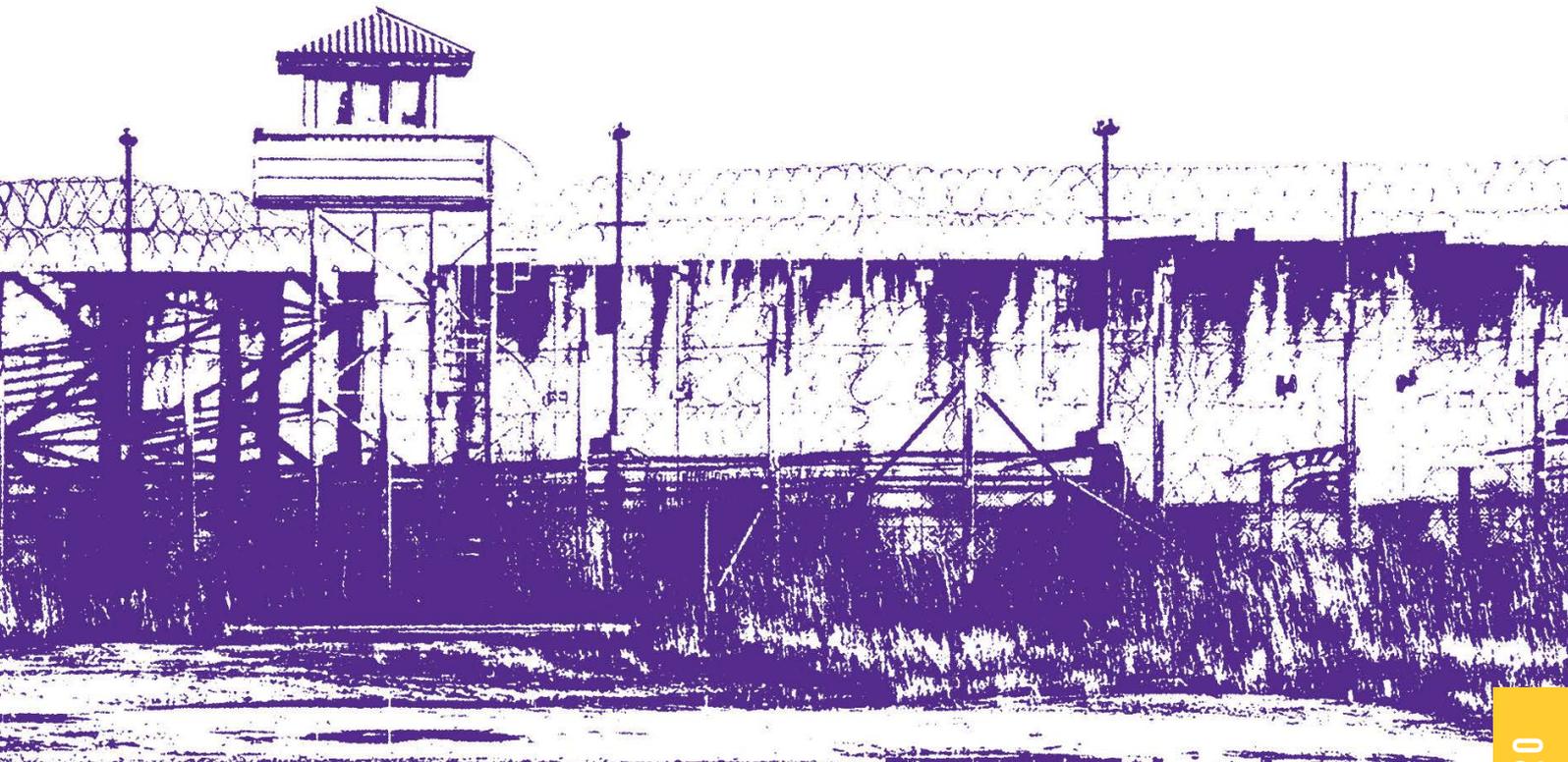




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The European Union for Georgia



THE LEGAL STATUS OF CONVICTS (INCLUDING VULNERABLE GROUPS) IN THE PROCESS OF ENFORCEMENT OF CONDITIONAL AND NON-CUSTODIAL SENTENCES



The publication has been produced by Partnership for Human Rights (PHR) within the framework of the EU funded project “Monitoring Government’s Commitments and Promoting Penal Reforms through the Engagement of CSOs” which is implemented by Penal Reform International South Caucasus Regional Office together with its partner organizations – “Rehabilitation Initiative of Vulnerable Groups” and “Human Rights Center”. The content of this document is the sole responsibility of the Author and can in no circumstances be regarded as reflecting the position of either the donor or Penal Reform International.





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1.1. INTRODUCTION

The use of alternative sanctions is of particular importance in the implementation of liberal justice policy. In Georgia, unlike in previous years, the use of alternative sanctions has increased significantly since 2012. It is the probation service that enables the implementation and effective functioning of alternatives to imprisonment. In Georgia, the National Agency for the Execution of Non-custodial Sentences and Probation ensures the execution of alternatives to imprisonment. The main purpose of the agency is to enforce legal acts determined by the law, to prevent re-offending, to protect public safety, re-socialization and rehabilitation of convicts .¹

The present thematic study describes the legal status of convicts (including vulnerable groups) in the process of enforcement of probation and non-custodial sentences in Georgia, based on the national legislation, international standards, and statistical data in this field.

A conditional sentence is a well-proven humanitarian approach to the administration of criminal justice. Its main purpose is to prevent the justice system from imposing unnecessary prison sentences, especially when it is not necessary for achieving criminal justice goals, and it can be accomplished by using lighter or non-custodial sentences. At the same time, probation is a lighter and more humane form of traditional punishment (imprisonment), serves to re-socialize the offenders, prevent crime recidivism, and ensure public safety. Accordingly, international standards and countries with successful criminal justice policy prioritize the conditional sentencing and, where possible, encourage the use of probation and other types of non-custodial sentences.

Non-custodial measures are an alternative to imprisonment. It aims to reduce the frequency of use of detention which, by observing human rights, its protection, and considering the rehabilitation needs of offenders is an important component of rationalizing criminal justice policy. The use of non-custodial measures is of particular importance from the point of the nature and gravity of the crime, the offender's personality, and experience, envisage the aim of protecting the community, and the prevention of unnecessary use of detention. The Public Defender of Georgia constantly draws attention to the importance of the development of non-custodial measures in Georgia, the rehabilitation of convicts and the development of criminal justice policy aiming at the integration of the offenders into society.²

By analyzing the situation in Georgia this document is mainly based on the International minimum rules on probation and non-custodial sentences, which create an international

¹ George Arsoshvili, Givi Miqanadze, Moris Shalikashvili, Probation LAw", 2015, pg. 29-40;

² Parliamentary Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2016, p. 6;

legal framework and are recommended for the implementation to the state parties. The main documents are The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), etc.

In the thematic study special attention is given to the existing guarantees for equality and the prohibition of discrimination in the national legislation. In particular, women offenders, children in conflict with the law, people with disabilities, sexual and gender minority, foreigner, and ethnic minority offenders should be taken into account and legal standards for the protection of their rights.

The document discusses the main topics that, in the opinion of the authors, need a legislative revision and the aim of which is the harmonization of the national legislation with international standards. Accordingly, the document does not reflect issues that are substantially in line with the above-mentioned international minimum rules. Since the document only aims to revise legislative regulations, only those norms will be studied that go beyond the purpose of verifying the implementation of a particular legislative regulation in the practice

1.2. Research Methodology

The thematic study aims to describe the legal status of convicts (including vulnerable groups) in the process of enforcement of conditional and non-custodial sentences in terms of their compliance with international standards, to identify gaps in the legislative level and develop recommendations for their elimination.

For the purpose of the study, the research issues were as follows:

- To what extent the enforcement of the suspended and non-custodial sentences complies with international standards?
- To what extent the educational and rehabilitation programs of the National Probation Agency comply with international standards;
- To what extent the offender risk and need assessment, and individual sentence planning comply with international standards during the enforcement of conditional and non-custodial sentences; How the needs of vulnerable groups are met during the enforcement of conditional and non-custodial sentences and to what extent they comply with international standards.

As a method of thematic research on the legal status of convicts (including vulnerable groups) in the process of enforcement of conditional and non-custodial sentences the desk review was used which was carried out in three main directions:

- 1.** Secondary Analysis of Existing Researches and Reports-In the framework of secondary analysis, the existing researches and reports on the legal status of convicts in the process of enforcement of conditional and non-custodial sentences have been processed. Among them there are the annual reports of the Special Penitentiary Service and the National Probation Agency of the Ministry of Justice of Georgia, the Parliamentary Report of Public Defender and Reports of the National Prevention Mechanism, other studies of the field;
- 2.** Analysis of the current situation - this direction of the research involves the analysis of national legislation related to the legal status of convicts in the process of enforcement of conditional and non-custodial sentences and its comparison with relevant international standards;
- 3.** Statistical data analysis-Within the framework of this component, statistical data on the legal status of convicts in the process of enforcement of conditional and non-custodial sentences were requested from the relevant state agencies and processed. Based on the objectives of the study, the requested information included information on the dynamics of probation and non-custodial sentences in the period of 2014-2017. However, it should be noted that the provided information, in many cases, was not complete or the relevant agency did not process the relevant information. Because of this, in some cases, it has become impossible to analyze statistical data on specific issues and to determine the appropriate dynamics.

In all three areas of the study, attention was focused on the needs and the standards of protection of the rights of the vulnerable groups. For the research purposes vulnerable groups were:

- Juvenile offenders;
- Female offenders;
- Offenders with disabilities;
- Ethnic and religious minority offenders;
- Foreign nationals;
- Sexual minorities.

1.3. Key Findings

The study found that the criminal justice system of Georgia includes and covers under the field of legislative regulations the enforcement of conditional and non-custodial sentences as an alternative to a traditional prison sentence, which is undoubtedly a positive concept. However, shortcomings have been identified both at the legislative and practical levels, which requires changes. Especially, the issue of processing statistical data should be distinguished, including the gaps in the processing of segregated statistics in the case of various vulnerable groups. In particular, statistical data is processed based on age and sex, however, it does not include such characteristics as disability, an ethnical and religious minority, sexual minority, foreign citizenship. This makes it impossible to assess through the analysis of statistical data the situation in terms of enforcement of conditional and non-custodial sentences. The study revealed that there are no clear requirements for the qualifications framework for professionals involved in the process of enforcement of conditional and non-custodial sentences. The issue with their professional qualifications on topics such as women's and minority rights and consideration of their specific needs is unclear.

The study showed that there are special training courses for the staff of the Probation Bureau, however, the principles of what this training should be based on, how to determine the priorities of thematic training or how to evaluate its effectiveness are unclear.

The study also found that Georgian legislation is completely unprepared to guarantee the rights of women, foreign nationals and minorities, and does not meet even the formal criteria that are fundamental and reflected in international regulations.

1.4. Recommendations

- 1 To regulate imperatively the rights of women and minorities in all relevant legislative acts, taking into account their needs;
- 2 The use of the conditional sentence to be full discretion of the criminal justice policy bodies in the cases concerning the protection of the child's best interest;
- 3 To determine the specific professions according to which depending on the job description the candidate will be required to have higher education;
- 4 Knowledge of women's and minority rights to be added to the personnel selection qualification requirements;
- 5 The special training course for personnel should be based on the basic human rights issues, with special emphasis on the rights of women and minorities. Training on these topics should be guaranteed by law;

- 6 Evaluation forms and subsequent measures should be substantially based on and, accordingly, analyze the special characteristics of the offenders, such as identity or otherwise;
- 7 To regulate and specifically draft the rules for the enforcement of non-custodial measures in connection with foreign citizens and to communicate it with the countries of their origin;
- 8 The interests and needs of the victim shall be taken into account and assessed during the execution of non-custodial measures;
- 9 The existence of the rehabilitation and other socio-economic programs during the enforcement of non-custodial measures, which will be focused and accessible to victims of all types of crimes;
- 10 Produce detailed statistics that also cover the legal status of women and minorities.



