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საქართველოსთვის
The European Union for Georgia



ინიციატივა მონწყვლადი ჯგუფების
რეაბილიტაციისათვის
Rehabilitation initiative for
vulnerable groups



DISCIPLINARY PROCEEDINGS IN THE PENITENTIARY SYSTEM

DESK RESEARCH





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

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Introduction

The behaviour of the accused and convicted persons, as well as of free citizens, is significantly defined by the various rules and norms existing in their environment. The key characteristic of the process of being an accused or convicted person deprived of liberty is the life of the accused/convicted person in different living conditions, which is way more strictly regulated and standardized in detail, where any deviation from the established rules or misconduct leads to completely different liabilities, from the usual living conditions outside of the establishment, and disciplinary/administrative penalties. Therefore, the discipline of the accused/convicted persons and the disciplinary proceedings in the reality of penitentiary establishments are very important and are directly related to the purpose of punishment, re-socialization, restoration of justice and prevention of crime.

Main Findings

In the years of 2014-2017, number of changes have been made on a normative level regarding the disciplinary proceedings, which share the spirit of international standards for the protection of prisoners' rights, but there are few changes aimed at further restrictions of these rights. Information, evaluations, proposals and recommendations published by the Public Defender in relation to practical implementation/establishment of standards set by international and national legislation is important, as it suggests that there are number of necessary measures (including legislative measures) that definitely need to be pursued in the penitentiary system.

- It has been revealed that persons authorized to make decisions have wide discretion, which may provide opportunities for their arbitrariness and a high risk of misconduct and, among other things, hinder the possibility to form unified practice/standards. A specific disciplinary measure for a specific disciplinary violation is not determined. Also, there is no full list of actions considered as disciplinary violations (there is room left to determine which action is a violation) or disciplinary incentives. The Ministry of Corrections (now the Special Penitentiary Service within the Ministry of Justice of Georgia) believes that already existing rules and norms are sufficient and deems it unnecessary to develop any guidelines.¹
- At the legislative and sub-legislative level, the rules and procedures of disciplinary proceedings have not been improved and the standards have not been raised. Including in regards to the fact determination, obtaining the evidence and the guaranteed protection of prisoners' rights.
- The Ministry and the penitentiary system do not produce statistical data about repeated disciplinary violations for such persons who are placed in a solitary confinement.² Consequently, it lacks the possibility to have a wider approach to the problem, evaluate the effects of the use of the measure, prevent future violations and deliberately fulfil the guidelines of international standards and various authoritative human rights organizations; for example, in regards to using solitary confinement only in exceptional cases and as a last resort.
- The systemic regulatory rules regarding disciplinary incentives have not improved through the reporting years, the principles of application have not been established and the consistent practice has not been achieved. The Ministry of Justice believes that systemic improvement of disciplinary incentives is demonstrated in offering various activities to convicts envisaged within the framework of individual sentence planning and the usage of incentives to engage them in these activities. The above-mentioned situation shows that the Ministry does not consider this to be a problematic issue and/or has a wrongful approach and does not give due consideration, which may lead to (further) diminishment of the disciplinary incentive mechanism and/or increase the use of improper/unlawful practices.
- There are certain changes in the use of disciplinary measures and incentives in practice. The cases of using disciplinary measures have increased from 1846 to 3644 annually from 2014 to 2017 inclusive. In case of disciplinary incentives, the increase is only from 1560 to 1643. Maximum amounts are shown in 2016 – 4806 cases of disciplinary sanctions, and in 2014 – 2305 cases of disciplinary incentives.
- The practice of disciplinary/administrative detention is absolutely non-uniform. According to official statistics, there are 9 such cases recorded, and according to the official information requested for this study, there are 13 such cases. These numbers indicate the rare use of this mechanism and its inefficiency, since 8 out of these detentions were carried out towards only 2 convicts. Each of them was sentenced 4 times to the disciplinary/administrative detention in 2015 (establishment №7).³
- The dynamics of the use of solitary confinement are positive, since there is clear reduction from 1151 cases in 2014 to 381 cases in 2017.

1 A letter of the Ministry of Corrections of Georgia - N MOC 5 18 00758472, para 2.

2 Ibid, para 6.

3 Ibid, para 7.

- The Public Defender's proposals and recommendations are often not fulfilled. In parallel to small positive changes, the problematic issues increase and the unfulfilled recommendations and proposals pile up for years. Among them, the full prohibition of family visits to persons subjected to disciplinary measures, the use of solitary confinement against prisoners with mental health problems, legal proceedings in the way of oral hearings, etc. There are cases of practical and legislative changes that are against the guidelines, recommendations and proposals.
- Among important legislative changes there are some that directly reflect international norms recognized in the country and improve national standards; such changes are: setting maximum limits on the number of sanctions used; prohibiting the simultaneous use of different measures, which restrict the contact with the outside world; determining the right to a lawyer to be exercised even in case when there is no oral hearing; decreasing the maximum term for solitary confinement; decreasing the general term for disciplinary detention (except for special risk establishment); exempting women living with children under the age of 3 at women's special establishment, as well as the convicts over 65 years, from being subjected to disciplinary detention.
- Among important legislative changes there are some that are aimed at reducing the standards of protection of the accused/convicted persons. Such changes are: removing the right to request oral hearing for reviewing the transfer of a person charged with committing disciplinary violation to a solitary cell or a cell type dwelling; giving sufficient time and resources to prepare the defence of a person charged with committing disciplinary violation and the right to call for a witness only in case of oral hearing; giving the decision-making authority, regarding disciplinary proceedings to be carried out through oral hearing or without oral hearing, only to the director (or person authorized by him/her); adding new sanctions, such as restriction to sell the item (inventory) made through individual work, restriction of the right to use personal TV or radio, prohibition of the right to watch TV programmes or listen to radio transmissions to the convicts under the disciplinary detention, restriction of the right to participate in the education process for those subjected to solitary confinement; for a special risk establishment, increasing the annual overall term of disciplinary detention from 90 days to 150 days.

Recommendations

- To use disciplinary measures only in exceptional cases and as a last resort;
- To conduct disciplinary proceedings only through oral hearings;
- To take effective measures in order to establish unified practice regarding the disciplinary measures and incentives in the penitentiary system. This includes the adoption/approval of guidelines and instructions and proper training of the staff;
- To improve disciplinary proceedings with regard to the fact determination, to raise standards in terms of obtaining evidence and protecting the prisoners' rights, to adopt relevant norms and regulations and properly train the staff;
- Production of statistics on different issues, including on repeated disciplinary violations, in order to analyse the data, make relevant conclusions and take appropriate measures;
- To elaborate and implement a unified policy towards disciplinary detention or to abolish such measure altogether;
- To make records about the exercise of the rights by the persons subjected to solitary confinement;
- To thoroughly study and analyse proposals and recommendations made by the Public Defender of Georgia, relevant NGOs and international organizations, and to implement relevant measures.

