



ევროკავშირი
საქართველოსთვის
The European Union for Georgia



ინიციატივა მონველადი ჯგუფების
რეაბილიტაციისათვის
Rehabilitation initiative for
vulnerable groups



THE COMPLAINTS MECHANISM IN THE PENITENTIARY SYSTEM

DESK RESEARCH





ევროკავშირი
საქართველოსთვის
The European Union for Georgia



ინიციატივა მონწყვლადი ჯგუფების რეაბილიტაციისთვის
Rehabilitation initiative for vulnerable groups



The Complaints Mechanism in the Penitentiary System

Desk Research

წინამდებარე სამაგიდო კვლევა მოამზადა ორგანიზაციამ „ინიციატივა მონწყვლადი ჯგუფების რეაბილიტაციისათვის“ (ავტორი: ბაქარ მეტრეველი). კვლევა ჩატარდა ევროკავშირის ფინანსური მხარდაჭერით, „ციხის საერთაშორისო რეფორმის სამხრეთ კავკასიის ოფისის პროექტის – „სასჯელალსრულებისა 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.

The publication has been produced by Rehabilitation Initiative of Vulnerable Groups (Author: Bakar Metreveli) 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. The contents 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, or its partner organisations.

Introduction

The accused/convicted person has the right to make a request and/or a complaint to a penitentiary establishment for the protection of his/her rights, to ensure their implementation, to request any action from the administration or to refrain from action. This right along with the procedural guarantees for its implementation is a fundamental right of the accused/convicted person, which to some extent balances the pressure caused by the deprivation of liberty. The right of a prisoner to request the action prescribed by the law or to appeal/complaint against the taken action or inaction, is one of the fundamental issues in the penitentiary system. Ensuring a safe and effective access to these rights is a significant guarantee of respect and protection of prisoners' rights by the penitentiary system. Consequently, appropriate and efficient functioning of the requests and complaints mechanism is a significant indicator for evaluating the penitentiary system.

Main Findings

The national legislation regulating and reviewing requests and complaints is basically in compliance with international standards and sets out certain important rules, however, the practice shows that the regulating norms are not sufficient for addressing these issues in detail and leave a possibility for ignoring basic principles, such as the principle of confidentiality.

- The monitoring and evaluation carried out by the Public Defender reveals that a problem of criminal subculture still remains in the penitentiary system, which is a significant problem not only for the implementation of the right to requests/complaints but also for the proper functioning of the penitentiary system and for reaching the purpose of imprisonment and punishment.
- The information, requested and received for the present study, shows that the prisoners are notified about their right to file a request/complaint, the procedures for its filing and review, the right to free legal consultation and translation services by the administration of the establishment in the written form only upon admission and through placing publications about the prisoners' rights in the libraries of the establishment.¹ This means that the international obligation to place/disclose the list of rights on a visible spot for prisoners is not fulfilled.²
- Despite the requirement of the Code of Imprisonment, the complaints form is not determined. The form of the envelope for a confidential complaint is not determined either.
- The normative base and practice for the confidentiality of requests/complaints, for the purpose of a safe implementation of the right to file a request/complaint, is weak and problematic.
- The absence of official statistical data is an important issue. At least there is no official data on the amount of requests and complaints (information about the amount is obtained specifically for this study through a request for public information), the content, procedural details (including timely implementation of procedures, protection of confidentiality, approving/rejecting requests for a lawyer and a legal representative, requesting/receiving other legal consultations, etc.), satisfactory or unsatisfactory decisions, evaluation of the validity of the decisions made, further appeal of the decision to a higher or another authority, and other data. This is a definite basis for a detailed review, analysis and proper conclusions on key issues in order to improve the normative framework and practice. This was caused by the removal of the Department's responsibility from the Code of Imprisonment, which envisaged a general review, analysis of requests and complaints once in every six months, preparation of a relevant report and submission to the supervising authority and the Minister.
- The statistical data is available only regarding the amount of requests/complaints (by years and establishments), which confirms the complexity of the issue and the absence of common approaches in practice, which is reflected in dramatic differences between the amount of requests/complaints filed in different establishments.
- None of the legal acts have been issued for the purpose or on the grounds of fulfilling the recommendations of the Public Defender, despite the statement made by the Ministry that it closely cooperates with the Public Defender and has already accepted part of the recommendations.³

1 A letter of the Ministry of Corrections of Georgia - N MOC 1 18 00766028, paras 10–11.

2 The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) – Rule 55.3.

3 Ibid, paras 7-9.

Recommendations

- Develop and implement a common, effective policy of combating criminal subculture;
- Improve the system of informing the prisoners about their right to file a request/complaint, the procedures for its filing and review, the right to free legal consultation and translation services, which entails the implementation of the right to be informed without additional bureaucratic and other hindering procedures;
- Place/disclose the information about the rights provided by law regarding filing of requests/complaints on the appropriate and safe spot with the possibility of access to all prisoners in all establishments;
- Elaborate and approve the complaints form;
- Elaborate and approve the form of the envelope for a confidential complaint;
- Improve the normative base and practical capacities for the protection of confidentiality and a safe implementation of the right to file a request/complaint.
- The penitentiary system to produce full statistics on requests/complaints;
- Develop and implement a unified system of continuous monitoring of the right to file requests/complaints and implementation of related rights;
- Take effective measures to study, analyse and implement relevant proposals and recommendations of the Public Defender of Georgia, other relevant NGOs and international organizations.

