared in 2015, which initially revealed certain drawbacks. These recommendations were as follows: on starting the process of assessing the risks of the convicted individual, on granting the right to the convicted person to submit additional documentation at any stage, involving the chief doctor of the establishment and the head of the medical department and envisaging the health condition of the convicted individual when making a decision²¹. The given recommendations have not been yet shared and complied with by the penitentiary system.²²

Based on the normative base, respective involvement of the convicted individual in the process of assessing and reassessing risks is not guaranteed and this factor disregards the recommendation of 2006 of EU Committee of Ministers on preliminary consultation with prisoners.²³

There are unjustifiably vague norms. For example, substantial change of behaviour or attitude of the convicted person or other circumstances and/or failure to justify leaving him/her in the same type of establishment are defined to serve as the ground for re-assessing the threat risk of the low-risk convicted individual.²⁴ (Enacted since April 2017). The mentioned rule contains a

¹⁴ Ibid, p. 45-47.

¹⁵ Ibid, p. 47.

¹⁶ Decree N 70 of July 9, 2015 of the Minister of Corrections and Probation on approving the rule of assessing and re-assessing the risk types of convicted individuals, risk assessment criteria and terms and conditions of moving the convicted individual to the same or a different type of establishment as well as that of defining the activities and rights and obligations of the risk assessment team.

¹⁷ Ibid, Article 4.

¹⁸ Comment: after the investigation period, from 2018, the penitentiary system got submitted to the Ministry of Justice of Georgia in the form of the special penitentiary service.

¹⁹ Classification of convicted individuals, risks assessment survey, p-24.

²⁰ Report of the Public Defender of Georgia on the condition of protecting human rights and freedoms in Georgia in 2015, p. 39 – 40.

²¹ Ibid, p. 41.

²² Classification of convicted individuals, risks assessment survey, p. -5.

²³ Recommendation of the EU committee of ministers REC (2006)2 related with the rules of the European prison towards member states (European Prison Rules), Point 17.3.

²⁴ The rule of defining the rule of assessing types of risks of the convicted individual, criteria of risk assessment, the rule of activities of the team of risk assessment and the rule and conditions of moving the convicted individual to the same type of or similar establishment, the rule of assessing and reassessing risks approved by the decree N 70 of July 9, 2015 of the Minister of Corrections and Probation, Article 16.2, “d”.

lot of obscurity and is prone to the risk of using it by officials unfaithfully. The stipulation about not justifying leaving of the establishment by the convicted individual is of general nature since the mentioned circumstance of unjustifiability is not supplemented by neither an explanation nor any other content, what can be implied by the legislator and what specific circumstances or conditions may create the fact of unjustifiability. Also, the stipulations on substantial change of behaviour or attitudes are emptied from content and neither the definition of these circumstances is indicated on what can specifically be regarded by the executor of the norm as the negative change or what behaviour is and what the attitude is about.

The norm (enacted from September 2017) deprived of specific content is of general nature and deprived of specific content bears the same vagueness and risks, which envisages the authority of the director of the department to move the convicted individual to the closed type of establishment temporarily with the view of re-assessing the risk, for not more than 20 days in the event of the behaviour of the convicted individual, substantial negative change of attitude and/or when leaving the convicted individual in the same establishment is not justified.²⁵ With its form, the mentioned rule is similar to the measure of ensuring something. It violates the rules of the whole penitentiary system on making the legislative regime already defined for the convicted individual stricter for specific aims since this measure is neither disciplinary punishment nor special conditions of the establishment, the security measure and making the type of the placing establishment stricter which may be implemented only after 20 days. In case of making the circumstances as given in this mode specific in real action, mainly the basis for using disciplinary punishment, including, placing in the solitary cell, moving to the cell-type of dwelling and/or giving the disciplinary punishment will be taken into consideration. Besides, this norm is logically intended for only low category convicted persons since bearers another type of risk are placed in anyway closed establishments or under stricter conditions. However, legislation does not indicate specifically which category of convicted individual it is intended for.

According to the manual research, the Ministry declares that the mentioned norm is in fact not used and does not give out the information about the cases of its use.²⁶ However, **according to the 2018 annual report of the public defender**, the problematic practice of using the mentioned norm is already reported. The information on multiple cases of moving the convicted individual from the semi-closed type of establishment to the closed one is given in the report using he mentioned norm and in a way that maximum terms (20 days) are not kept as well as the obligation to verify.²⁷

Besides, the **annual report of the public defender of 2018** includes one of the most significant and alerting factor. The public defender clearly underlines that criminal subculture impacts the risks classification significantly.²⁸

The report of the European Committee of Torture and Inhumane Treatment or humiliating one and restricting punishment on the visit to Georgia in 2018 (10-21 September) is interesting and significant in respect with the topic to be researched²⁹. According to the report,

²⁵ Ibid, Article 14.13; Imprisonment Code of Georgia, Article – 47.22.

²⁶ Desk survey – Classification of convicted individuals, assessment of risks, p. 19.

²⁷ Report of the public defender of Georgia on the condition of protecting human rights and freedoms in Georgia in 2018, p. 53.

²⁸ Ibid, p-46.

²⁹ Report of the visit of the European Committee of Restricting Torture and Inhumane or Humiliating Treatment or Punishment to Georgia, September 10-21, 2018.

the committee welcomes amendments made to the legislation after 2014 on assessing individual risks of convicted individuals, assesses it positively in general and considers that after 2014 it is one of the positive legislation phenomena. However, it requires full introduction.³⁰

The committee notes that despite positive changes, unfortunately, the instrument of assessing risks is yet far from being respectively introduced to practice. The committee notes specifically the problem of involving the convicted individuals themselves in the assessment process and states that the majority of convicted ones had no idea about assessing risks, was not involved and did not take part in the process of assessment. In most cases, the convicted individuals did not receive written information on the decision and its appeal. The security department and their secret recommendations make main and irrelevant impact on decision making in the process of assessment. At this background, participation of other specialists is of formal nature.³¹

Based on the existing situation, the committee gives recommendation to the Georgian authorities to fully introduce the instrument in practice and attach special attention to the procedural guarantees indicated in the report whereas it is important to re-assess the risks of high-risk convicted individuals in minimum every 6 months.

According to statistics³², there are substantial changes in the approaches of defining the risk of threat of convicted individuals in the system. The substantial change in the dynamics of data between the categories of semi-open and closed types enables making the mentioned conclusion. If at the end of 2014, 2451 convicted individuals belonging to the semi-open category were placed in the system (overall amount of the convicted 8865), by the end of 2017 (the total amount of convicted individuals 7975) statistics show 5204 convicted ones of the same type whereas the amount belonging to the closed type of category by the end of 2014 equalled 6076 and that of the end of 2017 amounted to 2106.

Overall statistics on placing the convicted individuals looks as follows:³³

End of 2015: low risk – 80; semi open – 2731; closed – 5245; rehabilitation of juveniles – 21; women’s special – 7; waiting for the definition of the type – 316.

End of 2016: low risk – 101; semi open – 3238; closed – 4414; special risk: 190; rehabilitation of juvenile – 15; women’s special – 8; waiting for the definition of the type – 136.

End of 2017: low risk – 151; semi open – 5204; closed – 2106; special risk: 146; rehabilitation of juveniles – 17; women’s special – 216; waiting for the definition of the type – 136.

53 orders were appealed against with the minister out of those intended for moving to the respective establishment on the basis of risks assessment and re-assessment in 2015–2017 whereas in court this number equalled 22.³⁴

³⁰ Ibid. p. 26.

³¹ Ibid. p. 37.

³² Analysis of annual reports of the ministry of corrections and probation.

³³ Annual report of 2014 of statistics of the system of the Ministry of Corrections and Probation of Georgia, appendix chart N15–10/, 2015 annual report of 2015 of statistics of the system of the Ministry of Corrections and Probation of Georgia, appendix chart N32–10./ Annual report of 2016 of statistics of the system of the Ministry of Corrections and Probation of Georgia, appendix chart N33–10./ Annual report of 2017 of statistics of the system of the Ministry of Corrections and Probation of Georgia, appendix chart N33–10.

³⁴ Desk research – classification of convicted individuals, risks assessment, p. 24.

The annual report of **2014 of the Public Defender is interesting to take into consideration the situation of the initial period of analysis**³⁵. The public defender mentions the necessity of carrying out classification of convicted individuals on the basis of exact analysis of risks and needs. Indicates to numerous recommendations on moving the convicted individual and welcomes current changes, which implies creation of the mechanism to carry out classification, which is expressed in developing the draft decree on assessing the risks of the convicted people in the Ministry of Corrections and Probation, re-assessing them, criteria of risk assessment, types of risks, moving the convicted individual to the same or a different type of establishment. It proves the existence of the mentioned project, welcomes prepared changes, reviews priorities of its approval, but, at the same time, notes vagueness and legislative drawbacks existing in the project.³⁶

7. MAIN FINDINGS:

Overall, the national strategy, government plans, criminal law reform strategies and plans in respect with issues to be researched were limited.

Creation of the normative base about risks assessment of a completely new threat based system of classification of convicted individuals started in 2014 and ended mainly in 2015.

Revealing of specific drawbacks and deficiencies by the public defender has been still continuing which started in 2015 and only omitted the year of 2017 and respective recommendations and proposals were made out of which none were fulfilled fully taken separately until 2018.

At the background of issued recommendations and proposals and those uncompleted with, the normative base after 2015 in terms of human rights guarantees almost has not improved (if we do not count the definition of the terms of re-evaluation). Furthermore, in 2017 vague and provocative changes of arbitrariness of administration³⁷ were made, which, as it was expected, led to negative effect in the form of verified actions practice.

Government and criminal reform plans (2014-2020) were distinguished by the mainly proper directions. However, specific and clear tasks were not issued towards responsible establishments, which left the possibilities of failure to comply with the aims and objectives or set such low standard requirements which undermined their relevance.

Government action plans of human rights protection

³⁵ Report of 2014 of the Public Defender of Georgia on Protection of Human Rights and Freedoms on the condition of human rights and freedoms protection in Georgia, p. 45.

³⁶ Ibid, p. 45-47.

³⁷ The changes which are related to the possibilities of moving the convicted individual to the closed type of establishment for not more than 20 days. The rule of defining the activities and rights and responsibilities of the risks assessment group and the rule of assessing the types of risks of the convicted individual, risks assessment criteria, the rule of assessing and re-assessing risks, the rule and terms of moving the convicted individual to the same or another type of establishment approved by the Decree N 70 of July 9, 2015 of the Minister of Corrections and Probation, Article 14.13,16.2-“d”, Code of Georgia on Imprisonment, Article - 47.22.

Plan of 2014-2015

In general, the plan was relevant and reflected proper directions. However, it was general and did not contain the activities carried out in reality. Focus was made on improving legislation in general, in respect with human rights protection and new classification of the penitentiary establishment. But, the basis of classifying convicted individuals was not planned, which would serve as the basis for placing them at the specific establishment. The mentioned basis was created in 2015, which was revealed in approving/activating the normative act on assessing and re-assessing the threat risks of the main instrument in this direction.

In terms of complying with the plan, it was fulfilled in both components, legislation was improved and classification of establishments was updated.

Plan of 2016-2017

Similar to the previous year's plan, the government plan of these years, contained improvement of regulatory norms of the system in general and introduction of the methodology already assessing risks, which included assessment of risks by the multidisciplinary team and placing of convicted individuals in the respective establishment as well as refining the instrument of assessing the convicts. General directions were welcome and proper, as in case of the plan of the previous year. However, they were limited and lacked specificity.

In terms of compliance, it can be stated that in respect with improving legislation, the plan is not being fulfilled and, vice versa, as it was expected, vague changes in 2017 led to the practice of improper use of norms. They were met partially in respect with risks assessment and refining the instruments.

Plan of 2018-2020

The given plan also continued the general line of the previous one in respect with improving legislation and also planned everyday functioning of the multidisciplinary team, use of risks assessment instruments and periodical review of the issues by the team. Similar to previous years' plans, the one of 2018-2020 was also general, limited and did not give any specific expectations.

In terms of compliance, nothing was fulfilled during 2018 in respect with the improvement of legislation and it is impossible to assess the rest due to the failure to finish the cycle.

Action plans of the criminal law reform

In general, criminal law reform action plans mainly and frequently repeat directly those of the government.

Plan of 2015

As for the assessment and classification of the risks of convicted individuals, similar to the government action plan of 2014-2015, it included two directions on the basis of changes/improvements of legislation and risks and needs, increase of the percentage indicator of placing the convicted persons in the respective establishment as well as construction of the new

establishment according to the renewed classification, retraining of administrative personnel and introduction of the risks-based assessment system. The plan was relatively specific. However, it still lacked specific clarity and measurement components.

As for compliance, it can be stated that the plan was fulfilled except the part of training the employees since the information about complying with the above-mentioned, is not given in compliance reports. Besides, specific assessment of the process of construction it initially impossible since neither the plan contained any specific indicators nor the mentioned information is related with the state secret.³⁸Besides, it needs to be envisaged that due to the fact that the dynamics of decrease of convicted persons is in progress and there is a need for new establishments since out of planned 2 establishments, none have been opened and functioning so far.

Plan of 2016

Similar to the previous year's and the government plan, it follows the line of generally acting legislation and plans to increase the index of placing the convicted individuals in respective establishments on the basis of risks and further improvement of the instrument of assessing the risks of threat as well as rehabilitation of establishments and construction of new ones in accordance with updated classification (different from planned 2 establishments of previous years).

In terms of compliance, it can be stated that given refining the legislative change and the instrument, the plan has not been complied with. It was partially fulfilled in terms of increasing the index of placing in the establishment in accordance with assessing the risks. However, as it was stated, it was planned to carry out primary assessment of risks in accordance with the decree of the minister by the end of 2016, which was postponed by his order for half a year. As for constructing the new establishment, it is known and has been mentioned above, that the establishments of Orkhevi and Laituri have not been opened yet.

Plan of 2017

The action plan of 2017 criminal reform also retains the established line of improving the regulatory normative base and also plans to increase the percentage index of placing the convicted individual in the respective establishment in accordance with risks and training/retraining of the employees of a certain category in respect with risks and needs as well as putting to an end construction of a new establishment in west Georgia.

In terms of compliance, the plan has not been met in terms of any direction. Furthermore, vague and unjustified norms appeared in the normative base which, according to the report of the public defender of 2018, already showed contra-indications (see. Analysis of the government action plan of 2016-2017).

³⁸ Approved on the basis of the decree N 507 of September 24, 201 of the government of Georgia "A list of Information considered as state secret", Article 24.a. .

Plan of 2018

Nothing is mentioned in the plan of the criminal reform of 2018 about classification of convicted persons and assessment of risks.

Ministry of Justice penitentiary and prevention action plan of 2019-2020

It needs to be mentioned that the penitentiary and prevention action plan of 2019-2020 is quite humble in respect with assessing and classifying the risks of convicted individuals. Furthermore, it can be stated that it does not even plan anything in this direction besides finalizing and implementing the “new instrument” of assessing the risks. At the same time, it is unclear whether “the new instrument” is the one which was introduced in 2015 or a newer one. It is not planned to do something specific. Therefore, it is impossible to assess its relevance or any ups and downs.

What is logically clarified is that on the basis of this “new instrument”, the ministry is planning to finalize the procedures on inputting certain data, improvement of individual assessment via the possibility of collecting aggregate data and, by so doing, implementing efficient methodology of individual assessment (including, classification), which will itself promote reduction of repeated crime in the penitentiary system through efficient rehabilitation and reintegration and prevent the crime as a result.

It is worth noting that in respect with the structure the plan, compared with other ones, is relatively simpler, more logical and detailed and has more specific and measurable indicators.

Relevance of plans

It needs to be mentioned that, in general, plans were relevant and with proper directions, envisaged the need for being compatible with international standards and the necessity to improve the legislation and internal regulatory documents in terms of enhancing protection of human rights. However, as for compliance, it did not envisage respective recommendations and proposals.

The plans in the direction of risks assessment and classification contain one and the same components, demonstrate the same dynamics and offers one and the same ways and methods of implementation and measuring performance.

The plans are mainly general, superficial and limited, what is mainly planned is either general or irrelevant components. In general, as if responding to challenges, it initially plans to envisage the outcomes, recommendations and proposals of international and local monitoring but does not envisage at all the failure to comply with them and is developing in another direction as if these recommendations have already been met.

In fact, almost all the plans contain one direction related with the issue under investigation which is relatively specific and understandable but lacks detail, obvious nature and, respectively, does not lead to clear expectations.

It is because of scarcity of the plans in respect with the issue under investigation that the general directions are discussed in the present research which refer to putting the international standards of the penitentiary system in compliance with each other and improvement of legislation.

In this respect, it is unclear what type of constant analysis was to be planned during 2014–2020 for making the regulatory norms of the system commensurate with international standards. As for the direction of classification of convicted individuals and risks assessment, the given component is extremely general and surface level. The impression is left that the plan has been developed specially with the purpose of considering everything as planned preliminarily in case of whatever happens in respect with developing regulatory norms. Obviously, the law and the norm, in general, should be alive and develop with time but the mentioned is not theory of law and putting this “development” in practice is everyday activity of specific legislative and executive authorities. Therefore, it is extremely extra to reflect such endeavours in the specific action plan (throughout 7 years) if it is not followed by specific and obvious measures and indicators.

On the one hand, the request to go into so much detail in terms of the government plan may not be a proper approach to the issue but if the content of the plan is envisaged and the level of detail of a specific issue is taken into consideration, at the overall background, the mentioned demands arise quite fairly.

Clarity is even more substantially required of criminal law reform action plans since, overall, they are the plan of developing a completely specific field and, otherwise, it is impossible to think about their

After the plan of 2014-2015, i.e. after the new system and instruments of assessing and classifying the risks was introduced, it was necessary to move forward and develop substantially, which would first and foremost be reflected in plans in defining indicators of specific activities and high standards.

Overall:

Aims: were mainly relevant though general.

Objectives/priorities: were also mainly relevant though general.

Activities: were general and in most cases not saying anything and irrelevant.

Indicators: were mainly general, saying nothing, did not set any realistic measurements and/or set the requirements of low standards which devalued aims and objectives.

Accountable agencies: in certain cases, the competence of responsible entities (ministry) defined by the legislation did not match the obligations imposed by plans or, vice versa, the plans did not impose over them the obligation to use their competency fully. Besides, in certain cases, the activities of the responsible body and the indicator imposed a different liability. There are cases when the plan imposed over accountable bodies the functions that were intended for them anyway and, as usual, everyday activities.

In general, such an approach towards development of the field in general led to the outcome that the recommendations and proposals of 2015 are not yet taken into consideration. Since 2017 the normative base was added with the norms which cannot be verified and be provoking of administrations in a different establishment of the convicted individual without re-assessing the risk, temporarily, before the risk is re-assessed, which, according to the report of the public defender, led to the practice of restricting the rights of convicted individuals additionally with no verification.

The structure of plans

Indicators - as it was indicated upon assessing the indicators, when assessing action plans, it is significant that the objectives and goals are formulated following the SMART principles. To be more specific, each aim or activity should be **specific**, which means that it should be formulated specifically, in detail, the actions to be made are properly defined; **measurable** - it should be possible to measure the activities and aims and reflecting them in figures and amounts; **attainable** - it should be possible to achieve them respectively. Aims and activities should be **realistic**, which implies that taking into consideration the existing resources, it should be possible to implement them and **time bound** - there has to be a set timeframe for completing the activities and achieving the aims. It is also worth noting that **the indicators** of assessing aims and objectives may measure only compliance of separate activities (compliance indicators) and it is possible that they are the indicators of impact or the way out, which shows to what extent the aim set in the action plan was attained. The institution responsible for a separate activity should be envisaged in the plan as well as it should be defined what the source funding of the activity is. The indicators should meet all five terms of SMART indicators.

Action plans discussed in the research (in the direction of risks assessment and classification of the threats of convicts) mostly do not satisfy the given demands. In most cases, the aims, objectives, activities and indicators are very general, not specified and formulated. For example, it is not indicated which recommendations of which international organization should be envisaged for improving legislation, how periodical review and analysis have to be made, etc. There are cases when there is a margin of error in activities and indicators.

A positive example of activities and indicators, which, at the same time, has some drawbacks is 2016–2017 government action plan activities 4.1.3.1. And its indicators. In this case, it is planned to implement specific activities with much more specific indicators compared with others. Risk assessment and placing of convicted individuals in respective establishments by the multidisciplinary team should be measured by introducing the instrument of classification and after risk assessment all the convicted individuals should be placed in respective establishments. This would result in introduction and finalization of methodology of individual planning of classification of convicted individuals, risks assessment and going through punishment, which, will itself contribute to in achieving the aims of establishing the penitentiary system commensurate with international standards.

At first sight, everything in this structure is simple and obvious. There is activity, which has a specific unit of measurement and as a result of complying with which the objective is fulfilled, which promotes the attainment of the goal. However, implementing the mentioned component was not possible within the pre-determined term. Respectively, it is possible that the request to define the additional component is made, which in this case, will be logically connected with the introduction of the instrument. It is well-known that this instrument of assessing risks was enacted from 2015 and upon making the plan it was known that it was operating. At the same time, it is logical that it was not operating yet within the scope of the whole system, i.e. it did not go through the introduction stage. The introduction stage finalization, as a rule, had to be expressed logically in the primary assessment of all convicted persons. However, it is the fact that the above-mentioned was not implemented within the set term. Therefore, the assumption arises that if the plan becomes more specific and towards the direction of a more specific and primate assessment, i.e. in the direction of introduction, it would, for instance, define additional measurements/indicators according to specific time periods establishments:

- In case the existing term is not realistic, it would be more realistic and determine more terms from the beginning or
- In case the existing term is realistic, by means of defining specific obligations set in time, the bodies responsible for implementation would not be given the possibility to breach the term.

Compliance results

The status of fulfilling the compliance with separate activities is defined in compliance reports of the plans as fulfilled or partially fulfilled. However, in fact, they are not not-complied with or being impossible to comply with.

It also needs to be mentioned here that in a number of cases, compliance reports do not indicate at all whether some components were complied with or not at all.

Within the scope of the research, the Ministry refused to provide additional information related with compliance. Reports of fulfilling the plans as well as those of the public defender and the normative base of the research period serve as the source of assessing compliance, which, in fact, reflect the directions of developing compliance well and objectively.

RECOMMENDATIONS:

- realistic, objective and multilateral analysis of recommendations and proposals issued by the public defender and other institutions implementing monitoring and reflecting changes based on them in respective normative acts;
- To envisage the SMART principle when developing action plans and make sure that the 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 in the system and, respectively, it is purposeful to make sure that indicators measure not only activities/results of activities but also their impact on the total system;
- The plan should include the detailed formula of calculating indicators to make sure the impact of activities on target groups is measured realistically;
- To make sure strategies and action plans include a clear and detailed policy and measures directed towards wiping out the impact of criminal sub-culture;
- To make sure the plans include specific and clear components which would give an exact and unequivocal direction to the responsible entities and exclude possibilities of deviating from the plan due to subjective motives;
- To exclude defining non-competent responsible establishments in plans;
- To exclude definition of everyday activities included in regular specific responsible establishment in the plan, included in their competence;
- To task the special penitentiary service (Ministry of Justice) on the basis of the superior normative act to keep the terms and comply with other main liabilities on maintaining public statistics in the process of risks assessment and reassessment by the responsible establishments and officials;

