

ZOIA (MAIA) KHASIA

STANDARDS AND PRACTICES OF
TREATMENT OF PERSONS WITH
DISABILITIES IN PENITENTIARY
SYSTEM



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PENITENTIARY SYSTEM**

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გამომცემლობა „მერიდიანი“

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PREFACE

The book “Standards and Practices of Treatment of Persons with Disabilities in Penitentiary System” is the author’s dissertation work. It is the first scientific work on this topic in Georgia, covering both theoretical and practical aspects. The value of the work is complemented by many years of practical experience of the author on the research topic.

Also noteworthy is the research methodology used on the topic; in particular, the author analysed the practice of the penitentiary system of Georgia, as well as the practice of post-Soviet and European countries, and the selected decisions of the European Court of Human Rights. The used methodology allowed the author to assess the challenges for people with disabilities in the penitentiary system and formulate recommendations for improving the existing practices through comparative-legal analysis.

The present work is intended for the following audience: the scientists working in the field, practicing lawyers, and people employed in the state institutions, especially those who work with persons with disabilities in the penitentiary system, law students, and people interested in current issues of law.

The work reviews the existing problems and challenges in the criminal justice system and the sentencing of persons with disabilities and offers ways and methods for solving them. The new vision presented in the work will enable the Georgian penitentiary system to put into practice a modern, international standards-oriented approach and provide conditions for the execution of sentences of persons with disabilities tailored to their needs, equal to other detainees, ensuring the protection of the rights of persons with disabilities as a vulnerable group.

The author suggests new terms/institutions in her work, such as “prisoners with disabilities with multiple needs”, “prisoner caregiver system”, which have no analogues in the Georgian legislation on the

penitentiary system. The introduction of these terms/institutions will significantly facilitate the assessment of the risks and needs of persons with disabilities and the procedures for creating/introducing adequate conditions for serving sentences.

The practical value of the present work is significant, as the author's provisions, conclusions, and recommendations will substantially contribute to planning the process of sentencing persons with disabilities, creating adequate conditions, and planning early/conditional release. In addition, the present work will contribute to introducing new approaches to the problems mentioned above in regard to resolving contentious issues.

Editor,

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GLOSSARY OF ABBREVIATIONS, ACRONYMS AND TERMS USED

art – article

The Mandela Rules - The United Nations Standard Minimum Rules for the Treatment of Prisoners

Persons with disabilities (PwDs) – “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”¹

The social model of disability – According to the social model, the disabled people are disadvantaged by the limitations imposed on them by social, cultural, economic and environmental barriers.²

The medical model of disability – According to the medical model, the inequality and disadvantage, that disabled people face, results solely from their medical condition and the only ‘hope’ is a cure.³

Prisoners with special needs⁴ - International documents also contain special categories of prisoners, and include: women, juveniles, PwDs, older prisoners, persons with terminal illness, foreigners, ethnic and racial minorities, LGBT (lesbian, gay, bisexual and transexual).

Sign language interpreter – a person translating between a spoken and a signed language.

Braille—a system of writing or printing, devised by Louis Braille (1809-1852) for use by the blind, in which combinations of tangible dots or points are used to represent letters, characters, etc., that are read by touch.⁵

¹ UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, art 1.

² See British Council, Toolkit to Inclusive Decision-Making for Policy-Makers, 2014, 10.

³ Ibid, 69.

⁴ Atabay T., Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009.

⁵ See Braille Definition & Meaning | Dictionary.com [05.03.2021].

Discrimination on the basis of disability – means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁶

Reasonable accommodation – means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.⁷

Accessibility – access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.⁸

Adapted environment – designing residences, public buildings and facilities to eliminate obstacles and barriers.

Rehabilitation – a set of interventions designed to optimize functioning and reduce disability in individuals with health conditions in interaction with their environment.⁹

Habilitative/Habilitation Services – healthcare services that helps individuals to keep, learn, or improve skills and functioning for daily living, e.g., therapy for a child who is not walking or talking at the expected age.

Social rehabilitation – this part of the rehabilitation process in-

⁶ UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, art 2.

⁷ Ibid.

⁸ Ibid.

⁹ See World Health Organization (WHO), *Rehabilitation*, <<https://www.who.int/news-room/fact-sheets/detail/rehabilitation>>, [05.03.2021].

cludes the integration or re-integration of a person with a disability into society, thereby helping him or her to adapt to the needs of the family, society and occupation, as well as reducing any economic or social barriers that may hinder the rehabilitation process.

Integration – to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.¹⁰

Mediation – is one of the methods of conflict resolution, in which a neutral mediator assists the parties through constructive discussion and negotiation of their issues in order to reach a mutually acceptable resolution. There are two types of mediation: court-ordered mediation and voluntary or private mediation.

Poliomyelitis – Poliovirus is a highly infectious virus that invades the nervous system and can cause lifelong paralysis and sometimes death.¹¹

Facility – the publication refers to the penitentiary facility.

Post-Soviet state – a country in the former Soviet Union. On 30 December 1922, the first congress of plenipotentiary delegations established the USSR.¹² In 1924, the Soviet Constitution was approved at the second congress.

Detachment - the term is found in the practice of post-Soviet states. The employee of the so-called correctional service (head of detachment) is responsible for one detachment, which includes from 50 to 100 prisoners. Separation of prisoners according to detachments is a simple form of division of prisoners.

Colony - type of penitentiary facility in penitentiary systems of post-Soviet states, designed to accommodate convicted individuals.

¹⁰ See UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, art 26.

¹¹ See Fact sheets on sustainable development goals: health targets, World Health Organisation, regional office for Europe, 2017, 1.

¹² The Union of Soviet Socialist Republics.

Black World – prisoners and their circle belonging to the so called thieves’ world.

PRI (Penal Reform International) - Penal Reform International is an international non-governmental organisation, founded in 1989 by a group of criminal justice and human rights activists.

UNODC (United Nations Office on Drugs and Crime) - a United Nations office that was established in 1997 as the Office for Drug Control and Crime Prevention within the United Nations International Drug Control Program.

CPT (The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) – the CPT was founded on the basis of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), which came into force in February 1989.

APT (Association for the Prevention of Torture) – the Association for the Prevention of Torture is an international non-governmental organisation, which was founded in 1977.¹³

AHRC (The Australian Human Rights Commission) – the Australian Human Rights Commission is the national human rights institution of Australia, established in 1986 as the Human Rights and Equal Opportunity Commission (HREOC) and renamed in 2008. It is funded by, but operation independently of, the Australian Government.

ACLRC (Alberta Civil Liberties Research Centre/University of Calgary, Alberta, Canada) – the mission of the Centre is to promote respect for civil liberties and human rights through research and education to contribute to a more just and inclusive community.

IDFI (Institute for Development of Freedom of Information) – a Georgian non-governmental organisation founded in 2009. The mission of the organisation is to empower society and make it better informed

¹³ Information about the organisation is available at the website of the Association: <<https://www.apr.ch/en/who-we-are/>>, [15.11.2019].

and inclusive.

NEADS (National Educational Association of Disabled Students) – is a charitable organisation, which was founded in 1986 (Ottawa, Ontario, Canada).

HRW (Human Rights Watch) – an international non-governmental organisation, founded in 1978. The organisation conducts research on human rights violations and carries out advocacy campaigns around the world.¹⁴

WHO (World Health Organisation) – WHO, which was established on 7 April 1948, works worldwide to promote health, keep the world safe, and serve the vulnerable.

HWA (Handicaps Welfare Association) – founded in 1969 by a group of 23 persons in Singapore. The organisation is run by people with disabilities, for people with disabilities to promote self-help and provide mutual support among the disabled. It adopted the present name in 1976.

IACHR (Inter-American Commission on Human Rights) – is a principal and autonomous organ of the Organization of American States (OAS) whose mission is to promote and protect human rights in the American hemisphere.

PRT (Prison Reform Trust) – is an independent UK charity, working to create a just, humane and effective penal system.

Leicester University - The University was founded as Leicester, Leicestershire and Rutland University College in 1921, at the heart of the UK. The Leicester is a leading university committed to international excellence, world-changing research and high quality, inspirational teaching.

The interview conducted by the doctoral student during the research is based on handbooks published by the University of Leicester and the standards set by it.

¹⁴ Information about the organisation is available at: <<https://www.hrw.org/about-us>>, [15.11.2019].

INTRODUCTION

This current publication discusses the specificities of serving a sentence by persons with disabilities (hereinafter PWDs), analyses the problems and challenges that PWDs face while serving the sentence, presents the new approaches aimed at addressing this issue, which would enable Georgian penitentiary system to introduce the latest, international standards-oriented approaches and to provide PWDs with the conditions of serving a sentence in line with their needs and on equal basis with other convicted individuals.

The creation of reasonable accommodation and accessible environment for persons with disabilities is new to the society, in general. Such approach was introduced in 2006 when the Convention on the Rights of Persons with Disabilities (CRPD) was adopted. It became widely known for the Georgian society in 2014, when Georgia ratified the Convention.¹⁵

Regulation of the discussed issue is one of the priority directions of the state policy due to its newness, the high interest of the society towards it and the needs, which the considerable part of the society has or might have. Also, the priority is conditioned by the international treaties and agreements, which Georgia has joined or intends to join. Based on the above, the author aims at analysing existing gaps and achievements and seek ways to make effective decisions based on it. It analyses both the practice, existing in Georgia, including its positive and negative characteristics, as well as legislation, which at this stage cannot create an environment for serving a sentence that fully respects the dignity of PWDs.

¹⁵ Georgia signed the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol in July 2009. The Convention was ratified on 13 March 2014. The Optional Protocol has not yet been ratified by Georgia. (CRPD List of Countries: Convention, Optional Protocol Signatures, Ratifications), available at: <<https://www.disabled-world.com/disability/discrimination/crpd-milestone.php>>, [20.11.2019].

The problems faced by PWDs should be of particular importance not only in public life but in places of deprivation or restriction of liberty. The negative impact of unequal conditions is particularly strong when the PWD is placed in the mentioned place, in a foreign environment and the informational vacuum. The PWDs cannot access the services and activities that other prisoners enjoy on daily basis. The absence of such care and services may be vital, depending on the nature of the disability and the serious state of health of the person with disability.¹⁶

The **relevance and actuality of the issue** is determined by a number of factors in the publication, which discusses them separately, independent of each other, but emphasizes the importance of interconnectivity between these factors. The first factor to discuss is an increasing number of PWDs in penitentiary facilities worldwide, among them, presumably in Georgia as well. It is impossible to accurately analyse the number of persons with disabilities in penitentiary facilities and its dynamics according to the Georgian practice, due to the absence of relevant published statistical data.¹⁷

In addition to the fact that the increase in the number of prisoners determines the increase in the number of persons with disabilities in places of serving a sentence, its impact on the process of sentencing of persons with disabilities is also significant. Increased number of imprisoned PWDs results in overcrowding of prisons. Accordingly, conditions in the above-mentioned facilities become more difficult for persons with disabilities. The theses published by the University of Toledo assert

¹⁶ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 44.

¹⁷ Statistical information about the number of PWDs placed in penitentiary facilities cannot be found either on the webpage of the penitentiary system: <www.sps.gov.ge> or the webpage of the National Statistics Office of Georgia: <<https://www.geostat.ge/ka/modules/categories/131/samartaldarghvevebis-statistika>>, [20.11.2019].

that the cases of crime and criminal acts have increased significantly over the past 20 years. Herewith, the number of persons deprived of liberty has also increased. Consequently, according to the conclusion of the theses, a large part of the accused and convicted PWDs in need of rehabilitation cannot get the proper service.¹⁸

The second factor that determines **the relevance and actuality of the issue** is the discussion about the causes of the crime committed by PWDs, which are usually distinguished by different characteristics compared to other convicted individuals. According to different research, PWDs mostly commit crimes not due to their criminal mentality, but for the purpose of meeting their needs and overcoming existing obstacles. The respondent PWDs¹⁹, who have had an experience of working with other PWDs convicted and placed in penitentiary facilities for different crimes, explain that the causing factor of the crime is that the state does not offer any assistance, service, or employment to PWDs. For example, according to the IDFI, the employment rates among persons with disabilities in Georgia are deteriorating. In particular, the employment rate according to the status of disability was the following: only 3.8% of persons with disabilities (age 15 and above) were employed among those with pronounced disability (Group I), 4.8% among those with consider-

¹⁸ See *Greifinger R. B.*, Disabled prisoners and reasonable accommodation, *Criminal Justice Ethics*, 25, 253-55, 2006, in *Shunk C.*, *The Treatment of Criminals with Disabilities: An Ongoing Debate*, Submitted as partial fulfillment of the Requirements for The Master of Liberal Studies, The University of Toledo, 2008, 13.

¹⁹ Within the research, the persons with disabilities, representatives of the Department of Protection of the Rights of Persons with Disabilities at the Public Defender's Office and representatives of non-governmental organisations working with persons with disabilities, as well as citizens, by random selection, were interviewed and surveyed. The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

able disability (Group II), and 7.8% among those with moderate disability (Group III), while, as of 2014, average PWD employment rate in EU countries is 33.6%, which is 7 times higher than in Georgia.²⁰

Also noteworthy are the studies on the causes of crime in Georgia, which, among other reasons, consider the difficult socio-economic conditions, such as: unemployment, poverty in a large part of the population, etc. In one of such studies, we find the author's view that, according to experts, "more people have a motive to commit a crime during a period of economic downturn".²¹ According to her, in this way they try to get what they cannot afford. This reasoning clearly coincides with the respondent's opinion on the causes of the crime. Clearly, socio-economic factors affect the population with disabilities more due to their vulnerability. This reason is not present only in the practice of Georgia, but it also takes one of the defining places in the practice of other countries. According to a study by NSW²², which is based on the analysis of criminal experiences of individuals, typically people with lower socioeconomic status are more prone to engage in crime.²³ Most of the publication belong to this category. These and several other factors have an extremely negative impact on the daily lives of persons with disabilities. Such an impact affects their social life, which in fact leads them to the places of serving the sentence. We also encounter such impact in places of deprivation of liberty, where persons with disabilities often

²⁰ See Institute for Development of Freedom of Information (IDFI), Data Analysis on Persons with Disabilities Living in Georgia, 2018, available at: <https://idfi.ge/public/upload/IDFI_Photos_2017/idfi_general/pwds_statistics_eng.pdf>, [15.11.2019].

²¹ See *Dushuashvili T.*, Crime and Economics, 2015, available at: <<http://forbes.ge/blog/123/kriminali-da-ekonomika>>, [15.11.2019].

²² See NSW - Justice Bureau of Crime Statistics and Research, Australia <<https://www.justice.nsw.gov.au/>> [15.11.2019].

²³ See *Weatherburn D.*, What Causes Crime? Crime and justice bulletin, NSW - Justice Bureau of Crime Statistics and Research, Australia. No 54, 2001.

find themselves in a different, discriminatory environment from other prisoners, leading to a sharp deterioration in their physical and mental state. In some cases, such complications can put them at risk for life.

Among the causes, in addition to socio-economic conditions, we may also consider the lack of information, when persons with disabilities, due to their isolation from the society, are not aware about which actions are considered as a crime and, in general, what is the concept of crime. For this same reason they cannot be fully involved in every stage of the criminal proceedings and in everyday life of the prison. Several reports emphasize that existing standards do not provide full and accessible information and communication for all persons with disabilities at all phases in the legal proceedings. PWDs often cannot participate in the proceedings due to the inability of the authorities to provide information and to communicate in a fully-accessible manner.²⁴

During the interviews, people with disabilities identify problems that they face in everyday life. They note that the problem of isolation still remains, which includes not only physical but also informational isolation, when, for example, a person with hearing impairment cannot receive information on the events, rules, laws, and especially the prohibiting norms in the society, which in itself is a contributing factor to commit crime. However, it is logical that these factors might not be directly reflected in the committed act and, therefore, investigative and judicial bodies do not or cannot study them.²⁵

²⁴ EDF Alternative report on the implementation of the UN Convention on the Rights of Persons with Disabilities, Adopted in Brussels by European Disability Forum's Board of Directors on 8-9 November 2014, 28 (Available form includes sign language interpretation, assistive listening devices, speech-to-text services, easy to read and understand information)

²⁵ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

Based on the above discussions, **the relevance and actuality of the issue** is determined by the main question: what should the conditions of serving the sentence be for persons with disabilities, in order for them to serve it in the same conditions as other convicted individuals, and what causes the unequal conditions of serving the sentence? The paper should answer these raised questions, explore ways of solving the problem, and provide adequate conditions of serving the sentence, which shall be ensured for persons with disabilities by the administrations in places of deprivation of liberty.

The discussions and conclusions presented in the this publication, in relation to the penitentiary system personnel, shall also be considered as the factor that determines and **the actuality and relevance of the topics discussed in this publication**. The paper discusses what the readiness and attitude of the penitentiary system personnel should be towards prisoners with disabilities and how to ensure social reintegration of PWDs after their release.

The relevance and actuality of the publication is also determined through discussing, along with other issues, the attitude of the justice system towards the PWDs. The author analyses the existing practices in Georgia and other countries in the context of access to justice for PWDs and its impact on the process of serving the sentence. Given that no separate study has been carried out on this particular issue in Georgia, this publication will provide the most comprehensive information to the stakeholders in the field.

Although international standards and national laws actively discuss the rights and standards of treatment towards PWDs, often they live in unequal conditions compared to other members of the society in Georgia and in many other countries. The following factors may be considered as causes: limited accessibility, non-adapted environment, legislative gaps, lack of state policy, low level of public awareness, etc. These factors turn them into one of the most vulnerable groups of the society.

The lack of proper care and services, which persons with disabilities require in their everyday life, complicates their conditions in penitentiary facilities. Lack of proper conditions may be of vital importance for those PWDs, who are placed in closed-type facilities.

The above-mentioned and other problems remain to be acute for PWDs in many areas of public life. Despite the fact that number of important steps are being taken to regulate them in today's world, we still come across the gaps in practice. Specifically, national legislation and international standards regulating the approach towards persons with disabilities envisage many factors, such as: living conditions, social protection, healthcare, labour rights, education, participation in public life, etc.,²⁶ which should place PWDs in equal conditions with others. In most cases the problem is the enforcement of these legislative norms. Their effect is often minimized, which is why these norms are particularly declaratory and often remain as "dead norms". The integration of international standards into national legislation should be considered as a problem of regulatory mechanisms at the national level.

For the given reasons, there is still a visible gap between the living conditions of persons with disabilities and other citizens, both in the public life, as well as in places of deprivation of liberty. This gap is gradually increasing and, as a result, unlike the rest of the society the persons with disabilities face vitally important challenges and difficulties. Based on these and other factors, there are several reasons to discuss the conditions of serving the sentence for prisoners with disabilities and the ways in which they can be solved, which justifies the inevitable necessity of this discussion.

First of all, it should be noted that any country, which has joined several international human rights treaties, is obliged to create condi-

²⁶ See the UN Convention on the Rights of Persons with Disabilities, 13 December 2006; Law of Georgia on Social Protection of Persons with Disabilities, Departments of the Parliament of Georgia, 14 June 1995.

tions that ensure equal and dignified living conditions for each person, regardless of where they are.

Based on a superficial discussion, the percentage of prisoners with disabilities is very low in Georgia, however, research carried out in different countries shows a different picture. For example, the study conducted by the University of Michigan shows the quantity and the ratio of PWDs among the persons deprived of liberty. According to the study, most of the prisoners in the United States have at least one type of disability, and according to the latest research conducted by the Bureau of Justice Statistics (BJS) of the US Department of Justice revealed that 10 per cent of prisoners complain about mobility impairment, more than 6 per cent claim that they are deaf or have hearing impairment, more than 7 per cent claim that they are blind or have vision impairment (which cannot be improved through glasses), from 4 to 10 per cent have intellectual or developmental disabilities.²⁷

Another discussion, which determines **the relevance and actuality of the issue** and deserves special attention in relation to the conditions of serving prison sentence by PWDs, is the design and arrangement of prisons. There is practically no published document in Georgia that provides a basis for discussing this issue. The question of whether these facilities meet the requirements for accommodating prisoners with disabilities is still unresolved, even though imprisonment is increasingly used against persons with disabilities. In addition, it should be taken into consideration that the majority of prisons were built in the beginning of the twentieth century, while even the concept of human rights let alone the rights of persons with disabilities was, in fact, an unknown topic. In addition, as experts explain, logically, the prisons are built for healthy people who constitute a large part of the offenders. Professor

²⁷ See *Schlanger M.*, Professor of Law at the University of Michigan Law School, Prisoners with disabilities: Individualization and Integration, Public law legal theory research paper series, March 14, 2017, 2.

Murdoch's explanation²⁸ about the purpose of prisons, in general, reflects the reality that most of the prisons are practically designed for young and physically healthy prisoners, and therefore such prisoners constitute the majority of prison population. He also explains that not only the prison conditions, but also the prison programs, as a rule, are designed to address the needs of young prisoners. *"Older (that is, elderly) prisoners and persons with physical disabilities (and those with long-term disabilities in particular) may encounter various barriers that hinder their full and effective participation in prison life or on an equal basis with others."*²⁹

In the list of arguments that determines **the relevance and actuality of the issue**, we should also consider appertaining the persons with disabilities to a special category. Granting of this status is based on the special needs they have as vulnerable persons due to their physical and mental state. Evaluation, identification, and further provision of such needs is, or, in the worst case, should be a duty of the prison administration, in order to ensure that such individuals do not find themselves as targets of violence and human rights violations from other persons. The scientists explain the special categories of prisoners, which represent vulnerable groups, such as, ethnic, religious, racial, and sexual minorities. Professor Murdoch focuses exclusively on people with disabilities, such as handicapped, sick, mentally ill, or mentally retarded prisoners. According to him, they are at a much higher risk of ill-treatment and discrimination.³⁰

Taking into consideration the above-mentioned factors, we should

²⁸ See *Murdoch J.*, Professor of Public Law, University of Glasgow, School of Law, United Kingdom, *Jiricka V.*, Head Psychologist, Prison Service, Czech Republic, A handbook for prison staff with focus on the prevention of ill-treatment in prison, Council of Europe, April 2016, 55.

²⁹ *Ibid*, 55.

³⁰ *Ibid*, 46.

assume that persons with disabilities are intentionally or unintentionally at risk of discrimination. When PWDs are placed in prisons it is difficult to avoid discrimination even if maximum preventive measures are taken. Prevention is a very important component to eliminate discrimination, but even in the case of well-planned preventive measures it is still impossible to avoid all cases of discrimination. Therefore, it is necessary for the state to respond efficiently to all manifestations of discrimination. To this end, there must be an appropriate legal framework and institutional mechanisms in place, which will implement the anti-discrimination norms. Based on the above, it is advisable to analyse what kind of legal and institutional framework should exist at the national level.³¹

Apart from legislative regulations, we should consider human and financial factors – such as: prison management, personnel, conditions – as preventive measures in the penitentiary system.

First of all, as experts explain, the prisoners with disabilities or vulnerable prisoners in penitentiary facilities should not be perceived as marginal problems for the prison administration. The approach of experts is unequivocal that the timely and effective solution of the daily problems, identified when working with PWDs, requires a state policy that provides for the functioning of the prison system in the manner which ensures that working with persons with disabilities is a permanent, legally regulated, and properly remunerated part of the work of prison personnel.³²

There are several arguments to emphasize the important role of

³¹ See *Dzamashvili B.*, Measures to be Carried out by the State for Effective Fight Against Discrimination, Law Journal, №1, 2016, 254.

³² See *Murdoch J.*, Professor of Public Law, University of Glasgow, School of Law, United Kingdom, *Jiricka V.*, Head Psychologist, Prison Service, Czech Republic, A handbook for prison staff with focus on the prevention of ill-treatment in prison, Council of Europe, April 2016, 47.

personnel in working with persons with disabilities, and the need for the appropriate policy to determine their activities. According to relevant specialists, the prison personnel, in general, have difficult working environment, such as: large quantity of high-risk prisoners, financial difficulties (low remuneration, problems of funding the system, etc.) and improperly trained personnel. In the presence of these difficulties, only a comprehensive approach can ensure that working with persons with disabilities becomes an issue of daily prison management, which requires constant attention. In order to implement the PWD needs-based prison management policy, comprehensive management strategies shall be used, including risk and needs assessment, individual sentence planning and special care. Supervision and protection of prisoners with special needs implies developing and introducing relevant policies and practices. In this discussion, special attention should be paid to formulating the existing approach to working with persons with disabilities in a way that *“the protection of the human rights of vulnerable prisoners is seen as an integral part of management responsibilities to ensure the creation of a safe and fair environment.”*³³

The author in this publication does not only discuss the prison conditions and the situation in closed institutions as problems and difficulties. Attention is also focused on the legislation, in particular the legislation and practice regulating the penitentiary system, which, based on the above reasoning, requires to be renewed in relation to persons with disabilities. It also analyses that consideration of external factors, which often have a decisive impact on the creation of an adequate environment for serving a sentence, is not of a less importance.

The relevance and actuality of the issue is also determined by the

³³ *Murdoch J.*, Professor of Public Law, University of Glasgow, School of Law, United Kingdom, *Jiricka V.*, Head Psychologist, Prison Service, Czech Republic, A handbook for prison staff with focus on the prevention of ill-treatment in prison, Council of Europe, April 2016, 18.

standards and procedures of exemption from punishment, discussed in the publication. Its special importance for persons with disabilities is due to the fact that European standards emphasize the introduction and implementation of an effective system of early conditional release, which is recognized as the most expedient system of achieving the purpose of punishment and supporting factor for rehabilitation of convicted individuals.³⁴

The relevance and actuality of the issue is also determined by the consideration of those external factors, which, along with the existing internal problems of the system, often have a negative impact on the conditions of serving the sentence by PWDs. Discussion on these external factors at the professional level may be considered as one of the ways to reduce such impact. The author in this publication discusses the following:

a. Impact of the society, which is caused by lack of basic knowledge about disability. It is mainly caused by a low level of public awareness and it creates a discriminatory approach in all areas of public life. How does the society perceive a disability? Is it a status, because of which the PWDs live locked up in their own homes, isolated from the outside world or is it a stigma, which substantially complicates the daily lives of PWDs? Due to ignorance or other reasons, the public often does not think about the consequences that their attitude may bring to a person with a disability. We find a number of explanations for such results in different research. For example, such stigma and discriminatory approach can result in internalised oppression and feelings of shame as people with disabilities may have to face great challenges in overcoming the negative views of their community or societies to achieve self-accept-

³⁴ See *Mikanadze G.*, The Right of a Prisoner to Early Conditional Release – European Experience and the Georgian Reality, Human Rights Protection: Achievements and Challenges, collection of articles., Tbilisi, 2012, 139.

tance and a sense of pride in their lives.³⁵ The above-mentioned attitude of the society is clearly manifested in the Georgian practice. One of the respondents pointed out: *"I was in the tenth grade when I heard that my next-door neighbour had a child with disabilities, who was my age. He was not taken outside in the yard, so that children could not see him and know that the family had a member with disabilities."*³⁶ Often the only way seen to solve the problem is to hide the family member who, according to a widespread belief, creates an obstacle for the rest of the society. The basis for such decision needs to be analysed as it comes from the indifferent and inhumane attitude of the public that pushes for and/or forces this absolutely unjustified and radical measure. A disability is an obstacle/barrier, which affects and hinders persons with a variety of problems in everyday life. The obstacle, in terms of perception, can be apparent and/or less noticeable, which often remains unobserved, while this condition may not only restrict access to services or desired activities for persons with disabilities, especially in closed institutions, but make them totally inaccessible. However, with appropriate support and services, all these barriers and obstacles can be overcome.

b. The indifferent attitude of the public towards the problems of persons with disabilities. Due to their condition and status, persons with disabilities face plenty of difficulties on daily basis. Despite this, questions still arise as to why persons with disabilities should be considered as vulnerable groups in public life and in closed institutions; and why the state and the society should take care of the rights of persons with disabilities, including the rights deriving from their status. One of

³⁵ See Brigitte Rohwerder, *Disability Stigma in Developing Countries*, Institute of Development Studies, 9 May 2018, 4.

³⁶ A citizen. The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the publication was in accordance with the standards set by the University of Leicester, available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

the main challenges of the problem is the fact that this question arises in each layer of the society and the society cannot understand the difficulties that the PWDs face.

c. Socio-economic situation in the country. One of the PWDs, who participated in the research, names the socio-economic situation as the main factor for the crimes committed by persons with disabilities and explains that a large part of PWDs, approximately 80%, is at the same time enlisted as individuals beyond the poverty line by Social Service Agency. Thus, their socio-economic state is one of the triggering factors for committing a crime.³⁷ The document “Some Facts about Persons with Disabilities”³⁸ explains that millions of people in low income countries have disabilities as a result of poliomyelitis, which is a preventable disease. According to UNDP, 80% of persons with disabilities live in developing countries.

According to the data of the Social Service Agency of Georgia from 2018, 317,796 families (438,543 citizens) are registered in the unified database³⁹ of beneficiary families and receive the subsistence allowance. The practice in Georgia is such that vulnerable persons represent the risk group, which includes a large number of persons with disabilities for whom basic conditions of life are inaccessible due to their condition. The carried out analysis shows that according to the results of the

³⁷ A person with disabilities. The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview questions used in the publication was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

³⁸ See The UN Fact sheet on Persons with Disabilities, The UN Programme on Disability/Secretariat for the Convention on the Rights of Persons with Disabilities (SCRPD) falls within the Division for Inclusive Social Development (DISD) of the United Nations Department of Economic and Social Affairs (UNDESA), 2018, 1.

³⁹ See the database of Subsistence Allowance Programme of the Social Service Agency of Georgia, 2018.

2014 census, a total of 100,113 persons with disabilities are registered in Georgia, while only the Social Service Agency registered 118,651 persons with disabilities receiving social assistance as of 1 March 2015, and 125,104 – in 2017.⁴⁰ Many factors can be presumed while arguing about the relationship between economic situation and the persons with disabilities. For example, families in poor conditions do not have financial resources to detect existing disability or its risk at the earliest stage or to address appropriate structures for timely intervention, thus preventing the development of disabilities or their acquisition and/or complication. Families in poor conditions are unable to provide adequate conditions and access to necessary services for family members with special needs.

The above-mentioned and other socio-economic factors often lead the persons with disabilities towards committing a crime, however, the public officials leave these and other causes behind their attention despite the fact that the provision of these conditions is a direct obligation of the state. To exemplify this, we can use the practices of many countries. For example, the German Constitutional Court clarifies⁴¹ that the tendency towards unlimited subjective needs on the expense of the society does not correspond to the principle of a social welfare state. It also underlines that the state does not have the obligation to provide people with material resources and, moreover, with luxury, but the obligation of the state is to create an environment where individuals have the possibility of self-realisation.

d. Status determination. In Georgia, and many other countries, status determination represents one of the most difficult problems for

⁴⁰ See Institute for Development of Freedom of Information (IDFI), *Analysis of various statistical data on people with disabilities*, 2018, available at: <https://idfi.ge/public/upload/IDFI_Photos_2017/idfi_general/statistics_on_pwds_in_georgia_geo_idfi.pdf>, [15.11.2019].

⁴¹ See Beka Kantaria, *Commentary on the Constitution of Georgia*, Chapter 2, Georgian citizenship, Basic Human Rights and Freedoms, 2013, 388.

persons with disabilities. The bureaucratic and inflexible system of status determination is largely characteristic of post-Soviet states, which, of course, is still a heavy burden for people with disabilities and their families with economic hardships.

If a bureaucratic and/or inflexible system of status determination exists in the country, persons with disabilities often remain without a status and as a result cannot benefit from basic services offered by the state. The problem of status determination is especially acute in places of deprivation of liberty, where internal procedures supporting the status determination are either unavailable or inflexible and prolonged. The persons in custody do not have the ability to personally take care of the bureaucratic aspects of status determination or cover the costs of a legal service, which would carry out these procedures, etc.

e. The wrong understanding of the disability model may be caused by many factors, including the low level of public awareness and knowledge, which often negatively affects all areas of life of the PWDs. Its negative results are found at the initial stage when discussing the disability model. There is a traditional perception that is often referred to as a “medical model of disability” and there is a modern one called “social model of disability”. These models cause divergence of opinion in the society, as well as among specialists.⁴²

The medical model of disability does not meet the requirements of international standards. First of all, because the traditional approach of disability is emphasized by the physical limitations and disadvantages of the individual,⁴³ and not on those external factors that create these limitations, and second of all, because the disability is considered as a problem in the medical context and, therefore, insufficient attention is given to the potential and capability of the person with disabilities,

⁴² See Toolkit on Inclusive Decision-Making for Policy-Makers, 2014, 14-15.

⁴³ See International Classification of Functioning, Disability and Health (ICF), World Health Organization, Publication, Geneva, 22 May 2001, 20.

which ultimately cannot guarantee the protection of his/her rights and interests and puts him/her in a discriminatory environment.⁴⁴ The introduction of a medical model has a significant impact on the treatment as well, because it implies identification of medical needs only and does not include the needs supporting and ensuring the independent life, such as: education, employment, participation in public life. The use of the medical model is particularly harmful in places of deprivation of liberty, where, in the case of Georgia as well as many other countries, the solution to the problem, found by the prison administration, is to place PWDs in the medical unit of the establishment, without acknowledging the need to create the living environment and conditions equal to that of other prisoners.

f. Civic duty – the vast majority of our community considers a disability as a problem of the person or his/her family and their personal tragedy. The public does not consider the support of persons with disabilities and co-existence in equal conditions, as their responsibility. As a result of this vicious attitude, persons with disabilities are expected to deal with the obstacles on their own and accept that it means there are many things they cannot do and therefore should not try to live in equal conditions with others.⁴⁵ This view leads to exclusion and dependency and reinforces pity and fear towards disability. There is an assumption that *“to be disabled is to be abnormal and that to be abnormal is undesirable.”*⁴⁶

The UN Special Rapporteur dedicated a special report of 2008 to the situation of persons with disabilities, which clearly illustrates the reasons why PWDs might be considered as vulnerable groups and why the public should put efforts to support them. He explains the situa-

⁴⁴ See *Ionatamishvili R.*, *History of Disability, Social and Medical Models of Disability*, 2007, 14.

⁴⁵ See *Toolkit on Inclusive Decision-Making for Policy-Makers*, 2014, 14.

⁴⁶ *Ibid.*

tion and attitudes towards persons with disabilities who are “*frequently subjected to neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence*” .⁴⁷

It should be emphasized that the special rapporteur is concerned that such practices are perpetrated in public institutions, as well as in the private sector. These practices remain invisible and are not recognized as torture or other cruel, inhuman, or degrading treatment or punishment.⁴⁸

The existence of these and other problems is the main factor, which determines the actuality and relevance of the topics discussed in this publication, because this publication provides a basis to scientifically discuss the need of creating a necessary environment for PWDs for living in equal conditions with other prisoners at places of deprivation or restriction of liberty in order to prevent the violation of the right to equality recognised by the Constitution of Georgia, which prohibits any discriminatory treatment on any grounds. Based on this, recommendations should be given to the state on how to create the non-discriminatory conditions; how to encourage persons with disabilities to correctly see and perceive their situation in the places of deprivation of liberty and be able to live in equal conditions with other prisoners; take all necessary measures to ensure that PWDs are able to live as full members of the society after their release. The achievement of this outcome should be based on the formation of a valid approach towards vulnerable prisoners. They shall be treated on equal basis with all other prisoners, in line with the requirements of international human rights standards. Their special needs shall be considered in the light of their prospects of

⁴⁷ See *Nowak M.*, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Interim report on torture and other cruel, inhuman or degrading treatment or punishment, submitted in accordance with Assembly resolution 62/148, 2008, Summary, 2.

⁴⁸ *Ibid.*

social reintegration.⁴⁹

Lastly, **the relevance and actuality of the issue** is especially determined by the statistical data recorded by the penitentiary system, which confirms the need for scientific discussion about the creation of relevant essential standards for PWDs.⁵⁰

The research questions the accuracy and reliability of the statistics due to two reasons: firstly, the low number of PWDs, which represents only 1 per cent of the total number of prisoners, and secondly, due to the analysis, which the statistics are based on.⁵¹ The statistics, provided through a letter, includes information about the accused and convicted prisoners, which use assistive medical devices (90 persons, who have only clearly expressed disabilities) as well as those people who have submitted documentation on having a PWD status (11 persons). The explanation given in the letter clearly goes beyond the standards set by the legislation, as the disability, despite its extreme difficulties, may not be clearly expressed. We can refer to relevant instructions⁵², as an example, according to which, the categories of disorders of the basic functions of an organism, which cause disabilities, include the following cases: disorders of blood circulation, respiration, digestion, excretion, metabolism, endocrine functions, which, most likely, do not represent

⁴⁹ See *Nowak M.*, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Interim report on torture and other cruel, inhuman or degrading treatment or punishment, submitted in accordance with Assembly resolution 62/148, 2008, 46.

⁵⁰ The letter No 191166/01 of 28 June 2019 of Special Penitentiary Service of the Ministry of Justice of Georgia to the organisation working with persons with disabilities participating in the research.

⁵¹ According to the Unified Report on Criminal Justice Statistics, as of June 2019, the number of persons placed in the penitentiary system of Georgia is 9,869, 110.

⁵² See the Order of the Minister of Labor, Health and Social Affairs of Georgia №1/n on the Approval of the Instruction on the Procedure for Determining the Status of Disability, Tbilisi, 13 January 2003.

clearly expressed forms.

In addition, the legislative change⁵³ should be mentioned, on the basis of which the word “expressed” was removed from the articles of the Imprisonment Code, which regulated certain relations with persons with disabilities. Consequently, the penitentiary system is able to present different, more accurate statistical data when registering persons with disabilities. The question, of how to register those who do not have the status and at the same time do not have any expressed signs of disability still remains unsolved.

Number of Male Prisoners with Disabilities by Age Groups.⁵⁴

PWDs	22-25	26-30	31-35	36-40	41-49	50-59	60-64	65-69	70 ≤	Total
Crutch Users		1	2	3	4	4	2			16
Wheelchair Users				2	10	6				18
Hearing Aid Users		2	2		2	1	1		1	9
Persons Placed in Long-term Care			2	2	4	7	2	3	2	22
PWD Status Holders	1			1	3	4				9
Anophthalmia		2	3	6	6	4				21
Upper Limb Amputation				1	1					2
Total										97

⁵³ Law of Georgia on Amendments to the Imprisonment Code, 14 July 2020.

⁵⁴ The letter No191166/01 of 28 June 2019 of Special Penitentiary Service of the Ministry of Justice of Georgia sent to the organisation working with persons with disabilities participating in the research.

Number of Female Prisoners with Disabilities by Age Groups:

PWDs	36-40	41-49	50-59	Total
Hearing Aid Users			1	1
PWD Status Holders	1	1		2
Anophthalmia		1		1
Total				4

The subject of the scientific research is:

- Analysis of the rights of accused/convicted persons with disabilities in penitentiary facilities and the practice of treatment of PWDs in places of deprivation of liberty. Accessibility to services and conditions of the living environment. Also, the peculiarities of treatment of persons with disabilities during the execution of alternative sentences to imprisonment;
- Analysis of national legislation and its compliance with the requirements of international standards;
- Analysis of international practice on the example of the countries with successful practice of treatment of persons with disabilities, as well as review of the practices of those countries, which had gaps at the time of the research;
- Preparation of conclusions on the basis of analysing existing practice and legislation, published reports and scientific papers, as well as analysing various opinions and problematic questions related to the issue;
- Preparation of recommendations on the basis of the above-mentioned analysis and applicable conclusions, which may later be used to create equal conditions for serving a sentence by persons with disabilities and an effective environment for their treatment and to ensure the environment of serving a sentence that is oriented on the protection of rights.

Purpose of the scientific research:

The purpose of the scientific research is to prepare analysis of the practice with respect to international standards and best practices, to outline the shortcomings, which may create a discriminatory and, in some cases, life-threatening situation in the process of pre-trial detention or execution of sentence, and to prepare recommendations in order to eliminate existing gaps.

The analysis of the international practice and the case-law of the European Court of Human Rights shall demonstrate those vicious sides, which become the basis for human rights violations and, in some cases, torture and inhuman or degrading treatment of PWDs. Recommendations for the improvement of prison management efficiency should be prepared, which would support the prison administrations to elaborate special policies and strategies, which would address the needs of the vulnerable groups and ensure the equal treatment of persons with disabilities and the protection of their human rights. The abovementioned strategies and policies should regulate the priority issues such as training of personnel, classification, accommodation conditions, health care services, access to programs and services, safety and preparation for early conditional release.⁵⁵

Based on the carried out research and best practice analysis, recommendations shall be elaborated, which will support the penitentiary system to implement reforms in order to create the adequate, equal and rehabilitation-oriented system of serving a sentence for persons with disabilities.

Scientific Novelty

⁵⁵ See Jim Murdoch, Professor of Public Law, University of Glasgow, School of Law, United Kingdom, Vaclav Jiricka, Head Psychologist, Prison Service, Czech Republic, *A handbook for prison staff with focus on the prevention of ill-treatment in prison*, Council of Europe, April 2016, 56.

The novelty of the research at the scientific level and its great importance is due to the fact that it introduces a new topic to the scientific community, which can be considered from different angles and become the subject of numerous new studies in the context of criminal justice, in general, as well as criminology and human rights. The topic provides students with the opportunity to conduct scientific research, develop and elaborate new approaches to sentencing persons with disabilities and the forms and methods of its execution.

The author in this publication is an attempt to scientifically discuss the treatment of persons with disabilities, their accommodation conditions in places of deprivation of liberty and its importance in Georgia, based on the analysis of the practices of various countries, the European Court of Human Rights and international standards.

Considering the scientific novelty, the paper discusses the following:

- Re-interpret the essence, significance and specificity of disability in the penitentiary system, in order to ensure that the system authorities or other employees are able to treat the persons with disabilities with dignity, honour and respect and ensure the conditions of serving the sentence;
- Georgian legal literature and especially the legal documents regulating the penitentiary system do not fully describe the procedures of treatment of persons with disabilities at every stage in the penitentiary system, starting from the admission until their release, such as: the physical environment, the search of prisoners (complete and incomplete), preparation for release, participation in programs and activities. In this case, based on international standards and successful practices, the publication presents a new way of regulating these shortcomings;
- The author in this publication provides in-depth analyses of the dire consequences of the absence of proper treatment and conditions in

- relation to prisoners with disabilities and, through analysis of these consequences, the necessity of adequate treatment and conditions;
- The internal differentiation of prisoners into special categories, such as prisoners with special needs, represents a novelty. Currently, this approach is not recognized by Georgian legislation and practice, but its introduction will make the process of serving the sentence by PWDs as well as the management process of the work with the PWDs by the personnel easier and more efficient;
 - The author in this publication also analyses new approaches on the introduction of standards for the release and preparation for release of prisoners with disabilities, as well as effective social reintegration after their release;
 - The paper provides all stakeholders with the description of the conditions and standards of serving a sentence, which should be created in order to avoid the violation of universal human rights, such as: the right to life, the inviolability of honour and human dignity, the prohibition of torture, inhuman or degrading treatment, non-discrimination. The paper emphasizes the need and necessity for specific treatment with persons with disabilities. It is oriented to demonstrate its vital importance to the part of the society, which considers the specific treatment of persons with disabilities as discrimination against other persons. When the person has individual needs due to the disability or other objective circumstances, the State is obliged to realise his/her rights in view of these needs.⁵⁶

The practical significance of the publication is that the provisions, conclusions and recommendations elaborated in it will: substantially contribute to the establishment of adequate conditions of serving a sentence for persons with disabilities and to the creation of the system of preparation for release; introduce new approaches, such as prisoners

⁵⁶ See Beka Dzamashvili, *Measures to be Carried out by the State for Effective Fight Against Discrimination*, Law Journal, №1, 2016, 253.

with multiple needs and the specificities of working with them; offer new approaches to the penitentiary system in resolving the disputable questions related to this issue.

The practical significance of the publication in the legal context is due to the fact that by the time the work on the paper came to an end, a number of legislative changes have already been made in Georgia, which respond to the problems posed in the publication. In particular, on 14 July 2020, the Law on the Rights of Persons with Disabilities was adopted.

Amendments were made to the Criminal Procedure Code,⁵⁷ the Imprisonment Code,⁵⁸ Space Planning, Architectural and Construction Activity Code,⁵⁹ and the Code of Administrative Offences.⁶⁰ Also, although not directly related to the publication, there is a significant legislative change that emphasizes the treatment of persons with disabilities, namely, the Law on Psychiatric Care⁶¹ was renamed as the Law on Mental Health. In addition, the technical regulation approved in 2020 – “National Standards of Accessibility”⁶² – should be mentioned separately, because one of the main emphasis in the publication is on the importance of accessibility for people with disabilities. The document may not directly address the issue of access within the penitentiary system, but its provision that “the technical regulations apply to all types of build-

⁵⁷ Law of Georgia on Amendments to the Criminal Procedure Code, 14 July 2020.

⁵⁸ Law of Georgia on Amendments to the Imprisonment Code, 14 July 2020.

⁵⁹ Law of Georgia on Amendments to the Space Planning, Architectural and Construction Activity Code, 15 July 2020.

⁶⁰ Law of Georgia on Amendments to the Code of Administrative Offences, 10 February 2020 and the Law of Georgia on Amendments to the Code of Administrative Offences, 14 July 2020.

⁶¹ The Law of Georgia on Mental Health, 23 June 2020.

⁶² The Decree №732 of the Government of Georgia, Technical Regulation – “National Standards of Accessibility”, 4 December 2020.

ings defined by the legislation of Georgia”,⁶³ means that it regulates relations both in public life and in places of deprivation of liberty.

The fundamental research papers of Georgian and foreign authors, scientific papers, articles and information available online represent the theoretical and informational basis of the research.

The methodology used in the research:

- Overview and comparative analysis of current legislation and international standards;
- Analysis of scientific papers, published reports, articles and other materials;
- Analysis of the Georgian as well as international practice of serving the sentence by persons with disabilities.

The research methodology used within the scope of the scientific research paper included interviews/survey⁶⁴ with small target groups, which represent different spectra: namely, interviews with persons with disabilities and the organisations working on the above-mentioned problems in Georgia; interviews with the heads of relevant bodies in Georgia and Kyrgyzstan to demonstrate the existing practice of personnel preparation and qualification on the treatment of persons with disabilities.⁶⁵

⁶³ The Decree №732 of the Government of Georgia, Technical Regulation – “National Standards of Accessibility”, 4 December 2020.

⁶⁴ The interview used in the research was in accordance with the standards set by the University of Leicester (footnote referencing style, **interviews-interviewee, interview by interviewer, recording medium, location, date, where held (if appropriate)**, <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

⁶⁵ Director of the Penitentiary and Probation Training Centre of Georgia, Tbilisi, 2017; Director of the Penitentiary Training Centre of Kyrgyzstan, Bishkek, 2017. The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance

Structure and scope of the publication

The publication consists of an introduction, glossary of abbreviations, acronyms and terms used, 4 parts, 20 chapters, 20 paragraphs and a conclusion. The size of the publication is 285 pages and additional 19 pages of bibliography.

with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

PART I. THE CONCEPT OF DISABILITY AND HISTORICAL EXCURSUS

CHAPTER 1. DISABILITIES IN THE CONTEXT OF HUMAN RIGHTS, HISTORICAL EXCURSUS

It is known that the international community started viewing the disability in the context of human rights not so long ago. This has been happening mainly since the second half of the twentieth century. According to the explanations given in various reports, *“Response to disability have changed since the 1970s, prompted largely by the self-organization of people with disabilities (5, 6) and by the growing tendency to see disability as a human rights issue.”*⁶⁶

Although the development of the human rights approach began a long time ago, the Georgian practice on this issue, similar to other international communities, is not distinguished by special achievements either. It would also be important to emphasize that Georgia, unlike many other countries, has a long history of human rights development. According to one version, scholars consider the post-classical era as the first stage *“almost all of the basic principles related to the field of protection of the rights of society, in general, or of the individual, in particular, or the violation of these rights, are present.”*⁶⁷ However, the discussion on human rights in the perspective of the needs of individuals, in which the rights of persons with disabilities would be given a dignified place, could not be ensured for a long time.

In contrast to the documentary sources on the long history of hu-

⁶⁶ See World report on disability, World Health Organization, Malta, 2011, 3.

⁶⁷ See *Berdzenishvili L., Bragvadze Z., Gvakharia G., Daraselia Z., Taktakishvili L., Sakvarelidze P.*, Human Rights and Georgian Culture, published with the financial support from the United States Agency for International Development (USAID) through the IRIS Center at the University of Maryland, 2004, 11.

man rights development, the description of the gradual development of disability perceptions and related attitudes is almost non-existent in Georgia. Historical analysis shows that the attitude of people towards disabilities in Georgia has not been homogenous. To support the argument on this issue we could only refer to various fields of art, which are based on documentary facts. Based on the analysis of Georgian folklore, folk literature, or fiction, we can conclude what “disability” was associated with in Georgia in the early period and what attitude did the Georgian society have towards disabilities.⁶⁸

As for the Soviet period, the situation of “disabled” people not only was not changing for the better, but in Georgia and, in general, in the Soviet Union, it was getting worse. Soviet approaches introduced a popular slogan – “There Are No Disable People in the USSR!”⁶⁹, which obviously did not reflect the reality. The problem, however, was not just the slogan, but it generally expressed the state’s attitude towards people who had some form of limited ability. Apart from the problem of recognition and appropriate perception of persons with disabilities, the state had no obligation to take any measures to ensure equal conditions for these people in either public life or places of deprivation of liberty.

With this “slogan” the state was avoiding the obligation to take responsibility for these people. This was the period when no attention was paid to their physical and intellectual potential. The state and, consequently, the “law-abiding” society, which perceived persons with disabilities only as a family problem, in fact, forcibly isolated them. There are sources which claim that in the USSR persons with disabilities were either resettled in the suburbs, which meant being locked up in special facilities, or forced to stay in their homes because there was no adapted

⁶⁸ See *Ionatamishvili R.*, *History of Disability*, 2007, 9-11.

⁶⁹ See *Fefelov V.*, *There Are No Disabled People in the USSR!..*, 1986, <<https://e-libra.ru/read/242202-v-sssr-invalidov-net.html>>, [20.03.2020].

environment for them.⁷⁰

Studies conducted in Georgia confirm that, similar to other post-Soviet states, a person with a disability in Georgia was deprived of the opportunity to participate in public life. They were not considered full members of the society to the extent that they were not allowed to take part in the criminal proceedings related to them. “PWDs were mostly placed in special institutions⁷¹ and were completely isolated from society since childhood. It was believed that they could not fully participate in public life, especially in gaining access to the justice system or the courts.”⁷²

Based on the approach described above, it can be said that the attitude of the Soviet society towards PWDs was very different from the attitude towards other people, and this was typical for the Soviet states, including Georgia. In many other countries of the world, we find the attitude, which is the opposite of this approach. For example, the British Prison Service Order clarifies when a treatment of a prisoner with a disability is considered discriminatory, and states that discrimination occurs when a disabled person is treated less favourably than others and when such treatment is for a reason relating to the person’s disability and the treatment cannot be justified.⁷³

⁷⁰ See *Volkova N.*, Disabled in the USSR: a story about destructive guardianship, 2016 Portal: <<https://www.miloserdie.ru/article/invalidy-v-sssr-istoriya-ob-unichtozhayushhej-opeke/>>,[20.03.2020].

⁷¹ In this case, the institutions are not the penitentiary institutions, but institutions specifically intended for the persons with disabilities within the society, where these people were placed together, in isolation from the society.

⁷² See *Nadiradze K., Arganashvili A., Abashidze A., Gochiashvili N., Lord J.*, Evaluation on Accessibility to Court Buildings for Persons with Disabilities, 2019, 17-18.

⁷³ See Prison Service Order, Order Number 2855, HM Prison Service, Prisoners with physical, sensory and mental disabilities, article 2.5.1, Date of Initial Issue 20 December 1999, Date of Update: 13 October 2003.

The discriminatory attitude of the state and the society towards persons with disabilities is more clearly seen in the example of Soviet prisons. In Soviet prisons, the situation of people whose existence was officially denied by the state was unbearable.⁷⁴ The regulations, which were not intended for vulnerable groups, did not recognize specific categories of prisoners and did not require the creation of an adapted and accessible environment for them.⁷⁵ The “detachments” were arranged in the same way for everyone. The first floor of the bunk beds was occupied by criminal authorities or their entourage. The visiting rooms were designed only for “healthy” people and, most importantly, the staff had no responsibility for providing a suitable environment for the disabled people.

The importance of the rights of persons with disabilities is significant at all stages and in all areas of public life, due to their specific needs. This is especially true, when people with disabilities are in places of serving the sentence and have a high degree of vulnerability. Thus, despite some fallacious aspects, we have a reason to conclude that, in general, the approach of protecting human rights, including the rights of vulnerable groups, in all areas of public life, including in closed institutions, must be sophisticated, flexible and effective, in the interests of any citizen.

The above-mentioned and other negative factors in the field of human rights probably became a precondition for the start of the human

⁷⁴ See *Volkova N.*, Disabled in the USSR: a story about destructive guardianship, 2016 Portal: <<https://www.miloserdie.ru/article/invalidy-v-sssr-istoriya-ob-unichtozhayushhej-opeke/>>,[20.03.2020].

⁷⁵ On the design and arrangement of the detachments, the following could be reviewed as an example: **Appendix to the Order N118 of the Minister of Internal Affairs of the Republic of Uzbekistan from 8 May 2001, on internal regulations of institutions for the execution of sentences in the form of imprisonment.**

rights movement for people with disabilities in Georgia in the 80s,⁷⁶ which is focused on protecting the rights of PWDs in a free society, as well as in the places of serving the sentence and other closed institutions. In 1996, there were already several dozen non-governmental organisations that aimed to protect the interests and rights of PWDs. It can be said that the result was the adoption of the Law of Georgia on Social Protection of Persons with Disabilities⁷⁷ by the Parliament of Georgia in 1995. In addition, in terms of the protection of the rights of persons with disabilities, an important event was on 12 April 2014, when the 2006 UN Convention on the Rights of Persons with Disabilities came into force. Although the ratification of the Convention was a grand step for the Georgian society, its downside remains the issue of ratification of the Optional Protocol, which is particularly important in that it allows persons with disabilities to apply to the relevant UN Committee as individuals or groups of individuals who claim to be victims of a violation of the provisions of the Convention by the State Party to the Protocol. Persons with disabilities living in Georgia, including those detained in places of deprivation of liberty, still do not enjoy this right.

The adoption of the law, the ratification of the Convention and the extensive information campaign on the Convention enabled the society to properly perceive disabilities. State institutions and officials gained an obligation to think about creating equal conditions and, most importantly, to review all legislative regulations. This was the period when the term “a person with a disability” was slowly but surely emerging in the legislation regulating the penitentiary system. The demands for creating an adapted environment and programs also appear.

To illustrate the high importance of considering PWDs in the con-

⁷⁶ See *Ionatamishvili R.*, History of Disability, Chapter – The Human Rights Movement for Persons with Disabilities in Georgia, 2007, 12.

⁷⁷ The Law of Georgia on Social Protection of Persons with Disabilities was first adopted on 14 June 1995.

text of human rights, a number of other determinants, in addition to the above reasoning, can be presented. When talking about rights we should consider areas such as healthcare, education, access to employment and other rights. This obliges the state to consider the situation of PWDs as a priority area of human rights, which should minimize the barriers faced by PWDs, due to which they do not have access to living conditions on equal basis with other persons.

It is part of the human rights discussion to consider eliminating the cases where persons with disabilities are the victims of various forms of violence or ill-treatment due to their disabilities. These approaches should become a priority both in a free society and in any closed institution where a person with a disability may be placed, especially in a vulnerable environment such as a detention facility. Finally, if we look at the views of international organisations, they highlight the steps that have been taken to address the issue of people with disabilities in the context of human rights. In particular, according to the United Nations, there is clear progress among the State Parties in addressing disabilities from a human rights perspective.⁷⁸ According to recent studies, 39 countries around the world have adopted legislation on discrimination or equal opportunities for persons with disabilities. Obviously, accordingly, Georgia must take further steps as well.

⁷⁸ See *Quinn G. and Degener T.*, The current use and future potential of United Nations human rights instruments in the context of disability, 2002, 2.

CHAPTER 2. THE CONCEPT OF PERSONS WITH PHYSICAL DISABILITIES, ITS PERCEPTION, AND PECULIARITIES OF TREATMENT

2.1 The nature of disabilities

What is disability and what are its characteristics? How is disability expressed in life?

The term “disability” means the social consequences of having an impairment.⁷⁹ According to experts, people with disabilities are “disabled” by society by creating additional barriers such as social attitudes and assumptions, institutional barriers to do with laws and policies, economic barriers, and attitudes that put them at a disadvantage, leaving people with disabilities excluded from society.

Barriers can be divided into levels, in accordance with their degree of overcoming or their degree of need. For example, circumstantial barriers, such as physical access to various services or matters of daily life, as well as ineffective and, for some PWDs, incomprehensible ways of providing information and communication, can be considered as special artificial barriers. The above-mentioned barriers do not allow a person with a disability to receive education, employment and development on equal basis with other members of the society. These and other similar barriers are often the reason why these people end up in places of deprivation of liberty, possibly simply because they have to break the law on a difficult path to establishing themselves in the society or simply earning a living, as they do not live in an equal environment. According to the association of the students with disabilities⁸⁰, a disability is a func-

⁷⁹ See Toolkit to Inclusive Decision-Making for Public Organizations of People with Disabilities. Project is implemented by British Council in Armenia, Azerbaijan, Georgia, Jordan, Lebanon and Ukraine in partnership with local organisations for people with disabilities, Tbilisi, 2014, 7.

⁸⁰ See National Educational Association of Disabled Students (NEADS), a chari-

tional limitation or restriction of a person’s ability to perform an activity. However, they explain that this restriction does not mean that a person with a disability cannot participate equally in public life. According to the association, appropriate accommodations and supports can ensure everyone’s inclusion. *“It is important to remember that “disabled” is an adjective, not a noun. People are not conditions. It is therefore preferable not to use the term “the disabled”; but rather “persons with disabilities.”*⁸¹

For a brief overview of the types of disabilities, the author in the publication uses the definitions of the NEADS⁸² and the World Health Organization (WHO)⁸³, which focus on the following types⁸⁴:

a. Physical Disabilities

A physical disability is one that affects a person’s mobility, dexterity or speed. A person with a physical disability may need to use some sort of equipment for assistance with mobility. It also includes people who have lost limbs or who, due to the shape of their body, require slight adaptations to the environment to enable them to participate fully in society.⁸⁵

The association for ensuring the social security of PWDs (HWA)⁸⁶ identifies two types of physical disability: musculo skeletal disability,

table organisation founded in 1986 in Ottawa, Ontario, Canada.

⁸¹ See International Classification of Functioning, Disability and Health (ICF), World Health Organization, Publication, Geneva, 22 May 2001.

⁸² See NEADS (National Educational Association of Disabled Students), <https://www.neads.ca/en/about/projects/inclusion/guide/pwd_01.php>, [15.11.2019].

⁸³ WHO – is the authority responsible for public health within the United Nations, <<https://www.who.int/about/what-we-do>>, [15.11.2019].

⁸⁴ Ibid.

⁸⁵ See NEADS (National Educational Association of Disabled Students), <https://www.neads.ca/en/about/projects/inclusion/guide/pwd_01.php>, [15.11.2019].

⁸⁶ Handicaps Welfare Association (HWA) <<https://hwa.org.sg/>>, [15.11.2019].

such as: loss or deformity of limbs, muscular dystrophy, and neuro Musculo disability, such as: spinal cord injury, head injury, cerebral palsy.⁸⁷

b. Intellectual and Cognitive Disabilities

People with intellectual, learning, or cognitive disability have a reduced capacity to learn tasks or process information. A learning disability may make it difficult for a person to take in information and communicate what they know. Learning difficulties can lead to difficulties in writing, reading, or, for example, mathematics. This type of disability and Attention Deficit Disorder is manifested between 3% to 10% of the population. People with these disabilities are often talented, creative, and productive.⁸⁸

According to the World Health Organization, intellectual disability is defined as a significantly reduced ability to understand new or complex information and to learn and apply new skills (impaired intelligence). This leads to a reduced ability to cope independently (impaired social functioning), and begins before adulthood, with a lasting effect on development.⁸⁹

c. Mental Disabilities

The research paper does not discuss mental disability, but gives a brief explanation of it, considering that it can also affect a person's physical condition. Specialists explain that a mental disability (or mental illness) can develop at any age and is often not apparent to other peo-

⁸⁷ See <<https://hwa.org.sg/general-information-on-physical-disabilities/>>, [15.11.2019].

⁸⁸ See NEADS (National Educational Association of Disabled Students), <https://www.neads.ca/en/about/projects/inclusion/guide/pwd_01.php>, [15.11.2019].

⁸⁹ See World Health Organisation (WHO) regional office in Europe <<http://www.euro.who.int/en/health-topics/noncommunicable-diseases/mental-health/news/news/2010/15/childrens-right-to-family-life/definition-intellectual-disability>>, [20.09.2019].

ple. In the case of mental disabilities, peoples' attitudes may be based on prejudice and myth (e.g., people with schizophrenia are potentially violent).⁹⁰

Mental disorders can include conditions related to stress, depression, as well as deep depression with bipolar disorder (formerly known as manic-depressive psychosis), anxiety, and schizophrenia. Depression is the most common non-psychotic mental illness (psychosis is a disorder that involves a sense of losing contact with reality).⁹¹

d. Visual Impairments

Only 5% of "blind" people cannot see anything. Visual impairments can be caused by a multitude of factors, including accidents and other congenital illnesses. There is a difference between the needs of people with visual impairments and blind people.⁹²

e. Hearing Impairments

Deafness and hearing loss can be caused by a wide range of factors, including physical injury, illness, disease during pregnancy, or exposure to very loud noise. There is distinction between people who are deaf and people who have a hearing impairment. Therefore, their needs also differ significantly.⁹³

f. Neurological Disabilities

A neurological disability is associated with damage to the nervous system that results in the loss of certain physical or mental functions. A neurological disability may affect a person's capacity to move or express their feelings.⁹⁴

⁹⁰ See NEDAS (National Educational Association of Disabled Students), <https://www.neads.ca/en/about/projects/inclusion/guide/pwd_01.php>, [15.11.2019].

⁹¹ See WHO <<https://www.who.int/about/what-we-do>>, [15.11.2019].

⁹² See NEDAS (National Educational Association of Disabled Students), <https://www.neads.ca/en/about/projects/inclusion/guide/pwd_01.php>, [15.11.2019].

⁹³ Ibid.

⁹⁴ Ibid.

2.2 Perception of disabilities in places of deprivation of liberty

In world practice, the Disability Equality Impact Assessment⁹⁵ is applied, which is designed to eliminate discrimination against this or that group and to use any opportunity to promote disability equality. Assessment covers all spheres of social life, where places of deprivation of liberty are no exception.

International standards and the law of developed countries determines special categories/vulnerable groups among prisoners in penitentiary facilities on the grounds of gender, age, health condition, etc. In this case, the prisoners with disabilities comprise a particularly vulnerable group. Nevertheless, the situation of persons with disabilities in places of deprivation of liberty, their treatment and special needs have not been the focus of much study to date, unlike other groups on which a number of local and international organisations work.

Although figures relating to the number of prisoners with disabilities worldwide are scarce, several studies indicate that, due to the growing prison population in most countries of the world, there is also increasing number of prisoners with disabilities.⁹⁶

The difficulties persons with disabilities face in society are magnified in prisons. *“It is difficult for anyone to be placed in a penitentiary facility, but it is especially difficult for persons with disabilities.”*⁹⁷ There

⁹⁵ Disability equality impact assessment is the process of assessing the impact of existing or proposed policies and practices in relation to their consequences for disability equality. It includes looking for opportunities for positive impact that may have been missed or that could be better exploited, as well as the detection of actual or potential negative impact for disabled people.

⁹⁶ Atabay T., Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 44.

⁹⁷ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accor-

are a few factors that have a particularly negative impact on sentencing conditions, such as closed and restricted environment, violence resulting from overcrowding, lack of proper prisoner differentiation and supervision, etc. This puts the prisoners with disabilities, and other persons placed with them, in difficult conditions. If we consider these factors, we will see what results they may lead to. For example, prison overcrowding accelerates the disabling process, with the neglect, psychological stress and lack of adequate medical care, characteristic of overcrowded prisons.

The Committee on the Rights of Persons with Disabilities clarifies that persons with disabilities should have access, on an equal basis with other persons subject to detention, buildings in which law-enforcement (various agencies) and the judiciary are located. The jurisdictional entities must ensure that their services include information and communication that is accessible to persons with disabilities, to facilitate accessibility to communication and assistance in the facilities of jurisdictional entities.⁹⁸

According to experts, the problem of unequal access can only be solved by providing complete information, qualified legal advice and/or assistance. Such assistance and support can ensure that PWDs have equal access to justice. A study conducted in Georgia showed that, for example, PWDs do not have access to basic information in the courts. In particular, *“the lack of information boards, information signs, directional signs and tactile maps is a challenge for all court buildings.”*⁹⁹

dance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

⁹⁸ See Committee on the Rights of Persons with Disabilities, Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, The right to liberty and security of persons with disabilities, Adopted during the Committee’s 14th session, held in September 2015, 7.

⁹⁹ See *Nadiradze K., Arganashvili A., Abashidze A., Gochiashvili N., Lord J.*,

The need for defence, both during and after criminal proceedings, stems from this problem. Especially if the person has been sentenced to imprisonment. Here the judiciary must acknowledge the specific complexity, need for protection and high risks that await these persons in places of deprivation of liberty. A prisoner with disabilities easily becomes a target of harassment and violence by other prisoners and prison staff. For example, prison guards may confiscate wheelchairs, crutches, from prisoners with disabilities, orthopaedic (egg crate) foams, hearing aids, glasses, and medications.¹⁰⁰

The living conditions of prisoners with disabilities are complicated not only by intentional actions to discriminate against this or that person, but also by inaction and/or negligence. Prisoners who require personal care or assistance with daily activities, for example, who need help with eating, dressing, and bathing may be simply ignored. They go without meals and are forced to urinate on themselves in the absence of assistance.¹⁰¹

The main obstacle that a PWD may face is the high probability of discrimination, as persons with disabilities may be directly or indirectly discriminated against in life. Based on the condition of the person, the risk of discrimination is even higher if placed in a penitentiary facility, in an environment different from the usual rhythm of life and surrounded by strangers.

Experts explain the numerous circumstances when PWDs found themselves in a discriminatory environment in prison. These circum-

Evaluation on Accessibility to Court Buildings for Persons with Disabilities, 2019, 13.

¹⁰⁰ See *Russell M. and Stewart J.*, *Disablement, Prison and Historical Segregation*, An Independent Socialist Magazine, Monthly Review, 1 July 2001, <<https://monthlyreview.org/2001/07/01/disablement-prison-and-historical-segregation>>, [15.11.2019].

¹⁰¹ *Ibid.*

stances, in their opinion, may be the lack of access to services, the inability to participate in activities on equal basis with other prisoners, and no specific conditions being created for persons with special needs. These are architectural barriers, which prevent prisoners with mobility disabilities from being able to access dining halls, libraries, restrooms, work, recreational areas, and visiting rooms independently. In addition, other physical barriers should be considered, such as when prisoners with visual impairments are unable to read their own mail or prison rules and regulations without assistance, because they are not provided with Braille materials, and thus, in addition to the problem of physical accessibility, their right to privacy is put at risk. Violations of the right to education can also become part of everyday life when they are unable to use the library because the printed materials are not provided with readers, taped or in Braille. Prisoners with hearing or speech impairments may be denied interpreters, making it impossible for them to participate in a number of prison activities, including rehabilitation programs, as well as their own parole and disciplinary hearings.¹⁰²

According to experts, the problems, in addition to technical barriers and needs, include one of the most important obstacles, such as condition-specific medical needs that can cost these people their lives. For example, physiotherapy, regular vision and hearing tests, and occupational therapy, which may be difficult and/or impossible to provide in prison settings. The following equipment or services can be considered as specific needs: hearing aids, wheelchairs, crutches, and orthopaedic devices, which would allow them to enjoy their rights to the extent possible.¹⁰³ To read and observe information related to the daily life and

¹⁰² See *Russell M. and Stewart J.*, Disablement, Prison and Historical Segregation, An Independent Socialist Magazine, Monthly Review, 1 July 2001, <<https://monthlyreview.org/2001/07/01/disablement-prison-and-historical-segregation>>, [15.11.2019].

¹⁰³ See *Russell M. and Stewart J.*, Disablement, Prison and Historical Segregation,

safety of the prison, to access the parts of the premises designed to meet the necessary needs, to call the appropriate personnel, when necessary.

Although the publication does not address the situation of prisoners with mental disabilities, it should be noted that any prisoner with a disability requires various forms of mental healthcare, due to his or her condition and the stress caused by the imprisonment and the conditions of penitentiary facilities. For example, such assistance may be needed by persons with sensory disabilities, which is usually accompanied by isolation, especially in prisons where the special needs of such persons are seldom met and they may become the object of psychological abuse and ridicule.¹⁰⁴ Prisoners with communication problems may face a similar problem if they do not have access to mental health and rehabilitation programmes. Mental healthcare services may often be needed by prisoners with hearing or speech impairments. This limits their ability to satisfy their needs or just communicate, which in itself creates a very stressful environment. A rather large number of other similar problems can also be listed, which further aggravates the difficult situation of prisoners with disabilities in places of deprivation of liberty.

Among PWDs we also find a category of people with special needs who, unlike other persons with disabilities, need additional protection and security mechanisms, which further complicates their life in prison. Several such vulnerable groups are addressed in this publication, such as foreign prisoners, members of ethnic and racial minorities, lesbian, gay, bisexual or transgender prisoners, who are at high risk of intense discrimination, harassment, sexual and other forms of violence in prisons.

An Independent Socialist Magazine, Monthly Review, 1 July 2001, <<https://monthlyreview.org/2001/07/01/disablement-prison-and-historical-segregation>>, [15.11.2019].

¹⁰⁴ Ibid.

The inconvenient conditions of the prison environment for persons with disabilities are discussed in numerous papers and reports, which address the fact that prisoners with disabilities often find themselves in significantly unfavorable conditions due to the lack of appropriate architecture and reasonable accommodation in the prison environment. It should be noted, however, that it is one thing to talk about the existing situation, but the consequences, that lead to the violation of almost all fundamental rights of these people, are of no less important either. Prisoners with disabilities often face obstacles in order to maintain their dignity, to be independent and to lead their own daily lives in terms of hygiene, food and mobility, and to participate in prison life on an equal basis with others. The European Court of Human Rights has ruled that denial of reasonable accommodation to a prisoner with disabilities constitutes inhuman and degrading treatment.¹⁰⁵

However, before analysing the placement and treatment of persons with disabilities in places of deprivation of liberty, we must first consider the nature of disabilities. It is important for all citizens, especially those employed in state entities, who, due to their work, have contact with PWDs, to know what disability means and what it means to create equal conditions for them and others.

No matter how much we try to avoid general approaches, it is impossible to talk only about the persons with disabilities in places of deprivation of liberty, separate from other members of society. Prior to their imprisonment, these people lived with other people and interacted with government agencies, whose inaction or unprofessionalism led to this situation when there is need to discuss the conditions of PWDs serving their sentences in places of deprivation of liberty.

Based on the above reasoning, we can conclude that knowledge of the nature of disability and the existence of flexible mechanisms for

¹⁰⁵ *D.G. v. POLAND* (Application no. 45705/07), 12 February 2013

its identification are of particular importance in places of deprivation of liberty. The attitude of the prison administration and personnel towards persons with disabilities, the availability of adequate living conditions and access to all services on an equal basis with other prisoners, depend on the identification of the person with disabilities at the time of admission to the facility and the knowledge of the personnel. The high risk of discrimination against prisoners with disabilities and the violation of their rights can be avoided only if the knowledge of the personnel is based on recognised standards and not on their interpretation or life experience.

PART II. INTERNATIONAL STANDARDS AND NATIONAL LEGISLATION FOR PERSONS WITH DISABILITIES

Chapter 1. International Standards Regarding Persons with Disabilities – Review and Compliance with National Practice

The Convention on the Rights of Persons with Disabilities (hereinafter - the Convention) is one of the main guarantees for the protection of persons with disabilities in those countries that have ratified or are preparing to ratify it. The Convention was adopted by the United Nations in 2006. It establishes the protection standards for the rights of persons with disabilities in any sector of social life.

The Convention does not directly reflect the peculiarities of the persons with disabilities in conflict with the law and their treatment in places of the deprivation of liberty. However, for the purposes of this paper, the review of the Convention shall be based on its role, as well as the coverage area, in all aspects of social life, which, accordingly, applies to every person with a disability, including those who are serving their sentence or are in other types of closed institutions.

First of all, it should be noted that the Convention is the first document that gave the international community a universal definition of a person with a disability. It is based on the general principles of the Convention, such as the respect of inherent dignity, individual autonomy including the freedom to make one's own choices, non-discrimination, and independence of persons. *“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”*¹⁰⁶

The definition focuses on the restrictions, the existence of which,

¹⁰⁶ UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, art 1.

when interacting with a variety of barriers, can prevent persons with disabilities from participating fully and effectively in social life on an equal basis with others. The definition emphasises that persons with disabilities are not distinguished or different in any way from others who may or may not have this type of disability at a particular time in their lives. The definition is quite general, however, according to the preamble to the Convention, “disability” is an evolving concept and the approach of the international community to the concept of disability must be dynamic and evolving in time.

As for the concept of persons with disabilities, we find it not only in the Convention, but also in various documents, which existed before the adoption of the Convention and, based on many years of experience, have been forming certain approaches. The International Classification of Functioning (ICF) does not consider “disability” to be a “medical” or “biological” dysfunction, but also takes into account possible social aspects. It considers that *“disability is not an attribute of an individual, but rather a complex collection of conditions, many of which are created by the social environment”*¹⁰⁷, this can be considered as one of the universal measures of health and disability. This definition can also be used as a guiding principle in any area of social life, especially in places of deprivation of liberty where disability is considered an illness and, consequently, the problem is addressed by placing prisoners with disabilities in a medical unit/facility.

When reviewing the Convention, the explanations given by the Committee on the Rights of Persons with Disabilities (hereinafter – the Committee) in relation to various articles of the Convention are noteworthy. In the case of serving the sentence or the placement of persons with disabilities in places of deprivation or any restriction of liberty, special attention should be paid to compliance with the requirements of

¹⁰⁷ See International Classification of Functioning, Disability and Health (ICF), World Health Organization, Publication, Geneva, 22 May 2001, 20.

the Convention, in particular, to the liberty and security of the person,¹⁰⁸ equality and non-discrimination,¹⁰⁹ etc.

The Committee considers article 14 of the Convention to be in essence a non-discrimination provision.¹¹⁰ It specifies the scope of the right to liberty and security of the person in relation to persons with disabilities, prohibiting all discrimination based on disability in its exercise in all spheres, whether in social life or in closed institutions, including in places of deprivation of liberty. Thereby, *“article 14 relates directly to the purpose of the Convention, which is to ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect of their inherent dignity.”*¹¹¹

The research focuses on the right to liberty and security, as well as the prohibition of discrimination, since persons placed in penitentiary facilities are deprived of their liberty, which is an irreversible process in the event of a crime being committed by them. In my opinion, people with disabilities are at high risk of discrimination due to their high degree of vulnerability. In such a case, safety is their main right, which ensures the protection of persons with disabilities from any negative impact.

The Committee also considers article 5 of the Convention as a guarantee of non-discrimination and equality, stating that *“all persons are equal before and under the law and are entitled to equal protection of the law.”*¹¹² The Committee also clarifies that article 5(2) is the norm

¹⁰⁸ UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, art 14.

¹⁰⁹ Ibid, art 5.

¹¹⁰ See Committee on the Rights of Persons with Disabilities, Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities, adopted during the Committee’s 14th session held in September 2015, 1.

¹¹¹ Ibid.

¹¹² Ibid, 2.

which prohibits all forms of discrimination on the basis of disability and ensures equal and effective legal protection for persons with disabilities against discrimination on all grounds.

Another aspect within the scope of the Convention that is briefly but still covered in the publication is access to justice. The Convention prohibits all discrimination on the basis of disability and imposes an obligation on States Parties that they “...*guarantee to persons with disabilities equal and effective legal protection against discrimination.*”¹¹³

Access to the justice, in this case, is considered as a prerequisite for a person with a disability to be placed in penitentiary facility, which often plays an important role in the process of serving the sentence. Article 13 of the Convention deals with the “*effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants,... in all proceedings, including at investigative and other preliminary stages.*”¹¹⁴

Among the challenges related to accessing the justice system, the Convention on the Rights of Persons with Disabilities also focuses on access to resources and explains that in the absence of such access, disability stereotyping towards persons with disabilities can exacerbate. The Convention also highlights the fact that persons with disabilities often must rely on increasingly scarce free or low-cost legal services and therefore have less choice in who represents them, and generally have less understanding and access to the legal system. The Convention calls on the States Parties, emphasising that “*it is critically important to recognize the problems involving cost and availability of competent legal services.*”¹¹⁵

¹¹³ UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, art 5(2).

¹¹⁴ Ibid, art 13.

¹¹⁵ See *Larson D. A.*, Access to Justice for Persons with Disabilities: An Emerging

Respondents, surveyed in the study, stress the inconsistency between international standards and national law in relation to the lack of access to the criminal justice system. In their view, this puts the situation of persons with disabilities in conflict with the law at risk. They also discuss the implementation of the requirements of the Convention in Georgia and the obligation of the state, and talk about the state's approaches to this issue: *"since the legislation does not impose any direct obligations on the state to create conditions for persons with disabilities, both in social life and in places of deprivation of liberty, the state thus chooses a passive role."*¹¹⁶ A study examines and evaluates the physical accessibility of courts for persons with disabilities in Georgia and explains that *"the entire majority of court building ramps, as well as indoor and outdoor stairs, do not meet the accessibility standards."*¹¹⁷ The so called imaginary adaptation also needs to be pointed out, when the court entrance might be adapted, but the floors in most court buildings are not connected by an accessible elevator or other means of movement for persons with reduced mobility.¹¹⁸

In addition to physical access to justice, respondents discuss other barriers that practically lead persons with disabilities to places of serving a sentence, which in turn indicates a weakness in meeting international standards. With regard to equal access to justice and reparation, in addition to the adapted environment, a respondent names the restriction in choosing a legal representative as one of such painful issues.

Strategy, Laws 2014, vol. 3, 27 May 2014, 224-225.

¹¹⁶ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

¹¹⁷ See Nadiradze K., Arganashvili A., Abashidze A., Gochiashvili N., Lord J., Evaluation on Accessibility to Court Buildings for Persons with Disabilities, 2019, 13.

¹¹⁸ Ibid, 14.

In particular, the respondent points out that law firms are not accessible to persons with physical disabilities, such as wheelchair users, as well as persons with hearing and visual impairments, and are therefore assisted mainly by non-governmental organisations. While a person with a disability may not want the community to know about his or her problems, he or she is forced to agree to the protection in this form, because he or she does not have the opportunity to hire another lawyer.¹¹⁹ The presented problem goes beyond the issue of access to justice and leads to the violation of the right to privacy.

However, if we look at the Commentary to the Criminal Procedure Code of Georgia, we will find different approach. Each of the authors unequivocally recognises the active participation of the accused (defendant) in any stage of the criminal proceedings to protect his or her rights and legitimate interests, which envisages their ability to present evidence, express opinions, defend themselves in person or through defence lawyer. It should be noted that the authors consider such an approach as an important guarantee for the equality of arms and the adequate use of the right to defence in the process, which should provide an opportunity for the parties to better defend their interests, influence the decision on the case, promote fair and just decision.¹²⁰

The extent to which the exercise of the right to full protection meets the requirements of the Convention is evident from the opinion of the respondents on the practice of presentation of evidence in courts, which should influence the court decision. In addition to inadequate access to these bodies or other factors, the courts do not receive

¹¹⁹ See *Nadiradze K., Arganashvili A., Abashidze A., Gochiashvili N., Lord J.*, Evaluation on Accessibility to Court Buildings for Persons with Disabilities, 2019, 14.

¹²⁰ See *Papiashvili L., Tumanishvili G., Kvachantiradze D., Liparteliani L., Dadeshkeliani G., Guntsadze Sh., Mezvrishvili N., Toloraia L.*, Commentary on the Criminal Procedure Code of Georgia: As of October 1, 2015, Tbilisi, 2015, 95.

complete information on the reasons why the person with a disability committed the crime and in what conditions he or she will have to serve his or her sentence. *“Of course, if he has committed a crime, he will be arrested, but no one will care how he will serve his sentence there.”*¹²¹

If we review the explanations provided by experts regarding the importance of the causes of the crime, it is vital to consider the approach when revealing the factual circumstances of the crime in an effective criminal proceeding means revealing all episodes of the crime, the perpetrator, causes and conditions of the crime.¹²²

The respondent clearly shows the connection between the access to justice and the lives of persons with disabilities in prisons. Thus, we can conclude that having the justice system in line with the Convention for persons with disabilities and the structural and cultural improvement of this situation seem to be one of the most fundamental issues for persons with disabilities to reverse the negative impact.

In its review about the access to justice for persons with Disabilities,¹²³ the Alberta Civil Liberties Research Centre (ACLRC) discusses four key barriers that persons with disabilities face. Most of these barriers are common to many countries. Georgia is no exception. Overcoming these barriers would make the criminal justice system more flexible and the daily lives of PWDs easier. Among these barriers, the Research Center identifies the following areas:¹²⁴

¹²¹ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

¹²² See *Gogshelidze R., Akubardia I., Papiashvili L., Gognashvili N.*, Criminal Procedure, General Part, publishing house “Samartali”, Tbilisi, 2008, 17.

¹²³ See Access to Justice and Persons with Disabilities, Alberta Civil liberties Research Center, 2019, <<http://www.aclrc.com/access-to-justice-persons-with-disabilities#socialeconomic>>, [15.11.2019].

¹²⁴ Ibid.

- Barriers resulting from social and economic conditions, which include the problems in the areas of economic well-being, education, health, employment, housing, safety and justice, and political and social inclusion;
- Barriers resulting from identification with other communities, which include minorities, women with disabilities, elders with disabilities, refugees and immigrants with disabilities, and other categories that have specific needs;
- Barriers arising from the type of disability experiences. Persons with different types and severity of disabilities will encounter different types of attitudinal, physical or institutional barriers;
- Barriers arising inside the legal system, which arise in the areas, such as: laws specifically targeting persons with disabilities, power imbalances between persons administering laws, policies, or bureaucracies and persons with disabilities, and much higher levels of discrimination that the persons with disabilities face compared to persons without disabilities.

In addition to the above-mentioned barriers, the lack of public support means that persons with disabilities often remain vulnerable to violence and have to face the criminal justice system. Persons with disabilities should be provided with protection in the criminal proceedings or the initiation of a case to participate in the process of administration of criminal justice on an equal basis with other people. To receive a fair decision, it must take into account different values. According to Professor Khubua, the following formulations should be used as a basis for different levels of fairness and justice: to each – their own; to each – equal; to each – considering their nature; to each – considering their requirements; to each – rightful, etc.¹²⁵ Although the disability is not

¹²⁵ See *Khubua G.*, *The Theory of Law*, 2004, 69.

specifically mentioned in this discussion, taking into account the nature and requirements of each person can be considered as a guarantee of a fair decision in the case of persons with disabilities.

The respondents with disabilities discuss the reasons for non-compliance and vicious practices in Georgia with regard to the criminal justice system in a more global context. They see a direct link between the current situation and access to justice. They point out that a person with a disability is not fully involved in the criminal process, which prevents him/her from achieving a proper result. The commentary on the criminal procedure code makes it clear that the persons involved in the investigative part of the case, whether they are the perpetrators of the case or other participants, are closely related to each other. During this or that procedural action, through the realisation of their rights and duties, numerous procedural relations arise between the participants. Based on such relationships, the fulfilment of the goals faced by the criminal process becomes achievable.¹²⁶

The negative attitude towards PWDs is no less painful. The 2018 report¹²⁷ of the UN High Commissioner for Human Rights states that one of the major barriers that affect access to justice for persons with disabilities are attitudinal barriers. Due to negative attitudes and opinions towards persons with disabilities, they are often considered unreliable, untrustworthy, or incapable of presenting sufficient evidence, making legal decisions, or participating in court proceedings. The lack of support from a specialist is also an obstacle. Often PWDs are not provided with appropriate programmes, because it is considered that they are unable to understand or respond to the criminal charges against them

¹²⁶ See *Gogshelidze R., Akubardia I., Papiashvili L., Gognashvili N., Criminal Procedure, General Part*, publishing house "Samartali", Tbilisi, 2008, 11.

¹²⁷ See Report on the right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities, Thematic report of the Office of the United Nations High Commissioner for Human Rights, 2018, 15.

(non compos mentis). Persons with disabilities may not be provided with an adapted environment and assistive devices that would enable them to enjoy basic human needs and participate in prison life. They are often subjected to inhuman and degrading treatment, or torture, and ill-treatment by the prison administration.

According to a respondent, the state is not properly interested in the situation of persons with disabilities, as most of the requirements of the Convention still have not been met to date. For example, the respondent briefly explains the requirements of the Convention and the approach of the state, that the standards set by the Convention requires the adaptation of new buildings, however, according to the national standards, adaptation means the installation of ramps only, the quality and usability of which are not even evaluated. And as for the penitentiary system, the respondent reviews it in comparison with the existing situation in the society. *“What can be said about the buildings of penitentiary facilities, when, for example, 90% of the ramps installed in Tbilisi do not meet the established standards and a person with a disability may even be injured when using them. The same can be said about the person using a crutch.”*¹²⁸ The respondent explains that this seemingly simple problem, the solution of which is not associated with particular difficulties, is in fact life-threatening. Besides the ramps, the respondent also talks about the designs executed with indifference, such as, for example, the width of a door that a wheelchair user cannot fit into.

The existence of the above-mentioned problems, in the opinion of the respondents, are directly proportional to a high probability of a person with a disability entering the places of deprivation of liberty, while it would be possible to avoid it in the presence of a normal accessible environment.

¹²⁸ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

CHAPTER 2. GEORGIAN LEGISLATION REGARDING PERSONS WITH DISABILITIES

1.1. Brief overview of the Constitution of Georgia in relation to persons with disabilities

When discussing national legislation, first of all, it is sensible to consider the provisions of the Constitution of Georgia regarding the persons with disabilities, in social life, in general, as well as those in conflict with the law, including the ones placed in penitentiary facilities: their treatment, conditions and services, their involvement in social life, and accessibility.

The human rights enshrined in the Constitution of Georgia cover a broad spectrum of high standards, which applies equally to all citizens of Georgia. However, the Constitution of Georgia does not directly specify the right to non-discriminatory treatment towards persons with disabilities. The positive side of the Constitution is the fact that no article contains a legal basis for restricting the rights of persons with disabilities.

The Constitution of Georgia does not include multiple mentions of persons with disabilities, and generally does not include a definite reference to persons with disabilities deprived of their liberty, but it should not be considered as if the issue remains outside the constitutional regulation. Although Article 11 of the Constitution does not consider disability as one of the risk factors for discrimination along with the grounds of *“race, colour, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property of titular status, place of residence”*¹²⁹, the Constitution of Georgia obliges the State to ensure

¹²⁹ See the Constitution of Georgia, Chapter II, art 14 (old edition), art 11 (new edition), 28 August 1995.

that the rights of persons with disabilities as well as other vulnerable groups are protected in all areas of public life. The statement made by the Constitutional Court of Georgia explaining that the aim of Article 14 of the Constitution (Article 11, as amended) is to ensure equality before the law, not to allow substantially equal to be considered as unequal or vice versa, can be attributed as an argument. According to the explanation, *“The aim of the norm is much larger than the prohibition of discrimination based on the limited list provided.”*¹³⁰ Later, in the next decision, the Court explained the reasons as to why the list provided by Article 14 of the Constitution should not be considered exhaustive, saying that such an approach from the Court would confirm that any other grounds are not discriminatory, since they are not specifically covered by the Constitution. According to the explanation, naturally, such an approach would not be right, because any of other grounds not being mentioned in the Constitution does not exclude the groundlessness of differentiation.¹³¹

In addition to the decision of the Constitutional Court, the study also relies on the commentary to the Constitution, which clarifies the obligation of the state to ensure a healthy and productive life of citizens, including persons with disabilities. The commentary explains that the state has positive obligations to create conditions for the free personal development of the individual. The commentary also indicates what factors ensure access to free personal development for persons with disabilities, such as access to information, education, health care, or access to existing resources on an equal basis with other people. These resources also include the use of cultural and natural environments,

¹³⁰ Citizen of Georgia, Shota Beridze and others vs the Parliament of Georgia, decision of the Constitutional Court of Georgia from 31 March 2008 No 2/1/392, 6.

¹³¹ Political Unions of Citizens – New Rightists and Conservative Party of Georgia vs the Parliament of Georgia, decision of the Constitutional Court of Georgia from 17 September 2010, No 1/1/493, 14.

opportunities for political or civic activism, environmental and industrial hygiene, control and prevention of communicable diseases, social protection and insurance of citizens, and adequate standards of housing, food and living conditions to facilitate active participation of people in all areas. Thus, the comments give grounds for the conclusion that when using the term “people”, it should mean every person, regardless of their physical or mental condition.¹³²

The commentary to the Constitution emphasizes the special importance of such an obligation to ensure that persons with disabilities are not excluded from social life. It is interesting to note that the commentary considers the violation to be not only a consequence of the action, but also the inaction of the state, which is a violation of the right to personal development of PWDs in case the public institutions (For example, City Hall, police or public buildings (cinema, library, etc.)) do not become equally accessible to persons with disabilities, as it hinders their ability to solve their problems as well as their relationships with other people and the outside world. *“The positive obligations of the state in the field of personal development include the development, adoption and implementation of relevant policies, legislation and other measures at both the national and international levels.”*¹³³

The commentary explains the obligation of the state to protect, assist and create appropriate conditions for those individuals who, due to their physical or mental disability, are not actively involved in public life. Although we do not find this point in the form of a direct provision in the Constitution, the interpretations indicate the obligation of the state to create adequate conditions for them.¹³⁴

¹³² See *Gotsiridze E.*, Commentary to the Constitution of Georgia, Chapter 2, Citizenship of Georgia, Human Rights and Fundamental Freedoms, 2013, 104.

¹³³ *Ibid.*

¹³⁴ See *Izoria L.*, Commentary to the Constitution of Georgia, Chapter 2, Citizenship of Georgia, Human Rights and Fundamental Freedoms, 2013, 483.

Although the Constitution of Georgia does not contain separate provisions on the rights of persons with disabilities in the justice system and places of deprivation of liberty, but based on the above considerations, it can be said that the Constitution of Georgia, along with other commentaries and interpretations, includes a prohibition of discrimination on the grounds of disability. It obliges the state to ensure the unwavering protection of the rights of persons with disabilities in all spheres, in all state or non-state institutions operating in the country, and in public life, in general. In this regard, it can be said that the legislation of Georgia, compared to the countries of the former Soviet Union, provides all the conditions for the protection of the rights of persons with disabilities. As an example, we could review the practice of the Russian Federation for comparison. The discussion is based on a publication about working with PWDs, in which the author points out that the rights of persons with disabilities are being violated everywhere. Restitution of violated rights is difficult due to the contradictory nature of the legislation and the legislative illiteracy of the disabled people. Moreover, the publication categorises persons with disabilities and highlights the situation of persons in places of deprivation of liberty. *“The situation of persons with disabilities in places of deprivation of liberty is more difficult.”*¹³⁵ The author also analyses and notes that in many countries such prisoners are housed in special facilities that are equipped with their special needs in mind. According to the author, *“at present, the existence of special problems for this category of prisoners is not officially recognised in Russia.”*¹³⁶

We can also discuss the practice of other countries of the former Soviet Union regarding persons with disabilities. In Uzbekistan, for example, the legislative analysis carried out by the UNODC clarifies that

¹³⁵ See Balykin D.G., Bulanov A.S., Rights of People with Disabilities in Places of Deprivation of Liberty, information publication, Nizhny Novgorod, 2014, 5.

¹³⁶ Ibid.

the Penal Code does not adequately reflect the peculiarities of ensuring decent conditions for serving a prison sentence in relation to convicted individuals belonging to vulnerable groups. Along with other vulnerable groups, the report emphasises the persons with disabilities and notes that although there are some entries in the law, they do not fully reflect the needs of this category of prisoners. The report also cites the example of wheelchair users and notes that there are no mechanisms to ensure the basic rights of prisoners who use wheelchairs.¹³⁷

A brief review of the Constitution of Georgia allows us to conclude that: placing persons with disabilities in poor living conditions, lack of care, services, and access to information and inappropriate treatment in the places of deprivation of liberty, described in this publication, leads to violation of several human rights¹³⁸ protected under the Constitution of Georgia, such as: inviolability of human dignity and prohibition of torture; the right to equality; procedural guarantees; rights to personal and family privacy, personal space and privacy of communication; access to public information; freedom of labour, rights to education and the protection of health, which are discussed and described in the framework of both legislative and practice research of the paper.

2.1. Brief overview of national legislation defining the concept and status of persons with disabilities

The analysis of the national legislation allows us to say that the prohibition of discrimination on the grounds of disability was not explicitly mentioned in any legislative act in 2014, before the adoption of the

¹³⁷ See Analysis of the Criminal Code of Uzbekistan: Proposals and Recommendations, Regional Office for Central Asia of the United Nations Office on Drugs and Crime (UNODC), Uzbekistan, 2018, 43.

¹³⁸ Constitution of Georgia, Departments of the Parliament of Georgia, Chapter II, arts 9, 11, 15, 18, 26, 27, 28, 31, 24 August 1995.

Law of Georgia on the Elimination of All Forms of Discrimination. Adoption of this law can be considered as one of the guarantees in terms of protection of the rights of persons with disabilities and ensuring their equal living conditions. The purpose of this law is to eliminate various forms of discrimination in Georgia and to ensure equal rights of every natural and legal persons under the legislation of Georgia. The list of factors given in this law, among others, indicates a disability.¹³⁹ The present publication attaches special importance to the legislative regulation, considering that the law included a disability in the list of circumstances, the existence of which should not lead to discrimination.

In terms of harmonising the national legislation with the provisions of the UN Convention on the Rights of Persons with Disabilities, the amendment to the Law of Georgia on Social Protection of Persons with Disabilities, which introduced a definition based on the social model of PWDs, is important. However, an amendment to the definition of the term alone is not the key aspect that can ensure the transition from a medical approach to disability, which has existed in the country for many years, to a social approach to disability. The Action Plan of the Government of Georgia on Ensuring Equal Opportunities for Persons with Disabilities for 2014-2016 established that *“the system of disability assessment and status determination should be reformed and the process of gradual transition to a social model should be continued.”*¹⁴⁰

Unlike the old version of the law,¹⁴¹ in which, according to the definition, the international standards and Georgian legislation were based on completely different approaches, the 2014 edition of the Georgian

¹³⁹ See the Law of Georgia on the Elimination of All Forms of Discrimination, 2 May 2014.

¹⁴⁰ See the Action Plan of the Government of Georgia on Ensuring Equal Opportunities for Persons with Disabilities for 2014-2016, para 1.

¹⁴¹ See Law of Georgia on Social Protection of Persons with Disabilities, 14 June 1995.

Law on Social Protection of Persons with Disabilities introduced a definition based on a social model, according to which persons with disabilities are considered persons with substantial physical, mental, intellectual or sensory impairments. The main point here is to consider that these impairments in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹⁴²

The Concept of Social Integration of Persons with Disabilities¹⁴³ adopted by the Decree №604-II of the Parliament of Georgia on 2 December 2008 formulates a unified state policy in the field of disabilities, which is more or less in line with the vision on disabilities established by international standards, and establishes that the term “a person with a disability” is relative and its interpretation depends on the specific conditions of his or her existence and/or the types of measures to be taken towards him or her.¹⁴⁴ Although the Concept is not a legally binding document, its adoption is still an important step forward for the reality of Georgia.

2.3 Legislation regulating the criminal justice system with regard to persons with disabilities

2.3.1 General overview

In many countries around the world, especially in post-Soviet states, the criminal law does not have clear standards for the use of punishment proportionate to the situation of persons with disabilities, and strong protection mechanisms or guarantees. It should also be noted

¹⁴² See Law of Georgia on Amendments to the Law on Social Protection of Persons with Disabilities №2103 from 7 March 2014, art 2.

¹⁴³ See the Concept of Social Integration of Persons with Disabilities, Decree №604-II of the Parliament of Georgia, 2 December 2008.

¹⁴⁴ Ibid.

that imprisonment is often a disproportionately harsh punishment for offenders with disabilities.¹⁴⁵

Regardless of whether there is criminal legislation and procedures for persons with disabilities, the fact is that persons in this category also commit crimes and they, like any other person, face legislative regulations when a court has to make a decision, which will be proportionate to a crime committed by them and to their physical condition.

If we rely on the commentary on the criminal procedure, the criminal procedure not only declares the protection of human rights and freedoms, but also imposes guarantees for their realisation.¹⁴⁶ Thus, persons with disabilities should be given strong guarantees by the law to be on equal terms with other people. The main effort should be directed not at the person imposing the sentence, i.e., the sentencing process, but at the legislator, because the legislator should create a criminal law based on these principles. In this case, perhaps, the approach of Professor Dvaladze is relevant, that sentencing is indeed important, but criminal law-making, which results in criminal legislation, is essential.¹⁴⁷

The discussion in the publication regarding the legislative regulation of the issue of criminal liability of PWDs is based on the legislative analysis in relation to PWDs, according to which there are gaps in the legislation, which in fact say nothing about the inclusion of persons with disabilities in various stages of criminal proceedings. Access to various services that should ensure the full and effective involvement of persons with disabilities in the proceedings is also not covered. It is noteworthy

¹⁴⁵ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 5.

¹⁴⁶ See *Gogshelidze R., Akubardia I., Papiashvili L., Gognashvili N.*, Criminal Procedure, General Part, publishing house "Samartali", Tbilisi, 2008, 24.

¹⁴⁷ See *Dvaladze I.*, General Part of the Criminal Law, Punishment and other Criminal Consequences of the Crime, 2013, 69.

that the lack of equal access to all necessary services at all stages of this process can put us at risk of violating a number of constitutional rights.

The approach towards legal equality is noteworthy in the paper “*Liberalizing Trends in Georgian Criminal Law*”,¹⁴⁸ which explains the role of the state towards all different, including vulnerable groups, and stresses that “*from a liberal point of view, the state should only act as an impartial judge between various different groups and should be able to protect individuals, all citizens.*”¹⁴⁹

In this case, one of the problems is legal equality for persons with disabilities, as their physical, mental, economic or other problems do not allow them to be equal to other citizens, regardless of which model we use to consider their condition: medical or social.

Scholars discuss a list of circumstances that must be considered before a punishment can be imposed for any particular action. They explain that the legislature should pay special attention to the necessity, efficiency, proportionality, and cost-effectiveness of sentencing. Failure to take this factor into account will make it ineffective, in terms of crime prevention, to threaten the impending punishment.¹⁵⁰

Based on the explanations given by Georgian scholars, the legislation should allow the judge to make a decision based on the principle of fairness, taking care of the effectiveness of the sentence while taking into account both the general principle as well as the individual principle. When considering a sentence against a person with a disability, the judge should be able to take into account the severity and danger of the crime committed, as well as the personal characteristics and, consequently, physical or mental condition of the accused person. Otherwise,

¹⁴⁸ See *Todua N., Nachkhebia G., Lekveishvili M., Ivanidze M., Tskitishvili T., Mchedlishvili-Hedrich K.*, *Liberalizing Trends in Georgian Criminal Law*, 2016, 23.

¹⁴⁹ *Ibid.*, 18.

¹⁵⁰ See *Dvaladze I.*, *General Part of the Criminal Law, Punishment and other Criminal Consequences of the Crime*, 2013, 13.

the purpose of the punishment will not be achieved.¹⁵¹ This reasoning is of particular importance, given that the physical condition of persons with disabilities plays an important role in the effectiveness of crime. It is clear, that placing a person with a disability in an environment unsuitable for their physical condition can cause a devastating result, instead of serving as a contributing factor to his or her rehabilitation and resocialisation.

2.3.2 Brief overview of the Criminal Code in relation to persons with disabilities

The Criminal Code of Georgia (hereinafter - the Criminal Code) uses a term – “a person with a disability” (Criminal Code, Article 1422). The Code also includes the term “invalid”, which in this case is used as an impediment to the use of alternative punishment to imprisonment, for example, community service. According to article 44 of the Criminal Code, community service shall not be imposed on invalid persons of first and second categories, pregnant women, and women with children aged fewer than seven, persons of retirement age, as well as for recruited military service people. Modern scientific and public opinion, however, is gradually leaning more toward the benefits of punishment, in the broadest sense of the word, rather than the severity of punishment. In this respect, community service is an important punishment.¹⁵²

The general part of the Code deals with the situation of persons with disabilities in the context of liability or diminished capacity. Of course, liability or diminished capacity should be understood as indicators of disability. It should be noted, however, that a person may be liable but, depending on his or her physical condition, have a disability. Therefore, we can conclude that liability and disability are often differ-

¹⁵¹ See *Dvaladze I.*, *General Part of the Criminal Law, Punishment and other Criminal Consequences of the Crime*, 2013, 72.

¹⁵² *Ibid*, 48.

ent terms and, given their meaning, cannot be fully equated. In addition, the liability reflects the mental state of the person and not the physical, unlike the disability, which includes both elements.

The provision of the law on the placement of a person, who became ill before the conviction, due to which he or she is unable to control or guide his or her acts, in a relevant medical (treatment) facility before the recovery, should be assessed positively.¹⁵³ However, the issue remains open when a person becomes physically ill before the conviction and his or her condition does not allow him or her to serve a sentence, or the person is mentally able to account for his actions but is physically limited or unable to care for himself independently. What happens in this case and what guarantees does the law offer them?

Article 35 of the Criminal Code – “diminished capacity” – more or less provides for the possibility of taking into account the diminished capacity of a person by a court when sentencing. First of all, this approach does not consider people with physical disabilities and on the other hand, it is not mandatory. The explanations by the experts regarding the diminished capacity is noteworthy. Although physical disabilities are not considered here, this approach can still be extended to a given target group. For example, the experts explain that when imposing a sentence, the judge should take into account the disability, which qualifies as a diminished capacity, which is why the sentence for an adult offender should be reduced, and this conclusion is based on the essence of the norm. If the consideration of the diminished capacity by the judge at the time of sentencing would have no effect on the scope of the sentence, then the above provision would lose its meaning.¹⁵⁴ The standards set

¹⁵³ See *“If a sane person commits a crime and becomes mentally ill before his/her conviction, due to which he/she is unable to control or guide his/her acts, shall serve the sentence imposed by the court in the relevant medical institution until his/her recovery.”*, Criminal Code of Georgia, art 34(3), 22 July 1999.

¹⁵⁴ See *Todua N., Nachkhebia G., Lekveishvili M., Ivanidze M., Tskitishvili T.*

out in article 34 of the Criminal Code do not apply to persons with physical disabilities and it would be unfounded to discuss it, while article 35 of the Criminal Code, which deals with diminished capacity, may not be considered directly but still discussed in relation to persons with physical disabilities. *“Article 35 of the Criminal Code introduces only one type of diminished capacity - diminished capacity due to mental illness.”*¹⁵⁵

It is possible that the discussion over Article 34 of the Criminal Code is an arguable issue, because if we consider the two most recent commentaries on the general part of the criminal law, we will see that the one of them allows for such an opportunity in a way, while the other one practically excludes this version. In particular, according to the authors of the first commentary, two criteria (indicators) are used to determine the diminished capacity: medical-biological and psycho-legal. The first criterion answers the question: was the person mentally ill at the time of committing the act and, if yes, with what illness? As for the psycho-legal criterion, it answers the question: was this mental illness of the degree to which a person was deprived of the ability to fully comprehend the actual nature or unlawfulness of the action (intellectual activity) or to be deprived of the ability to fully control the action (voluntary activity)? Finally, was this illness of the degree that a person was partially deprived of consciousness or free will?¹⁵⁶ Here we must pay attention to the relevance of the situation of a person with physical disability, who may also have been unable to control his or her actions. For example, a person with visual impairments or cognitive problems,

Mchedlishvili-Hedrich K., Liberalizing Trends in Georgian Criminal Law, 2016, 530-531.

¹⁵⁵ See *Gabiani A., Gvenetadze N., Dvaladze I., Todua N., Ivanidze M., Mamulashvili G., Nachkhebia., Tkesheliadze G., Khuroshvili G., General Part of Criminal Law, 2007, 303.*

¹⁵⁶ See *Gabiani A., Gvenetadze N., Dvaladze I., Todua N., Ivanidze M., Mamulashvili G., Nachkhebia., Tkesheliadze G., Khuroshvili G., General Part of Criminal Law, 2007, 304.*

whose conditions are not considered as mitigating circumstance by the law, even though their condition may be the reason why the person at some point did not fully understand the factual side of the action or the unlawfulness for the simple reason that he or she cannot see and cannot properly perceive what is happening around him or her, or the case when a person due to his intellectual condition does not realise that this or that action is illegal.

The same commentary discusses other forms of diminished capacity, which are dealt with in different articles and are not included in article 35, for example: a minor, which, according to the authors, has a type of diminished capacity, because a child has a limited capacity to incrimination. The commentary also discusses murder in a state of sudden, strong spiritual excitement (M111), intentional killing of a new-born by a mother (M112).¹⁵⁷ In such a case the question must be asked: why cannot a physical disability be considered in this list, mainly because of its extremely severe expression?

As for the second commentary, here the author explicitly explains that *“there is a diminished capacity when a person due to mental illness was unable to fully understand and control the factual or illegal nature of his or her action.”*¹⁵⁸ In this case, the application of article 35 to persons with physical disabilities cannot be the subject of discussion.

We must agree with the view that punishment, as a mechanism of social control, is the most severe measure of state coercion.¹⁵⁹ Thus, the investigative and judicial authorities must undertake an obligation to examine the physical condition of the convicted individual in detail,

¹⁵⁷ See Gabiani A., Gvenetadze N., Dvaladze I., Todua N., Ivanidze M., Mamulashvili G., Nachkhebia., Tkesheliadze G., Khuroshvili G., General Part of Criminal Law, 2007, 303.

¹⁵⁸ See Turava M., Criminal Law: Review of the General Part, 2010, 226.

¹⁵⁹ See Dvaladze I., General Part of the Criminal Law, Punishment and other Criminal Consequences of the Crime, 2013, 13.

together with the evidence of the of the committed crime. Particular attention should be paid to the proportionality of punishment and other criminal measures in relation to the crime committed and the personality of the convicted individual,¹⁶⁰ given that detention conditions often drastically worsen the situation of persons with disabilities, which in turn becomes a significant burden on the prison system.

Imprisonment should be applied to all persons on equal terms, without giving priority to any of them. However, the existence of various special categories, to which vulnerable persons also belong, should be noted. For example, in the case of persons with disabilities, their physical condition and, consequently, the degree of vulnerability should be taken into account. This assertion should not be understood in such a way that a disability precludes a person's culpability or reduces the degree of risk to society. Professor Murdoch explains that "vulnerable" does not refer to "less dangerous", he explains that it is not related to the degree of dangerousness, risk of reoffending, violence, etc. However, he also explains that in some cases a person's vulnerability can lead to tangible problems, implying that failing to meet the needs of vulnerable prisoners may in certain cases amount to ill-treatment.¹⁶¹

The above reasoning does not imply that a person with a disability should avoid punishment due to his or her vulnerability, but indicates that the court should exercise its power and, even if the law does not explicitly address disability as an aggravating circumstance, take into account the person's situation when making a decision. Professor G. Khubua explains in his paper that equality is a fundamental principle of

¹⁶⁰ See *Dvaladze I.*, General Part of the Criminal Law, Punishment and other Criminal Consequences of the Crime, 2013, 12.

¹⁶¹ See *Murdoch J.*, Professor of Public Law, University of Glasgow, School of Law, United Kingdom, *Jiricka V.*, Head Psychologist, Prison Service, Czech Republic, A handbook for prison staff with focus on the prevention of ill-treatment in prison, Council of Europe, April 2016, 47.

law and legal concepts are abstract, precisely because the norm applies to all homogeneous and similar relations. However, the next reasoning is noteworthy, according to which individual cases should be taken into account. A specific case, which has individual characteristics, should be decided based on the general norm. Individual means distinctive, different, unlike, the law is abstracted from this individual – the law “does not see it”.¹⁶² It is exactly the consideration of this distinction, as well as its promotion, that this publication focuses on.

When there are discussions about liberalising the criminal law of the country, PWDs can be no exception. Moreover, the essence of liberalisation of the law should be to give equal opportunities to all citizens – this is how a British author, Andrew Heywood explains the role of the state in the administration of justice in his book “Politics”.¹⁶³

It is important to discuss the mitigating circumstances of punishment, where the law only provides a limited list, such as: due to age, mental illness, diminished capacity. The physical condition of the person is not considered among mitigating circumstances, regardless how devastating it may be to place a person at the penitentiary facility, depending on the degree of their disability. The current Criminal Code does not specifically provide an exhaustive list of mitigating, exemplary or aggravating circumstances. According to Professor Dvaladze, such an approach requires a high professionalism of the judge. The judge himself should make great efforts to study the factual circumstances of the case in detail and then determine exactly which circumstances will affect the severity of the sentence.¹⁶⁴ This approach should be binding in practice, when considering the case of a particular category of accused individuals, especially the persons with disabilities, due to their physical and

¹⁶² See *Khubua G.*, *The Theory of Law*, 2004, 75.

¹⁶³ See *Heywood A.*, *Politics*, third edition, N.Y, 2004, 134.

¹⁶⁴ See *Dvaladze I.*, *General Part of the Criminal Law, Punishment and other Criminal Consequences of the Crime*, 2013, 73.

mental condition as well as the inappropriate conditions in the places where they are serving their sentences.

The imposition of alternative sanctions is also noteworthy, when the law does not consider disability as a basis for the use of alternatives to imprisonment, but it is the disability that is a hindering factor in the use of community service. The Criminal Code clarifies that community service shall not be imposed on disabled persons of first and second categories. If we consider that the modern scientific and public opinion is gradually leaning more toward the benefits of punishment, in the broadest sense of the word, rather than the severity of punishment, in this respect, community service is an important punishment.¹⁶⁵ Thus, we can conclude that the restriction established by the Georgian legislation cannot be considered justified.

Clearly, not imposing a sentence only because of their disability can be controversial. When discussing this issue, we should consider what type of disabilities does the convicted individual have and to what extent it excludes the imposition of such a sentence on him or her. However, at this stage the law does not include the regulation of this issue based on the above reasoning. "It is justified to resolve the issue based on the condition of the convicted individual and the specifics of the work to be performed, but this is not yet possible under the current law."¹⁶⁶ However, if a judge examines the situation of a person with a disability in more detail, and identifies the person's condition, the type of work to be performed, and other circumstances, it could show the use of the community service as more effective than other sentences. However, in addition to the prohibitive provisions directly defined by law, the analysis of case law has also shown that judges, when approving plea

¹⁶⁵ See *Dvaladze I.*, *General Part of the Criminal Law, Punishment and other Criminal Consequences of the Crime*, 2013, 48.

¹⁶⁶ See *Todua N., Nachkhebia G., Lekveishvili M., Ivanidze M., Tskitishvili T., Mchedlishvili-Hedrich K.*, *Liberalizing Trends in Georgian Criminal Law*, 2016, 550.

bargaining, do not carefully consider the personal characteristics of the offender, such as his or her health condition and if he or she will be able to perform the community service.¹⁶⁷

In addition to the positive significance of the use of community service, we must also consider its negative aspects if its proportionality is not properly defined. For example, incorrectly defining the workplace and the type of work can lead to more negative than positive results. First of all, it should not be used for a particularly long period of time, which can lead to disproportionate punishment.¹⁶⁸ Also, the place and type of the sentence should not be an additional contributing factor to the stigmatisation of the person with a disability.

It should be noted that the imposition of a fine on a person with a disability is not prohibited by law. However, its use can have a devastating effect on a person with a disability or his/her family, who, in most cases, represent economically vulnerable groups. When using a fine as a punishment, it is necessary that the economic capabilities and solvency of the person with a disability be specifically specified in the decision, *“otherwise, the alternative sentence will not have the expected effect, neither for the purposes of the punishment nor for the other purposes.”*¹⁶⁹

Based on the analysis of the above information, we can conclude that internationally recognised standards and national legislation are the main guarantee of human rights protection and equal living conditions for all people in any country. The existence of such standards and quality legislation for persons with disabilities is of particular importance, as they belong to vulnerable groups, who, in most cases, are unable to protect or avoid barriers, and are unable to enjoy living and treatment conditions on equal basis with other people. A large part of

¹⁶⁷ *Getiashvili G.*, The Essence of Community Service, Law Journal, №2, 2016, 235.

¹⁶⁸ *Ibid*, 240.

¹⁶⁹ See *Todua N., Nachkhebia G., Lekveishvili M., Ivanidze M., Tskitishvili T., Mchedlishvili-Hedrich K.*, Liberalizing Trends in Georgian Criminal Law, 2016, 332.

the society, including those who are responsible for this, due to their work, are not tolerant towards these people, although the legal policy should determine the possibilities of normative regulation, and analyse non-legal range of assessment, such as: morality, social benefits, public and private interests, etc.¹⁷⁰

The criminal justice system or any area of public life regulated by national law do not guarantee that a person with a disability will be protected in family and community life or in places of serving a sentence, in accordance with the requirements of international standards. The absence of relevant legislation has a direct impact, on the one hand, on creating an accessible environment and, on the other hand, on public awareness and the quality of training of those who have professional contact with persons with disabilities. Low level of awareness is one of the main hindering factors for the relevant agencies to understand the scale of the problem and take real steps to eliminate it.

Compliance of national legislation with the requirements of international standards is the initial step, which should create an equal environment for all people in society and change the elements of Soviet attitudes towards PWDs, that still remain in state institutions. This compliance should be the basis for creating an accessible and equal environment for persons with disabilities in the state, regardless of where they are: outside in the society or in places of deprivation of liberty. To ensure the right to equality and, consequently, to combat discrimination, it is necessary for the state to have a system and mechanisms in place that effectively ensure the prevention, detection, proper liability, and restoration of violated rights.¹⁷¹ The solution of the issue should be of a complex nature, it should be regulated at the state policy level. Specifically, the following steps should be considered: harmonising the

¹⁷⁰ See *Khubua G.*, *The Theory of Law*, 2004, 22.

¹⁷¹ See *Dzamashvili B.*, *Measures to be Carried out by the State for Effective Fight Against Discrimination*, *Law Journal*, №1, 2016, 252.

national legislation with international standards; establishing the concept of reasonable accommodation; applying an individual approach to all persons with disabilities; providing information in an alternative, efficient format to people with mental health problems or certain developmental impairments or others, as needed; raising awareness about disability; reducing stigma; increasing public acceptance so that these individuals become not objects of assistance but carriers of rights.

Based on a brief overview carried out in the present publication of the criminal justice system and the current legislation, we can conclude that the penitentiary system cannot be considered separately as an independent element. Low level of awareness, shortcomings in the legislation, absence of adequate consideration of the situation of persons with disabilities in the justice system, etc., are the reasons why the persons with disabilities are admitted to penitentiary facilities, even when it can be assumed that this could be avoided if a person with disabilities was involved in the process, was provided with adequate protection or with highly qualified personnel, trained to work with persons with disabilities. However, these approaches are often disregarded. Thus, the guarantee that persons with disabilities either will not go to places of deprivation of liberty or will serve their sentences in an equal, non-discriminatory environment with other prisoners, must be the national legislation and procedures formulated in line with international standards.¹⁷²

It should be noted that the lack of access to protection and the discriminatory environment, described in the paper, lead to the violation of the rights of persons with disabilities enshrined both in the Constitu-

¹⁷² The first step in resolving this issue should be considered to be the draft law prepared by the Ministry of Justice of Georgia in 2019 on amendments to the Imprisonment Code. The draft law is initiated by the Government of Georgia. The draft law is being discussed in order to further approve it in accordance with the rules established by the legislation of Georgia.

tion of Georgia¹⁷³ and international standards.¹⁷⁴

2.3.3. Brief overview of the Criminal Procedure Code in relation to persons with disabilities

Disability, depending on the type and degree of disability, prevents a person from unrestricted involvement in the criminal proceedings. The low level of involvement of a person with disabilities in the process should be assumed to have a largely negative impact on both the investigation and the court proceedings and, therefore, ultimately, the outcome of the trial. In the commentary to the Criminal Procedure Code of Georgia (hereinafter – Criminal Procedure Code) the definition of the right to a fair trial refers to the minimum standard, which the right to a fair trial should include, in which the accused person shall be actively involved, and the restriction of such rights leads to violation of procedural rights protected under article 31 of the Constitution.¹⁷⁵

The right to a fair trial should be a combination of the following rights: the right of a person to apply to a court; to request a fair public hearing of the case; to express opinions and take part in the examination of evidence; to defend his/her rights before a court in person or through a lawyer; as well as, the right to a court hearing held within

¹⁷³ Constitution of Georgia, “Right to Equality”, Departments of the Parliament of Georgia, Chapter II, art 11(3), 24 August 1995.

¹⁷⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, “Prohibition of Discrimination”, art 14, 4 November 1950; International Covenant on Civil and Political Rights, 16 December 1966, art 2.

¹⁷⁵ “The right to defence shall be guaranteed. Everyone has the right to defend his/her rights before a court in person or through a lawyer, or through a representative in cases defined by law. The unrestricted exercise of the rights of a lawyer, as well as the right of lawyers to self-organisation, shall be guaranteed by law”, Constitution of Georgia, Procedural Rights, Departments of the Parliament of Georgia, Chapter II, art 31(3), 24 August 1995.

a reasonable time by an independent and impartial tribunal.¹⁷⁶ As for access to case materials, which is one of the main guarantees of full protection, a study explains the existence of a physical environment for reviewing the case materials and notes that this environment does not meet the accessibility standard for people with disabilities.¹⁷⁷

In addition to the above, the publication will focus on several key aspects when discussing criminal procedure law. First of all, it should be noted that the Criminal Procedure Code did not even include the term “a person with a disability” before the amendments. Amendments to the Code in 2020 have effectively introduced the term “a person with a disability”, which is obviously a step forward. However, despite the significant changes in this direction, we do not find this term in the “definition of basic terms” of the Criminal Procedure Code (article 3, 2009). It should be noted that defining the term in the Code would avoid several consequential shortcomings, as its misunderstanding by the parties to the process can often be the cause for different violation.

The next notion is “valid reason” and a list in which the disability of the person is not listed as a valid reason for not appearing at the trial, and it should be noted that this issue has not been addressed by the amendments. The subject of discussion is the fact that the legislation considers the illness of a person as a valid reason for not appearing at the trial, which must be confirmed by a document issued by the relevant authorized person of a medical facility and signed and stamped by an authorized person. It is impossible to argue whether this illness applies to a disability. If yes, what type and what degree of disability is meant? Because, as it is well known, disability is not necessarily a short-

¹⁷⁶ See *Papiashvili L., Tumanishvili G., Kvachantiradze D., Liparteliani L., Dadeshkeliani G., Guntsadze Sh., Mezvrishvili N., Toloraia L.*, Commentary on the Criminal Procedure Code of Georgia: As of October 1, 2015, Tbilisi, 2015, 78.

¹⁷⁷ See *Nadiradze K., Arganashvili A., Abashidze A., Gochiashvili N., Lord J.*, Evaluation on Accessibility to Court Buildings for Persons with Disabilities, 2019, 14.

term occurrence, which can be the valid reason for a single absence. It is a chronic process that may cause a person to be in this state for the rest of his/her life. This discussion on whether it is possible to consider disability as illness, has the opposite side as well: as mentioned above, disability is not just a medical model, it is treated as a social condition. Thus, if we consider disability as a state of health, in this case it may fall under article 3 of the Code¹⁷⁸, but if we consider it as a social model, in this case, it does not fall within the scope of this article. The following part of the definition also draws attention here: a valid reason for non-appearance of a participant of a criminal proceeding can be due to other specific objective circumstances which, for the reasons beyond his/her control, make it impossible to appear at the trial. Again, it is unclear whether this circumstance includes a disability or not.

The equality of arms is recognized by both international conventions and national law. According to the Criminal Procedure Code, a court shall be obliged to provide the parties with equal opportunities to protect their rights and lawful interests without giving preference to either of them. However, if we actually consider the impediments that may accompany equal opportunities, it is easy to see that in the case of persons with disabilities, the advantage is automatically given to the other party. A respondent with disabilities explains that they do not

¹⁷⁸ “Valid reason – non-appearance of a participant of a criminal proceeding due to his/her illness, the death of a close relative, other specific objective circumstances which, for the reasons beyond his/her control, make it impossible to appear at the trial. The fact of illness shall be confirmed by a document issued by a duly authorised representative of a medical facility, and signed and stamped by an authorised person, and must directly indicate the inability [of the person] to appear at the trial. The valid reason the existence of which is known in advance shall be notified to the court at the earliest available opportunity but not later than 48 hours before the commencement of the trial. A document confirming the valid reason for nonappearance shall be submitted within five days after the non-appearance”, Law of Georgia – Criminal Procedure Code, art 3, 9 October 2009.

even have ramps in courts. PWDs avoid applying to court because they can't enter the court building. The respondent shared *"I asked one of the victims of discrimination why he did not start a dispute in court. He told me that the court buildings do not have proper ramps and therefore he cannot enter the court."*¹⁷⁹

Apart from physical access, a person with a disability does not have equal access to all the resources that can help him or her with the case, such as providing additional evidence. *"Forensic bureaus are not accessible to persons with disabilities, which is a hindering factor for people to defend themselves."*¹⁸⁰ However, the commentary on the Criminal Procedure Code clarifies the defendant's right that, in the interests of due process, the court gives him or her the opportunity to lawfully obtain and provide additional evidence in court to refute the charges or to mitigate the liability. The commentary also determines the importance of the evidence that protects the accused from unsubstantiated allegations and convictions.¹⁸¹

Also, in many cases, the obstacle is the condition of a PWD, due to which the latter is not able to appear in court and express an opinion. As the commentary indicates, the accused person should be given the right to get acquainted with the explanations made by the prosecution on certain issues and the submitted complaints, as well as to express their opinions on them, before the court will discuss and make a final decision.¹⁸²

¹⁷⁹ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

¹⁸⁰ Ibid.

¹⁸¹ See *Papiashvili L., Tumanishvili G., Kvachantiradze D., Liparteliani L., Dadeshkeliani G., Guntsadze Sh., Mezvishvili N., Toloraia L.*, Commentary on the Criminal Procedure Code of Georgia: As of October 1, 2015, Tbilisi, 2015, 112, 184.

¹⁸² See *Papiashvili L., Tumanishvili G., Kvachantiradze D., Liparteliani L.*,

The factors hindering the realisation of such a right may be the following: the lack of and/or diminished physical ability; inadequate level of education depending on the situation; inability to hire a proper quality lawyer, when he or she is not physically or economically able to find a quality lawyer that he or she deems necessary and/or to reimburse the costs of his or her services, etc. Finally, one of the most problematic issues is the attitude of the society that we often encounter in our daily lives.

The above reasoning, in the context of analogy, can be equated with the cases and approaches that we encounter in Georgian practice. Among them are a few cases against Georgia, which focus on the shortcomings of the justice system. For example, the case of Mzekalishvili, where the decision of the European Court of Human Rights (ECHR) was mainly based on the mental examination report of the applicant made by the National Forensic Bureau on 23 October 2009. The report explains that the applicant, who had been serving a sentence for robbery since 2007, had schizophrenia (classification F2), which was manifested along with other illnesses such as: paranoia, hallucinations, thought disorder, speech impairment, etc.

The European Court explains in the present case that: *“The final conclusion was that the applicant could not be held accountable for his actions and he should have been placed in a special clinic. Nevertheless, he has been at the place of serving the sentence for years.”*¹⁸³

In addition to the above, there are some positive approaches in criminal procedure law, which have been further strengthened by the legislative amendments of 2020, such as: the right of the accused to use the services of an interpreter during interrogation and other investiga-

Dadeshkeliani G., Guntsadze Sh., Mezvrishvili N., Toloraia L., Commentary on the Criminal Procedure Code of Georgia: As of October 1, 2015, Tbilisi, 2015, 188.

¹⁸³ See Persons with Disabilities and the European Convention on Human Rights, 35, 2014. Also, similar cases against Georgia (Case of Mikiashvili v Georgia, 9 October 2012; Mzekalishvili v Georgia, 5 March 2015), [24.07.2017].

tive actions at the expense of the state. In this article, in addition to the lack of knowledge of the language of criminal proceedings, the specific provision is made, according to which a person who has such physical disability that does not allow him/her to communicate without sign language, has the right to use an interpreter. First of all, it is noteworthy that this article specifies the right to use a sign language interpreter.¹⁸⁴ At the same time, the provision of services to people who, for example, have problems with vision and are unable to understand a criminal case or persons with perceptual disabilities who need specialist assistance in order to be fully involved in criminal proceedings, still remains beyond attention.

The right to protection guaranteed by law, i.e., the equal right to use the services of a lawyer, should be available to persons with disabilities in any case, especially when they, due to their physical or other condition, are unable to attend the hearing or fully defend themselves. However, most of the respondents consider the practice as an incompatible reality of the requirements of the law. Even if the defence lawyer is fully involved in the process, he or she does not replace the person, nor should this exclude the physical participation of the defendant and the possibility of personally presenting the arguments. *“Attitudes towards persons with disabilities – the law enforcement officers are looking for an accompanying person, to the person with any kind of disability, who can be interviewed and explain the situation, because they think it makes no sense to directly communicate with the person with disabilities.”*¹⁸⁵

¹⁸⁴ A sign language interpreter for persons with hearing impairments.

¹⁸⁵ A respondent from the Department of Protection of the Rights of Persons with Disabilities at the Public Defender’s Office; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

However, in addition to the requirements of the Convention, a number of practical examples also confirm the fact that the participation of a person with a disability creates a much more favourable environment for both the person with a disability and the authorities. For example, in *Megyeri v. Germany*, when the applicant was in a state of diminished capacity. The commission allowed him to attend the hearing, to deliver a speech and to make sure that he really needed help.¹⁸⁶

This section provides a brief overview of criminal procedure law in relation to persons with disabilities. The analysis of the problems faced by persons with disabilities in relation to their active involvement in all stages of criminal proceedings gives us grounds to conclude that the approaches to persons with disabilities should be more clearly defined in the legislation. In the publication, the importance and necessity of discussing the Criminal Procedure Code is highlighted by the fact that in 2020 several legislative amendments were made to the Code in relation to persons with disabilities, which aimed at eliminating the shortcomings of the previous version of the Code.¹⁸⁷

Despite the changes made, it is necessary to continue improving the law. First of all, in article 3 of the Code, the definition of a person with disabilities should be added to the “definition of basic terms”. Also, the law should make the involvement of a person with disabilities mandatory at any stage of the proceedings. This type of legislative regulation should ensure equality of persons with disabilities before the law on an equal basis with other persons and their protection in criminal proceedings, as the lack of such equality and adequate guarantees of protection of persons with disabilities leads to the violation of the rights¹⁸⁸ pro-

¹⁸⁶ See *Trechsel S.*, *Human Rights in Criminal Proceedings*, 2005, 268.

¹⁸⁷ Law of Georgia on Amendments to the Criminal Procedure Code of Georgia, 14 July 2020.

¹⁸⁸ Constitution of Georgia, Procedural Rights, Departments of the Parliament of Georgia, Chapter II, art 31, 24 August 1995.

tected under the Constitution of Georgia. Strong legislative regulation will prevent the likelihood of violations of the rights of persons with disabilities and will facilitate the use of imprisonment against persons with disabilities as the last resort.

PART III. TREATMENT OF PERSONS WITH DISABILITIES IN PLACES OF DEPRIVATION OF LIBERTY

CHAPTER 1. PECULIARITIES OF TREATMENT OF PERSONS WITH DISABILITIES ACCORDING TO INTERNATIONAL STANDARDS

In parallel to international instruments that regulate standards of treatment for persons with disabilities in general, there are also documents of particular importance that set standards for the treatment of persons with disabilities in the penitentiary system and determine the specifics of working with vulnerable groups.

This paper mainly discusses the UN Standard Minimum Rules for the Treatment of Prisoners (hereinafter – the SMR). An updated version of the rules (referred to as the “Mandela Rules”)¹⁸⁹ significantly changed the part on the treatment of persons with disabilities in the main document, and the document now contains provisions that set out the characteristics of the treatment of prisoners with disabilities. IACHR Rapporteur on the Rights of Persons Deprived of Liberty, James Cavallaro described the Mandela Rules as “*a vital advance in the protection of vulnerable groups, in particular, persons with disabilities deprived of liberty.*”¹⁹⁰ Mr. Cavallaro pointed out that the Rules require prison authorities to make *reasonable accommodations* to ensure that prisoners with disabilities have full and effective access to detention conditions

¹⁸⁹ The UN Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), the revised version adopted by the UN General Assembly in December 2015. It sets out minimum standards for effective prison management, including the protection of prisoners’ rights.

¹⁹⁰ See *Cavallaro J.*, *Leading Human Rights Experts Call for Speedy Implementation of the Nelson Mandela Rules on Nelson Mandela International Day*, 18 July 2016, 2, 5.

and resources on an equitable basis.¹⁹¹

In addition that the Standard Minimum Rules have given attention to the treatment of persons with disabilities, this document most clearly reflects the current general, human rights-based approaches to sentencing. It was this need for change that led to the United Nations deeming it appropriate to revise the standards adopted in 1957. *“UN member states recognised that the Standard Minimum Rules were outdated and did not reflect major developments in human rights and criminal justice since their adoption 60 years ago.”*¹⁹²

In particular, the changes that introduced new approaches to the treatment of persons with disabilities were reflected in the general part of the SMR. Particular attention is paid to identifying the needs of prisoners with disabilities and creating a relevant, needs-oriented environment for sentencing. A person should undergo a medical examination following his or her admission to a penitentiary facility. This examination should reveal not only the health problems but also the disability of the person. The rules clarify that the examination should also serve to detect any signs of psychological or other stress, or ill-treatment. It also explains the purpose of focusing on these factors and states that in the case of identifying any signs, it is necessary to address them and notify the relevant authorities.¹⁹³

Another change, concerning the classification of prisoners, involves an individual assessment of the needs for which an adequate environ-

¹⁹¹ See *Cavallaro J.*, Leading human rights experts call for speedy implementation of the Nelson Mandela Rules on Nelson Mandela International Day, 18 July 2016, 2, 5.

¹⁹² See *Penal Reform International (PRI)*, The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules): Short Guide, 2015, 4.

¹⁹³ See The UN Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), 2015, Rule 30.

ment for serving sentences should be provided in the future. With regard to the proper selection and availability of services, the amendment specifies that individual assessments should identify any the risks that the prisoners may pose to themselves, to prison personnel or to other prisoners, but also any risks they might be exposed to. Specific needs they have and rehabilitation measures that should be taken should be identified. *“Classification systems should be flexible in order to support individualisation of treatment.”*¹⁹⁴

The Mandela Rules make it clear that prisoners must be provided with food of adequate nutritional value and quality. Specific nutritional needs may not be due to the health status of the person with a disability, but the provision of food of poor quality and nutritional value may lead to further complications (for example, long-term solid food supply to a wheelchair user, etc.). The European Committee for the Prevention of Torture clarifies that the particular needs of persons with disabilities in relation to catering arrangements should be taken into account when organising food for them.¹⁹⁵ Such an approach validates the above reasoning that needs, in this case, imply not only medical but also any other specific need.

Given that, for whatever reason, prioritising is often perceived as restricting or violating the rights of others, the SMR calls on the prison administration to adapt the environment to the special needs of prisoners. Accordingly, meeting such needs is not considered discrimination against persons who do not have special needs. The Mandela Rules also oblige the prison administration to adapt prison conditions to the needs

¹⁹⁴ *Penal Reform International (PRI)*, The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules): Short Guide, 2015, 6.

¹⁹⁵ See CPT standards, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Strasbourg, December 2010, 40.

of persons with physical, mental, or other disabilities to ensure equal access to services and programmes. At the same time, it should be emphasised that the Rules do not leave other prisoners out of the attention, who should be aware that additional care is based on their needs and that *“measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.”*¹⁹⁶

Based on the above, we come to the conclusion that new approaches to the penitentiary system need to be introduced based on the above standards, namely: in parallel with the general standards of risk and needs assessment, studying the needs of persons with disabilities upon their admission to the penitentiary facility and planning the sentence tailored to these needs should become mandatory. The procedure should be based on interviewing a person with disabilities admitted to any penitentiary facility by professional psychologists and social workers, which will enable the system to identify the type and degree of disability of the admitted persons without determining the status (if not already determined). Interviewing should also serve to plan the process of sentencing tailored to the needs. This approach is especially important when the physical disability is not visually expressed and the person does not have the status of a person with a disability.

Such an approach will help the penitentiary system to avoid the risk of violating the rights of persons with disabilities and to strengthen the degree of protection of persons with disabilities. If a sentence plan is developed in a prison, the plan must accompany the person during the transfer to any other facility or, in other cases, during the transfer from the given prison. The plan should be flexible, and changes should be made at any stage of the sentence by an authorised person. The plan should continue until the sentence is fully served, including in the event of a person with a disability being transferred to a probation system.

¹⁹⁶ See The revised UN Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), 2015, Rule 2.

The development and implementation of a sentence plan in this form will help to create conditions tailored to the needs of the person at any stage of the sentence, strengthen the protection of the person and increase the efficiency of daily work of the personnel.

Legislative changes should be made to prevent these violations and to create a strong institution for risk assessment. An explanation about the mandatory nature of risk and needs assessment for persons with disabilities should be added to article 46, part 41 of Imprisonment Code. The relevant Order¹⁹⁷ of the Minister of Justice of Georgia, which does not specifically mention a person with a disability, should describe in detail the procedures and criteria for risk and needs assessment of persons with disabilities.

¹⁹⁷ Order №395 of the Minister of Justice of Georgia (Annex 1, 2) from 8 May 2019 on approving the risk types of convicts, risk assessment criteria, risk assessment and reassessment, transfer of a convict to the same or another type of penitentiary facility, conditions of transfer, as well as the duties and responsibilities of the team assessing and determining the risk of convicts.

CHAPTER 2. PECULIARITIES OF TREATMENT OF PRISONERS WITH DISABILITIES IN THE PENITENTIARY SYSTEM. OVERVIEW OF NATIONAL LEGISLATION

One part of the Georgian Imprisonment Code deals with standards for the treatment of persons with disabilities. However, it does not cover all areas of life in a penitentiary facility and regulates only a small part of it, such as living conditions, food, and correspondence. The law stipulates that prisoners with disabilities, like other special categories of detainees, such as pregnant women, nursing mothers, minors, ill persons and the older persons (women over 60 years of age and men over 65 years of age) should have better nutrition and living conditions than other accused/convicted individuals, for example,. A positive step taken in this direction is noteworthy that the amendment¹⁹⁸ made in 2020 removed the term “*persons with severely and significantly expressed disabilities*” from the legislation, which was virtually leaving no assistance or services to accused/convicted individuals with *no severe or significantly expressed disabilities*.¹⁹⁹ However, we can not say that the problem was completely eliminated by this change, because there was no appropriate changes in the sub-legislative acts, and no new document was developed explaining how the penitentiary system should identify a person with *no severe or significantly expressed disabilities and with no determined status*. Thus, it is difficult to argue if this change will complicate the process of working with persons with disabilities or make it more efficient.

As noted, despite some efforts, the Georgian penal legislation does not specify who should be considered by the penitentiary system administration as a person with disabilities upon admission to a peniten-

¹⁹⁸ Law of Georgia on Amendments to the Imprisonment Code, 14 July 2020.

¹⁹⁹ See Law of Georgia – Imprisonment Code, art 15 – living conditions, art 23 - Food for the accused/convicted persons, LHG, 24 March 2010 (old edition).

tiary facility, when the person does not have a determined status of a PWD. Also, the law or by-laws do not stipulate how the administration should identify the special needs of a person and plan the sentence in such a way as to create adequate conditions for life and health of a PWD, in a manner that is respectful of the inherent human dignity. There are a number of good practice countries in this regard, for example, in the UK, the law states that a person with a disability is defined as a *“person who has a physical, sensory or mental impairment which has an effect on their ability to carry out normal day to day activities.”*²⁰⁰

International organisations believe that the condition of a person with a disability may not be perceived as a disability when he or she is admitted to a penitentiary facility, which poses a significant problem for him or her, as well as for the administration of the system, which is obliged to create adequate conditions for prisoners with disabilities.

Based on the experience in this field, various organisations provide relevant explanation (which can be taken as one of the guiding explanations) before determining the status. It asks what disability is and explains that it is impossible to see most disabilities and that lots of people in prison have a disability. It provides examples of when a prisoner might count as having a disability, if they have: *“a long-term illness (like asthma) that can stop you doing things; a learning disability, a learning difficulty (like dyslexia) or autism that makes it hard for you to understand things sometimes; a serious mental health problem (like depression) that has been going on for a long time; difficulties with seeing, hearing, speaking, or getting around.”*²⁰¹

This definition, in contrast to the practice of post-Soviet states,

²⁰⁰ See Prison service Order, PSO 2855 - The Management of Prisoners with Physical disabilities, p 2.3. Date of Initial Issue 20/12/99, Date of Update: 13/10/03.

²⁰¹ Information book for prisoners with a disability, Offender Health and Prison Reform Trust 2009, Prison Reform Trust office (020 7251 5070 or PRT, Freepost, ND6125, London EC1B 1PN).

presents the ways to solve the problems in the field of treatment of persons with disabilities in a relatively easy manner. The accuracy and correctness of the explanation may be a subject of dispute for many specialists, however, having this type of primary explanation is of particular importance in the practice of countries where there is a problem of status determination (including Georgia). According to the Public Defender of Georgia, the problem of determining the disability status of an accused/convicted individual with disabilities in the penitentiary system remains to be in the list of long-term, problematic and even unresolved issues, which is reflected in the creation of adequate imprisonment conditions for the persons with disabilities, when *“it makes it impossible to evaluate needs and to provide special services”* to PWDs.²⁰²

Often, lack of determined status is the reason why prisoners with disabilities do not have adequate environment and services and face a high risk of human rights violations and violence. While it may not be difficult to identify a disability, even without status determination, for the conditions to be in line with the person’s actual condition and not his or her status, which can be determined later, within the timeframe set by the procedure, to avoid any harm.

It is clear that the provision of an appropriate environment for serving a sentence for persons with disabilities depends on many external factors, however, first and foremost, it is the legislation regulating the

²⁰² See Special Report of the National Preventive Mechanism of the Public Defender of Georgia on the State of Rights of Persons with Disabilities in Prisons, in Institutions for Involuntary and Forced Psychiatric Treatment – Analysis of the Fulfilment of the Recommendations, 2014, 4 (the present report is the latest special report on the state of persons with disabilities in the penitentiary system), available at: <<https://www.ombudsman.ge/eng/190307075330spetsialuri-angarishebi/shezguduli-shesadzleblobis-mqone-pirta-uflebrivi-mdgomareoba-penitencieur-dawesebulebebshi-aranebayoflobiti-da-idzulebiti-fsiqiatrili-mkurnalobis-dawesebulebashi-rekomendaciebis-shesrulebis-analizi>>, [15.11.2019].

work of the penitentiary system and by-laws²⁰³ that should regulate the provision of conditions for serving a sentence for PWDs with full respect for their dignity. In addition to status determination, the following issues are also beyond the scope of legislation: the budget, infrastructure and living environment focused on the needs of persons with disabilities; institute of a caretaker and services; the obligation to have properly trained personnel, who, in addition to posing a problem to prisoners with disabilities due to their poor training and insufficient professional skills, find themselves in an uncomfortable work environment as they face problems that they are unable to solve within the knowledge and training they have.

With regard to legislative regulations, we consider it appropriate that any solution to the problems mentioned in the research should be based on legislative guarantees. For this purpose, the penitentiary system should continue to optimise the current legislation regulating the activities in relation to prisoners with disabilities. Also, relevant by-laws should be drafted and introduced, which will provide detailed explanations on the changes in the legislation and facilitate the effective implementation of the law in practice. The optimisation of the legal framework should provide a reasonable environment for persons with disabilities to serve their sentences, which should cover all areas related to the process and not just the specific areas that has been covered by the legislative change, such as living conditions, food and correspondence, because the following areas remain out of the attention: admis-

²⁰³ In this case, the laws and by-laws are: the Law of Georgia – Imprisonment Code; Order №366 of the Minister of Justice of Georgia on the Approval of the Statute of the Special Penitentiary Service, 2018; Orders №107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120 of the Minister of Corrections of Georgia on the Approval of the Statutes of Penitentiary Facilities and the Order №418 of the Minister of Justice on Approval of the Statute of the Department of Resocialization and Rehabilitation of Convicts of the Special Penitentiary Service, 2019.

sion procedures, registration of PWDs, search procedures, placement and accommodation of persons with disabilities with full respect for their dignity; Also, the provision of sentence planning, equal involvement in rehabilitation programmes, and preparation for release. Legislative regulation of the above-mentioned issues will, first and foremost, promote the effective functioning of the facilities of the penitentiary system, as well as provide a budget, focused on the needs of persons with disabilities, and strengthen the responsibilities of the personnel in relation to the treatment of persons with disabilities.

In order to create such a legislative package and prepare legislative changes, the Ministry of Justice should mobilise the local and international organisations and state institutions that have experience in working with persons with disabilities, to ensure that international successful practices and challenges that other countries have in this area are also taken into consideration.

CHAPTER 3. MANAGEMENT OF PENITENTIARY SYSTEM FACILITIES ORIENTED ON THE TREATMENT OF PRISONERS WITH DISABILITIES

Efficient management of the penitentiary system depends on the existence of legislation and a regulatory mechanism that clearly and unambiguously regulates all areas of the penitentiary system, including security and safety measures; disciplinary measures and standards of their use; prison personnel; rehabilitation programmes and their implementation, etc., in order to carry out the execution of sentence in prisons in combination with other social purposes, taking into account the protection of the rights of prisoners.

In order for persons with disabilities to serve their sentences on an equal basis with other prisoners, prison management and administration approaches must address all the obstacles that may be placing persons with disabilities in unequal conditions compared to those of other prisoners. The prison administration has a decisive role to play in developing appropriate policies for prisoners with disabilities that are at least in line with the prison's internal regulations. In the absence of relevant legislation, the regulations may be based on the Convention on the Rights of Persons with Disabilities and other international instruments. This policy should be clear, understandable, and accessible to all participants, such as: personnel, prisoners, their legal representatives, or other stakeholders.

The policy developed by the prison administration should explicitly prohibit discrimination against prisoners with disabilities and should serve to eliminate any form of unequal treatment. Experts discuss how the penitentiary system should achieve a condition that ensures equal treatment of persons with disabilities and the protection of their rights. According to experts, the prison administration needs to develop policies and strategies that will address the needs of prisoners with disabili-

ties in prison. Such policies must be informed by the Convention and national legislation. Such strategies should address issues such as “*staff training, classification, accommodation, health care, access to programmes and services, safety, preparation for release, early conditional release.*”²⁰⁴

It is a fact that many countries, including most post-Soviet states, have neither the experience nor the financial or physical resources to provide adequate services and programmes to all persons with disabilities to avoid possible complication of their condition. In addition to the fact that the prison authorities should have such services as part of their policy, they should also develop a strategy for cooperation with organisations that provide such services to citizens in the community. Often such organisations may be headed by or employ persons with disabilities, which will further enhance the effectiveness of cooperation for the closed institutions.

In addition to policy development, one of the most important components of management is also the data collection and analysis, which the prison authorities must be carrying out on a regular basis. At present, there is no proper system of keeping statistics in any state entity of Georgia, including the penitentiary system. According to the IDFI analysis,²⁰⁵ the state is still unable to provide comprehensive statistics on persons with disabilities, which the country is committed to under the UN Convention on the Rights of Persons with Disabilities. Although it is clear to everyone that analysing data and presenting statistics to the

²⁰⁴ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 43.

²⁰⁵ See Data Analysis on Persons with Disabilities Living in Georgia, Institute for Development of Freedom of Information (IDFI), 2018, available at: <https://idfi.ge/en/data_analysis%20_on_persons_with_disabilities_living_in_georgia>, [15.11.2019].

public should be an integral part of the day-to-day activities of prisons, it does have a special importance in relation to prisoners with disabilities, given the limited information and records available about them. Data analysis should aim not at disseminating information but at identifying gaps and effectively planning activities with prisoners with disabilities. The prison authorities should be especially attentive not to promote stigmatisation of prisoners with disabilities, both during their imprisonment and after their release.

This reasoning allows us to conclude that problems of persons with disabilities can often be solved at the local level with the proper planning and policies. Thus, the penitentiary system authorities should develop a policy for the management of the penitentiary system and manage the facilities in the manner that will avoid discriminatory treatment of prisoners with disabilities, for which the system should primarily collect and analyse the data according to categories and degrees of disabilities.

Statistics, without personal data, should be made available to organisations working on these issues that have extensive, long-standing experience in both needs assessment and working with persons with disabilities in general, so that in return the penitentiary system can receive support and professional assistance from these organisations. The involvement of these organisations in the development of strategies and policies will help increase the degree of flexibility of the system in working with persons with disabilities and sentence management.

The specifics of working with PWDs and their needs should be included in both the long-term development strategy of the system and the annual plans, which will increase the degree of responsibility and accountability of the system management.

CHAPTER 4. ADMISSION OF PRISONERS WITH DISABILITIES TO A PENITENTIARY FACILITY

The penitentiary system is an essential part of the criminal justice system. Approaches and procedures in this area have a significant impact on the development of the justice system in general. It is the approaches and attitudes applied in the process of admission to a penitentiary facility that should assist a person with a disability to overcome the penitentiary stress, which may be exacerbated due to his or her condition. Admission standards should regulate the practice of informing a person with a disability from the beginning that he or she can receive appropriate assistance for his or her condition and that he or she will not be subject to discrimination or degrading treatment.

Admission procedures are mentioned in a number of papers and reports, in which, in addition to talking about the importance of the rules and procedures in the admission process, we also find a number of recommendations. For example, in the report "Disability and Criminal Justice System" we find an explanation, according to which, in general, one of the basis for a successful functioning of the criminal justice system is having proper procedures for admitting a person with disabilities to prison. The author divides these procedures into three stages and notes that the field of criminal justice will not be successful unless and until the disability is addressed in all three stages, such as admission of persons with disabilities, gaps in the justice system, and an effective release system. The report explains about the admission stage that persons with disabilities are at a higher risk than people without disabilities of entering the justice system. It gives a recommendation on how to solve the problem, stating that *"addressing the issues include combating stigma and ignorance."* As for the justice system, the report addresses the problems faced by persons with disabilities in this area, such as: *"access to counsel, a lack of accommodations, complex rules,*

*systematic abuse and solitary confinement.*²⁰⁶ The report also explains what ways and means should be used to build a better criminal justice system, do better on release, reentry and reintegration for returning citizens, by specifying that the “*reform must address corrections education, building capacity, better data, recruiting employers and expanding innovative funding sources.*”²⁰⁷

If we discuss the shortcomings in the Georgian legislation regarding the admission procedures for persons with disabilities in a penitentiary facility, we should emphasize the fact that the legislation does not discuss in detail the needs assessment process of persons with disabilities upon admission. The law (Law of Georgia – Imprisonment Code, article 24) stipulates the obligation to carry out medical examination of an accused/convicted person upon admission to a penitentiary facility.

According to the law, a relevant report shall be prepared on the medical examination carried out upon admission of the accused/convicted person and the report shall be kept in the personal file of the person. The report does not specifically include information about the identification of a disability and its degree. If we consider disability in the context of the social model, then we must conclude that such a provision is not considered by Georgian legislation at all. Article 75 of the Imprisonment Code clarifies the purpose of such an examination, which is to detect injuries on the body of an accused/convicted person and to immediately notify the General Inspection of the Ministry as well as the prosecutor, which reaffirms that this important purpose, which is explained in the definition, does not include needs assessment of a prisoner. The section under the same article on the provision of information on rights and obligations in an understandable language to the illiterate accused/convicted individuals, may be assessed as positive. It is obvious

²⁰⁶ See Disability and Criminal Justice Reform: Keys to Success, Report from June 2016, by the organization “Respect Ability”, 2.

²⁰⁷ Ibid.

that providing information to the accused/convicted individuals about their rights at the time of admission is a very important issue and its reflection in the requirements of the legislation is also an important guarantee, however, the legislation does not cover the procedures on how to inform the persons with disabilities about these rights, in particular those with hearing, vision, and cognition impairments, etc. First of all, it is important to note that prisoners who have difficulty understanding a printed document about prisoners' rights, should be provided with information about their rights and obligations in a format that is understandable to them, which differs from the rules for providing information to other prisoners. Prison rules and regulations should be explained in forms and methods that are particularly understandable to them. For example, for people with severe visual impairments, information should be provided in Braille or audio recording, and for people with hearing impairment – through a sign language interpreter, if he or she does not have the ability or knowledge to read this information, and so on.

In addition to the standards that set out what the penitentiary facility should do or what the rules should be when admitting a prisoner, it is important to consider that a person with a disability should be able to declare their disability upon admission, which will make it much easier to work with him or her. *“Prisoners with disabilities should be given an opportunity to declare any disability and provide information about their special needs on entry to prison.”*²⁰⁸

In the event that a prisoner declares his or her disability or need, the prison administration, before examining his condition and/or receiving supporting documents, may consider that the declaration is an attempt by the prisoner to receive improved conditions or treatment, which is clearly a faulty practice. In the event that such declaration is made, the

²⁰⁸ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 50.

person must receive appropriate conditions to his or her needs. Only if the disability is not confirmed should he or she be transferred to similar terms with other prisoners, although practice shows the opposite, prisoners are provided with appropriate conditions (if possible) if the disability is confirmed, otherwise they stay with other prisoners until the fact is confirmed by the administration, which may be delayed and cause significant harm to the physical condition and health of persons with disabilities.

The reasoning given here should not be understood in such a way that the provision of information by prisoners to the administration about their disability or need precludes the obligation of prison administration to carry out a qualified needs assessment and relevant sentence planning. The administration should ensure that the prisoner undergoes a medical examination, the type and degree of disability is determined, and the relevant personnel determines their needs, which should become the basis for planning the placement of the PWD in the cell (accommodation) and the appropriate conditions and circumstances of the sentence. International organisations explain in the guidelines the need for prisoners with disabilities to undergo an induction programme appropriate to their needs, which will identify their capabilities and special requirements, including especially *“health care and educational needs, and to determine the level of and type of support they require.”*²⁰⁹

The successful practice of many countries can be discussed in relation to admitting a prisoner to a penitentiary facility, where legislation or by-laws regulating the penitentiary system do not allow the prison administration to act as it sees fit or take action in relation to persons with disabilities only when it deems it necessary. These procedures are prescribed by law and the prison administration as well as the persons

²⁰⁹ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 50.

or services that carry out the admission procedure of the prisoner are obliged to act in accordance with the norms established by law. These regulations set out what arrangements must be made for an assessment of prisoner's needs upon admission. *"A record must be kept about the communication and mobility needs of all disabled prisoners; this will need to be reviewed during longer sentence."*²¹⁰ The regulations explain that admission is the first opportunity to identify the special needs of prisoners. Therefore, this process needs to be handled sensitively especially by communicating clearly and not making immediate assumptions about prisoners' reactions. The approach of the regulatory document, on how to make this system flexible and operational, is noteworthy. It considers the knowledge and training of personnel to be the main means for this. It is important *"to inform staff who have regular contact with the prisoner of their special needs."*²¹¹

The elaboration of above approaches is based on the fact that the admission of a prisoner to penitentiary facility is related to his or her first contact with the penitentiary system. Thus, a record of his condition should be made in a relevant document, which will be available to all personnel, who will further work with this person, in order to avoid same questions from different personnel for clarifying the situation and further complication of the already stressful situation. The record will also assist the personnel in establishing the first communication with a person with a disability and in subsequent work, to prevent discrimination or violation of other needs-based rights and to ensure needs-oriented treatment.

Finally, one of the main focuses of admission procedures should be made on the first contact with the people who greet them in this unfa-

²¹⁰ See Prison Service Order, Order Number 2855, HM Prison Service, Prisoners with physical, sensory and mental disabilities, Date of Initial Issue 20/12/99, Date of Update: 13/10/03, 8.

²¹¹ Ibid.

miliar environment and on the treatment at this stage, as the reception and first interview with a prisoner is the first opportunity to identify his or her special needs, which should facilitate avoiding any violations or complications. Thus, *“this process needs to be handled sensitively especially by communicating clearly and not making immediate assumptions about prisoners’ reactions.”*²¹²

Another issue, which is no less important and is also an integral part of admission procedures, is awareness. Any person with a disability, and especially those who entered prison for the first time, in addition to their general rights, should also be provided with detailed information about prison conditions, living environment, and ways and means of communication, in a language he or she understands, to encourage their adaptation to the environment. A respondent with disabilities, interviewed for the purpose of this publication, explained what knowledge a person with disabilities may need at the first stage of contact with the criminal justice system. The respondent emphasised teaching the skills of self-care to wheelchair users, moving around the prison area, adapting to space as well as other prisoners and establishing communication with them. In the opinion of the respondent, *“trainings should be carried out in prison in such areas as: personal development, stress management, communication skills. A person should understand that despite committing a crime, he or she should be placed in dignified prison conditions.”*²¹³

We could review the decisions of the European Court of Human Rights in relation to the admission of prisoners and the violations com-

²¹² See Prison Service Order, Order Number 2855, HM Prison Service, Prisoners with physical, sensory and mental disabilities, Date of Initial Issue 20/12/99, Date of Update: 13/10/03, 10.

²¹³ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

mitted in the first stage of their incarceration. These decisions clearly demonstrate the essence of violations, at the time of admission, and their significance. For example, in one case, a person who was four-limb deficient due to thalidomide and also suffered from kidney trouble was placed in prison. During the first night she was kept in a cell in a local police station, where she could not use the bed and had to sleep in her wheelchair, as the facilities were not adapted to the needs of a PWD, and the cell was too cold. After being in the above-mentioned unfavorable conditions at the police station, she was transferred to a regular prison for two nights, where the applicant was assisted by a male prison officer in order to use the toilet. In the present case, the Court held that there was a violation of Article 3 of the European Convention on Human Rights. Specifically, the Court explained that *“to detain a severely disabled person in conditions where she is dangerously cold, risks developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constitutes degrading treatment contrary to Article 3 of the Convention.”*²¹⁴ This case clearly indicates the harm that can be caused by disregarding the conditions of the person at the time of admission and placing him or her in an inappropriate environment.

As the discussion shows, the admission procedures and any misconduct at this stage determine the existence of a number of consequential violations from the beginning of the process of serving a sentence for a person with a disability, as well as in planning this process.

²¹⁴ See *Price v. the United Kingdom*, 10 July 2001, Persons with disabilities and the European Convention on Human Rights, 3 (The case originated in an application (no. 33394/96) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a United Kingdom national, Ms. Adele Ursula Price (“the applicant”), on 23 July 1996. Court decision: there has been a violation of Article 3 of the Convention).

Thus, we can conclude that to avoid any violations, the prison authorities should ensure that the group on duty responsible for admitting the prisoners always includes at least one employee who has undergone qualified training in working with persons with disabilities and is able to interview them according to a pre-designed questionnaire. The process should be regulated by a legal act.

Also, the services of a sign language interpreter should be accessible in all penitentiary facilities, in order to ensure that the PWDs are informed about their rights and prison regulation mechanisms. The rights and regulations should also be printed and available in Braille, for persons with visual impairments.

CHAPTER 5. SEARCH OF A PRISONER WITH A DISABILITY UPON ADMISSION TO A PENITENTIARY FACILITY

One of the main problems when admitting persons with disabilities to a penitentiary facility is searching of prisoners, to which prisoners with disabilities are more sensitive when they cannot receive (they are not provided) information about what happens procedurally when they are physically touched. This naturally exacerbates penitentiary stress. In addition to the problem in providing or perceiving information, physical condition is also important when a person is unable to move around freely and/or obey the demands of the administration due to his or her physical condition.

Searching a person is, first and foremost, a procedure where it can be assumed that a person with a disability may be subjected to discriminatory, degrading or inhuman treatment, because of two important circumstances, namely his or her physical condition, which does not allow a person with a disability to fully respond to the requirements that may be imposed on him by the prison authorities and, secondly, because of the prison personnel who may not know how to search a person upon admission or may not have information on the specifics of searching persons with disabilities.

In practice, searching a person can be defined in different ways. For example, according to Professor Papiashvili, in order to conduct a personal search properly, it is recommended to start with explaining to the person to be searched that he or she should raise the hands and lean with his head on the wall or any other large object, after which it is advisable to search the person from top to bottom for the purpose of disarmament.²¹⁵ The fact is that here the author refers to the search at the time of arrest, however, so called inspection carried out upon ad-

²¹⁵ See *Papiashvili Sh.*, *Forensics, Techniques of Solving Crimes*, Tbilisi, 2011, 279.

mission²¹⁶ to the penitentiary facility and after the admission in all other cases is a more or less similar procedure. Thus, the question arises as to who is responsible to examine whether a person with a disability is ready, physically or psychologically, to comply with these requirements and whether his or her physical condition allows to comply with requirements of the instructions given. It should also be noted that a civil servant is required by law to carry out a search procedure. Thus, to avoid a degrading treatment against a person with disabilities during the search procedure, the solution to this situation might be carrying out transparent procedures specifically tailored to persons with disabilities and by specially trained personnel. However, these approaches are not actively introduced or effective in the practice of the penitentiary system.

During the personal inspection (search), attention should also be paid not only to what they might have to do physically, but also to what the personal search means itself, what is being checked and how flexible and acceptable this process can be for a person with a disability. *“Personal search involves not only searching the detainee’s clothes and pockets, but also checking and searching any luggage or handbags at the time of arrest.”*²¹⁷ In such a case there are a number of problematic details such as checking the prosthesis, in case the person moves around using it, checking the crutches and so on. Similar inspection procedures should also be part of the internal regulations of the penitentiary system.

Although Georgian law stipulates the obligation to inspect a prisoner when he or she is admitted to a penitentiary facility, it does not

²¹⁶ When a person is admitted to a penitentiary facility, a full and partial search of the person is carried out, which is only terminologically different from the search procedures provided by the Criminal Procedure Code, but procedurally is the same.

²¹⁷ See *Papiashvili Sh.*, *Forensics, Techniques of Solving Crimes*, Tbilisi, 2011, 279.

review the inspection procedures in detail. The statute²¹⁸ of a penitentiary facility, which is supposed to describe such procedures, does not even consider the need for a specific approach in relation to searching a person with a disability. There is only one provision in the legislation regarding the inspection, which, it can be stated, addresses the specific needs of the prisoners, *“an employee of the same sex of a detention facility shall search an accused person”* (Law of Georgia – Imprisonment Code, Article 75(4), 9 March 2010). However, this is a common standard, which does not take into account the situation of this or that prisoner and his or her disabilities.

Studies conducted in various countries around the world focus on the procedures for inspecting a prisoner with a disability upon admission in prison and the state’s obligation to determine the country’s internal procedures for such inspections. The study report explains that prisoners with a disability were less likely to feel that staff treated them with respect during the inspection (searches). The inspection report for Maidstone also emphasised the need for national instructions about searching arrangements to guide personnel dealing with prisoners with disabilities,²¹⁹ because often it is not the personal attitude of any specific employee but the very absence of such rules and procedures that makes violations irreversible.

We find a number of recommendations and opinions in research papers and reports that, along with training of personnel, also focus on informing prisoners about the ways and means of how persons with

²¹⁸ See the Orders №107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120 of the Minister of Corrections of Georgia on the Approval of the Statutes of Penitentiary Facilities and the Order №418 of the Minister of Justice on Approval of the Statute of the Department of Resocialization and Rehabilitation of Convicts of the Special Penitentiary Service, 2019.

²¹⁹ See Thematic report by HM Inspectorate of Prisons, Disabled prisoners: A short thematic review on the care and support of prisoners with a disability, March 2009, 29.

disabilities should act while being in prison so that their condition is not ignored. For example, an information book for persons with disabilities in prisons states that everybody has to have a full body search when they come into prison and explains what to do in such a case: if a person has a disability or a health condition, which makes it difficult, he or she must tell the prison personnel about it. It is also clarified that despite informing the personnel, the person will still have to have a search. The statement that we come across in the book is noteworthy: in the case of a search *“the doctor or nurse will tell the officers how to do this in the best way.”*²²⁰

In addition to having proper procedural elements, it is important to pay attention to the aids that a person with a disability may have when arriving in prison, such as a wheelchair, a walking stick, hearing and vision aids, etc. They are also inspected, however, the administration should take into account the high degree of need for such equipment and should avoid confiscating them as much as possible unless it is absolutely necessary. *“Prisoners should be allowed to keep in their possession any form of aid relevant to their disability, such as wheelchairs and crutches, unless there is a genuinely justifiable security reason not to do so.”*²²¹

Search is a particularly sensitive procedure for persons with disabilities. Thus, in order to adapt the search procedures to the needs of persons with disabilities, we consider it expedient to arrange appropriate rooms in all penitentiary facilities for the examination of persons with physical disabilities. When designing and arranging such a room,

²²⁰ See Information book for prisoners with a disability, Offender Health and Prison Reform Trust 2009, Prison Reform Trust office (020 7251 5070 or PRT, Freepost, ND6125, London EC1B 1PN).

²²¹ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 50.

it should consider the search of the detainees, as well as those persons with disabilities who come to the facility for a visit to a prisoner or for other purposes. The special room should be adapted and equipped with supporting equipment, among which priority should be given to electronic means of inspection.

In addition, the authority to conduct searches of prisoners and visitors with disabilities should be given only to specially trained personnel who have been trained in both the standards of searching, in general, as well as the treatment of persons with disabilities. Prior to searching persons with disabilities, the officer should consult with the medical personnel, considering the degree and type of disability of the person being searched. If the search is performed on a person with a severe disability, the officer has to be obliged to request the participation of a doctor.

The reasoning also leads to a conclusion that national legislation should undergo optimisation, which will establish norms regarding the prohibition of search in other conditions. The by-laws should also contain detailed rules and standards for the inspection (search) of persons with disabilities (both the detainees and the visitors to the facility, especially minors with disabilities), which will include informing persons with any type of disability about the reasons, purposes and rules of the search, from the beginning all through the search.

CHAPTER 6. SENTENCE PLANNING FOR PERSONS WITH DISABILITIES

Placing people with disabilities in places of deprivation of liberty is an inevitable process in the event that they have committed a crime. The court decision is primarily based on the action committed by the person. Thus, in accordance with relevant procedures, after admitting a person with disabilities in a penitentiary facility, a sentence plan should be developed and the risk and needs should be assessed. Such a plan should be regulated by law or by-laws.

Georgian legislation does not provide for the development of a sentence plan and risk assessment in a penitentiary facility, although this procedure is regulated by an order of the Minister.²²² It is clear that the existence of such a mechanism is already a step forward, however, the absence of legislative regulation significantly reduces the quality of execution. It should also be noted that convicted individuals should be offered a sentence plan, which will enable them to show the prison administration and other stakeholders that they have reduced the risk factor associated with their action, the committed crime. The purpose of the sentence plan is significant when considering the issue of release from the sentence and the return of the person to the community. This plan also has a special role when considering a change in the category of a prisoner, for example, transferring from a high security facility to a medium security facility, etc.

²²² Order №70 of the Minister of Corrections of Georgia from 9 July 2015 on approval of determining the types of risks, risk assessment criteria, risk assessment and reassessment rules, rules and conditions of transferring a convicted person to the same or another type of penitentiary facility, as well as the composition and authority of the multidisciplinary team. Order №39 of the Minister of Corrections of Georgia from 5 June 2015 on approval of the principles, rules and form of developing an individual plan for the assessment of convicts and the execution of an individual sentence.

Risk assessment and development of a sentence plan is extremely important when admitting a person to a facility and placing him or her in a cell (accommodation). Prison administrations should be aware that any decision regarding prisoners with special needs related to their search, accommodation, program selection, and other conditions of detention, may have a vital impact on a person serving a sentence in a non-discriminatory manner that protects his or her dignity. Nevertheless, none of the above-mentioned orders indicate the special needs of persons with disabilities.

There are a number of professional answers to the question of what the sentence planning is. In particular, the article “Sentence Planning – Progress: It is all in the planning...” explains that a prisoner’s sentence plan should be designed to include targets that demonstrate positive change in behaviour, thinking, and attitudes. These targets must be realistic and attainable, acceptable to the prisoner, and tailored to his or her needs. If the developed plan and the targets given in it lose their relevance, the targets should be changed to something more appropriate.²²³ According to Prison Reform Trust, sentence plan is a plan of measures to be performed by the parties, for example: prisoner and officer. Also, it says the plan should aim, on the one hand, at reducing the risk of harm or reoffending and, on the other hand, at assisting a person to return to society.²²⁴

The mere existence of a plan, in itself, is clearly not the main goal. The main thing is the results obtained from its execution. Thus, the sen-

²²³ See *Davies E. and Green S.*, Sentence Planning – Progress: It is all in the planning..., insidetime, the National Newspaper for Prisoners & Detainees, 2013, <<https://insidetime.org/sentence-planning-progress-it-is-all-in-the-planning/>>, [15.11.2019].

²²⁴ See Offender Management and Sentence Planning, Prison Reform Trust, UK, 2018, <<http://www.prisonreformtrust.org.uk/ForPrisonersFamilies/PrisonerInformationPages/OffenderManagementandsentenceplanning>>, [15.11.2019].

tence plan, especially for persons with disabilities, must be realistic and feasible, and, in addition to measures aimed at assessing and reducing risk, it must take into account the needs of prisoners.

A number of international instruments and guidelines talk about the needs that should be included in a sentence plan. According to the practice of those countries²²⁵ where the sentence planning exists, the following factors may trigger the needs: individual factors that may include, for example, a person's dependence (on drugs, alcohol, or other substances) as well as poor problem-solving skills, and social factors, such as housing, employment, strengthening relationships, integration with society. These factors are especially important for PWDs, as they must be considered in a complex manner, given that in addition to individual factors there is also a disability to physically perform this or that action. And as for social factors, as already mentioned, persons with disabilities are often socially vulnerable, from troubled families, and in the case of long-term imprisonment they often lose such connections.

When developing and implementing a sentence plan for persons with disabilities, the administration and the executing personnel should consider and, first of all, discuss the impact that a disability of a person may have on the implementation of the plan. Thus, the provision that a sentence plan must be feasible means that it must not be implemented unless it is relevant to the prisoner's condition and if he or she fails to benefit from the plan. The benefits that a prisoner should receive include positive changes in behaviour, thinking, and attitudes.²²⁶ In a penitentiary facility where sentence planning is not available, the administration should use alternative measures that are appropriate to the

²²⁵ See Sentence Planning, portal, Prison Reform Trust, 2012, 2, <<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Sentence%20planning%20%20info%20sheet%20final.pdf>>, [15.11.2019].

²²⁶ See Sentence Planning, National Offender Management Service (NOMS), UK, 2014, 7.

prisoner's needs. *"It is necessary in setting targets to take account of the special needs of a disabled prisoner. There may be activities or programmes that are difficult for disabled prisoners to access. Establishments must consider the reasonable adjustments that could be made to these activities or provide a reasonable alternative method of providing them to enable disabled prisoners to make use of them."*²²⁷

The sentence plan should be periodically reviewed, taking into account what goals have been achieved or what new needs have been identified in the implementation process. Also, the sentence plan should be reviewed in case there are any new circumstances. Periodic review is a possibility to remove the interventions that are no longer relevant to a given person.

The involvement of external expertise in the process of assessing special needs and providing appropriate conditions should also be considered as a successful practice. The above-mentioned document calls on the prison authorities to cooperate with local authority social services department or local voluntary societies, to use the available services.

Based on this reasoning, we come to the conclusion that the practice of individual sentence planning should be developed and introduced in the activities of the penitentiary system. In parallel with the sentence planning, it is necessary to establish a group in all facilities of the penitentiary system responsible for the needs assessment and implementation of the sentence plan, which will include a relevant regional probation officer. The involvement of a probation officer in the group will facilitate the continuous implementation of the sentence plan after the person is transferred to probation system and until the sentence is served. In the case of persons with disabilities, in addition to the probation officer the participation of medical personnel in the sentence plan-

²²⁷ See Prison service Order, PSO 2855 - The Management of Prisoners with Physical disabilities, chapter 4, sentence planning 3.4.2, Date of Initial Issue 20/12/99, Date of Update: 13/10/03.

ning group should be mandatory in order to avoid exacerbation of the person's health condition due to disability or aggravation of the degree of disability based on an unprofessional decision. Individual sentence planning group should be authorized, due to specialised needs, to invite any person at any stage of the activity, independently, without special permission.

CHAPTER 7. PLACEMENT AND ACCOMMODATION OF PERSONS WITH DISABILITIES IN A PENITENTIARY FACILITY

Identifying the needs at the time of admission to a penitentiary facility is a prerequisite for prisoners being placed in conditions and environment appropriate to their needs and risks. In the case of persons with disabilities, this process should be aimed at placing the person with disabilities in a living environment appropriate to his or her condition, where he or she will have access to all the services and programmes available to any other prisoner in the facility. The Special Rapporteur on Torture emphasises the importance of accommodation of persons with disabilities in places of deprivation of liberty, explaining that “the lack of reasonable accommodation in detention facilities may increase the risk of exposure to neglect, violence, abuse, torture and ill-treatment.”²²⁸

Accommodation of prisoners with disabilities in a detention facility implies not only that appropriate conditions should be provided in the facility to create an adequate environment for persons with special needs, but also an obligation to take immediate steps to facilitate the accommodation of a detainee in the absence of such conditions, for example, *“handrails can be provided in their cells, steps can be painted in bright colours and marked to make them visible for those with visual disabilities, portable ramps can be used to facilitate the access of those using wheelchairs.”*²²⁹ If the conditions in a particular facility cannot be provided due to different circumstances (building architecture, natural conditions, etc.), the person should be transferred to another adapted

²²⁸ See *Nowak M.*, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Summary, 2008, 2.

²²⁹ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 51.

facility if the system has such an alternative. In addition to ensuring adequate conditions for serving the sentence, the prison administration should be prepared to provide support, including counselling and psychological assistance, so that persons with disabilities can adapt to the environment as painlessly as possible.

In addition to the obligation of the prison administration to create an appropriate environment, it is important to develop and introduce new approaches to the system, for example, such as reasonable accommodation. The approach was introduced by the Convention on the Rights of Persons with Disabilities and facilitates the implementation of necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case. The reasonable accommodation shall *“ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”*²³⁰

If we look at the practice of post-Soviet states, the approach of the penitentiary administrations is clearly that the priority is given to placing prisoners based on security issues. However, in this case, too, priority should be given not only to the security of the facility in general, but also to the personal safety of persons with disabilities, as persons with disabilities are considered particularly vulnerable groups. The handbook explains what risks should be taken into consideration to ensure the safety of prisoners with disabilities during their allocation, such as *“the risk of abuse by other prisoners [...]. Female prisoners with disabilities are at increased risk of abuse. Their special need for protection should be taken into account in their allocation.”*²³¹

²³⁰ UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, art 2. See also, Prison service Order, PSO 2855 - The Management of Prisoners with Physical disabilities, chapter 3, 3.3.5, Date of Initial Issue 20/12/99, Date of Update: 13/10/03.

²³¹ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations

In the practice of many countries we find cases where the above issue is regulated by legal mechanisms. In the UK, for example, the Prison Service Order provides a detailed instructions and guidance for the management of work processes with persons with disabilities and standards for the allocation of persons with disabilities in a penitentiary facility. It sets out the circumstances that must be taken into account when allocating a person with a disability, such as the level of an individual's mobility, daily living skills and confidence in navigating within his or her environment. The Order states that the prison administration "should make provision for prisoners with moderate mobility impairment to be allocated on normal location".²³²

Shortcomings in the allocation and accommodation of persons with disabilities in penitentiary facilities and inconsistencies in environmental conditions are the grounds for the violation of the rights of persons with disabilities, regardless of whether these circumstances are due to subjective or objective reasons. A good example for this is the ECHR case law. For example, in the case "*Z. H. v. Hungary*", the applicant, who was deaf and dumb, illiterate, did not know sign language and had medium-grade intellectual disability, complained that his detention for a period lasting almost three months amounted to inhuman treatment. The Court held that there was a violation of Article 3 of the Convention in the present case. The Court concluded that, despite the authorities admirable but belated efforts to address the situation of the applicant, the applicant's incarceration without the requisite measures taken within a reasonable time resulted in a situation amounting to inhuman and

Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 51.

²³² See Prison service Order, PSO 2855 - The Management of Prisoners with Physical disabilities, p. 11. 3.3.5. Date of Initial Issue 20/12/99, Date of Update: 13/10/03.

degrading treatment.²³³

Given that the allocation and accommodation of persons with disabilities can be of vital importance, we consider it appropriate:

- to prohibit, at the legislative level, the allocation/accommodation of persons with disabilities in living quarters without the conclusion from the risk and needs assessment and sentence planning group;
- to carry out any decision regarding the change in accommodation of a PWD or his or her transfer to another facility, only after taking into account the recommendation of the above-mentioned group;
- to prohibit, at the level of legislation that regulates the activities of the penitentiary system, the placement of a person with disabilities in solitary confinement or his or her isolation from other prisoners solely on the basis of his or her condition;
- to include in the list of mandatory requirements, when planning and designing, the construction of adapted cells and other auxiliary storage amenities, regardless of whether there are wheelchair users or persons with other mobility problems in the penitentiary facilities or not.

²³³ Persons with disabilities and the European Convention on Human Rights, Z.H. v. Hungary - 28973/11, 4 (The case originated in an application (no. 28973/11) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Z.H. (“the applicant”), on 19 November 2011. Court decision: there has been a violation of Article 3 of the Convention and Article 5 § 2 of the Convention).

CHAPTER 8. LIVING CONDITIONS OF PERSONS WITH DISABILITIES IN THE PENITENTIARY SYSTEM

Providing adequate accommodation for persons with disabilities is one of the most difficult and problematic issues in the penitentiary system of many countries around the world, caused by a number of subjective and objective factors. If we consider these factors, they may be different depending on the socio-economic situation of the country. However, in most cases, they are similar in essence across the systems of many countries and especially for the post-Soviet states, namely:

The following can be considered as subjective factors:

- a. low level of personnel awareness/training on the characteristics and needs of treatment of persons with disabilities;
- b. lack of professionalism;
- c. lack of regulatory mechanisms or low level or absence of compliance with international standards and the needs of persons with disabilities;
- d. lack of sentence planning in the practice of the penitentiary system;
- e. indifferent attitude of personnel, etc.

In one of its reports, the UN Committee on the Rights of Persons with Disabilities highlighted the importance of these factors and, to eliminate shortcomings, called on State Parties to develop a national legal framework for the rights of persons with disabilities and explained the positive consequences that this framework can lead to, namely it can ensure reasonable accommodation, preserve the dignity of persons with disabilities and ensure the protection of this right for persons placed in prisons.²³⁴

²³⁴ See CRPD/C/COK/CO/ Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013), 1, §28, §25, §26, §32, §29, §34, §31.

The following can be considered as objective factors:

- a. Lack of state policy in relation to persons with disabilities;
- b. overcrowding of penitentiary facilities;
- c. outdated and/or new infrastructure that does not meet the needs of PWDs;
- d. lack of adapted programmes that meet the needs of PWDs.

It should be noted that the division into subjective and objective factors is conditional, because it is virtually impossible to discuss them independently, as they often derive from each other and/or are connected in nature.

If we look at the practice of Georgia, a number of positive steps have been taken regarding the living environment of persons with disabilities at the level of state policy, both within the legislation and the system. However, this is only an attempt to full solution of the problem, because creating an appropriate environment for persons with disabilities is a difficult and lengthy process.

The Human Rights Action Plan of the Government of Georgia for 2016-2017, and an improved version for 2018-2020, can be considered as a positive step. The Action Plan sets one of the tasks to ensure access of persons with disabilities to public places and means of transportation, information and technologies and to support their participation in political and social life.²³⁵ The Action Plan outlines the obligation of the penitentiary system to take appropriate action to ensure adequate conditions for the persons with disabilities serving the sentences and establishes that adequate infrastructure and services shall be provided to PWDs, as well as rehabilitation/habilitation services tailored to the needs of persons with disabilities, should be introduced in accordance

²³⁵ See Human Rights Action Plan of the Government of Georgia for 2018-2020, 2018, 19.1 (Human Rights Action Plan of the Government of Georgia for 2016-2017, 4.6.9.1, 22).

with the rules and infrastructure of a penitentiary facility.²³⁶

The penitentiary system has prepared a report about the implementation progress of the Action Plan, outlining the measures taken in penitentiary facilities, for example, the adaptation of №16 and №18 penitentiary facilities in line with a reasonable accommodation. The report also clarified that *“in addition to ramps, there are specialised living rooms with appropriate arrangement. There is also a specialised living room for persons with physical disabilities in the №5 women’s facility.”*²³⁷ It should also be noted that the existence of specialised rooms is not conducive to providing access to all the amenities and activities that exist in the facility, however, the tendency that adaptation is underway should already be considered as a positive step. In addition, the report mentions only a small part of the penitentiary facilities and it does not include the those in which persons with disabilities would be placed in the first stage of detention (temporary detention isolators and pre-trial detention facilities) prior to sentencing.

The draft law on amendments to the Imprisonment Code prepared by the Ministry of Justice to implement the Action Plan can be considered as a step towards resolving this issue. The draft law, for the first time in Georgian practice, focuses on living conditions tailored to the specific needs of persons with disabilities, *“pregnant women, nursing mothers, sick persons, persons with disabilities, older persons (females over 60 years of age and males over 65 years of age) shall be provided with living conditions adapted to their specific needs.”*²³⁸

²³⁶ See Human Rights Action Plan of the Government of Georgia for 2018-2020, 2018, 19.1 (Human Rights Action Plan of the Government of Georgia for 2016-2017, 4.2, 4.3).

²³⁷ Information is received from the International relationship department of the Ministry of Corrections of Georgia 2018. (The ministry has been dissolved: July 14, 2018)

²³⁸ Law of Georgia on Amendments to the Imprisonment Code, 14 July 2020, art 1(3).

Despite the positive aspects, the respondents have quite a negative opinion about the living conditions of persons with disabilities in prisons. They note that *“persons with disabilities, including wheelchair users, face great problems in prisons because they do not have the possibility to move around.”*²³⁹ Other respondents from non-governmental organisations and the Public Defender’s Office have the similar opinion.

In addition to residential buildings, access to various services for persons with disabilities on an equal basis with other prisoners is also problematic in the Georgian penitentiary system, which also requires timely and adequate regulation. Problems with access to such services are negatively described in the Public Defender’s report. The Public Defender described in detail those problematic aspects, the solution to which, in addition to objective factors, depends on the subjective attitude and perception of the problem by the personnel, given that the solution of these problems does not require regulation at the state policy level and can be solved by the system itself through proper planning oriented at the protection of the rights of PWDs. *“In Facility №3 of the Penitentiary Department, the phone is installed at a distance of 150 centimetres from the floor, due to which, it will be difficult for a person in a wheelchair to independently dial²⁴⁰ a number. A complaint box is installed at the entrance of the yards, the height of the surface of which is 155 centimetres from the floor. The hall leading to the yards is not adjusted to persons in the wheelchairs. There are three thresholds that are 4 centimetres, and three footsteps. The yards of Facility N2 of the Penitentiary Department are located on the fifth floor, while the medical division is*

²³⁹ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

²⁴⁰ The phrase “difficult to independently dial” implies the lack of physical accessibility of the phone, due to distance from the floor, to wheelchair users.

*located on the third floor. The staircases are not adjusted.*²⁴¹ The report explains that in light of the above-mentioned obstacles, according to interviewed persons with disabilities, they refuse to go for a walk, for example, one of the prisoners suffering from polyneuropathy, said that he has been in the facility for one year and seven months, and he has gone for a walk only three times during this period. In addition to the walking yards, the Public Defender pays attention to the issue of awareness²⁴² and talks about the penitentiary facilities where the information boards are either not posted, or they are posted at such a height that the person using the wheelchair will have difficulty reading the information on these boards. The report also focuses on such an important aspect as the services of a sign language interpreter. It states that *“there are no sign language interpreters available in any of the facilities. They have no list of rights and obligations printed in Braille, which constitutes an important problem for providing information to persons with the respective impairments.”*²⁴³

The lack of access to appropriate services in prisons for persons with disabilities covers a much wider range of problems than a one-time solution to any particular problem. Problems are related to the needs of persons with disabilities depending on the degree and form of their

²⁴¹ See Special Report of the National Preventive Mechanism of the Public Defender of Georgia on the State of Rights of Persons with Disabilities in Prisons, in Institutions for Involuntary and Forced Psychiatric Treatment – Analysis of the Fulfilment of the Recommendations, 2014, 9.

²⁴² The information boards are not available in the Medical Facility for remand prisoners and Convicts, whereas in Facility N2 and N3 of the Penitentiary Department, they are displayed at such a height that a disabled person in the wheelchair will have difficulty reading the information on these boards.

²⁴³ See Special Report of the National Preventive Mechanism of the Public Defender of Georgia on the State of Rights of Persons with Disabilities in Prisons, in Institutions for Involuntary and Forced Psychiatric Treatment – Analysis of the Fulfilment of the Recommendations, 2014, 9.

disabilities, however, we should also consider the complex needs that one PWD may have, addressing of which, in itself, requires a complex approach. In many cases, the problem may be easily solved, but it is the absence of timely and adequate measures that results in complex needs of the person with disabilities and/or the penitentiary system, and leads to disastrous outcomes. For example, when *“inmates with intellectual disabilities cannot adequately access the prisons’ medical system due to its reliance on written requests, which many inmates with cognitive disabilities cannot fill out. [...] inmates with hearing impairments are unable to access medical services [...] due to the prison’s failure to accommodate their disabilities.”* Prisoners have suffered injuries as a result of attempting to transfer themselves from their wheelchair to the toilet.²⁴⁴

Based on various research and International and European case law, it can be unequivocally argued that whatever the objective cause of the problem, the state has an obligation to ensure non-discriminatory (both direct and indirect) conditions and treatment of persons with disabilities in places of deprivation of liberty, otherwise it may subsequently qualify as torture, because placing a person with a disability in inadequate conditions, when he or she does not have access to food, hygienic amenities and services, equates to torture or other inhuman treatment, as evidenced in the case before the Human Rights Committee – *“Hamilton v. Jamaica”*.²⁴⁵

²⁴⁴ See Making Hard Time Harder Programmatic Accommodations for Inmates with Disabilities Under the Americans with Disabilities Act, Amplifying Voices of Inmates with Disabilities (AVID), Prison Project of Disability Rights, 2016, 19, 25.

²⁴⁵ See *Hamilton v. Jamaica*, Communication No. 616/1995, 7 July 1997, CCPR/C/60/D/616/1995*; The Human Rights Committee has examined the question of whether there is a violation of Articles 7 and 10 of the International Covenant on Civil and Political Rights, because of the prison authorities’ failure to take into account the author’s paralysed condition and to make proper arrangements for him and allow to take out his slop bucket. The Committee held that the applicant paralysed in both legs, was not treated with humanity and with respect for the

Among the living conditions, the law of Georgia – the Imprisonment Code considers only the area of a cell, sanitary-hygienic norms, which must comply with the relevant order,²⁴⁶ and a window, which must provide lighting and ventilation. Living conditions, however, need to be considered much more broadly as, in addition to the existing list, the law must define all the needs related to the necessary settings of a person’s daily life. This is especially important in the case of persons with disabilities, who are restricted in access to food, medical services, programmes, etc., due to the lack of legislative regulation. Given that the law does not address these issues under the living conditions, prison administration often does not include it in the list of obligations. However, if we look at the decisions of the European Court of Human Rights, it is clear that the violation of the rights of persons with disabilities in the context of living conditions is often discussed. One of such cases that can be considered as an example is “*Semikhostov v. Russia*”, where the applicant, who had complete paralysis of the lower body and was wheelchair-bound, argued that “*the conditions in the penitentiary where he was detained for nearly three years in a regular detention facility, was not adapted. He also claimed that he was not provided with legal protection mechanisms at the national level to review these allegations.*”²⁴⁷ In the present case,

inherent dignity of the human person, which is contrary to article 10, paragraph 1 of the Covenant.

²⁴⁶ See Joint Order №388 – №01-18/n of the Minister of Justice and the Minister of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Affairs of Georgia on Determining the Nutrition and Sanitary-Hygienic Norms of the Accused and Convicted Individuals, 2019.

²⁴⁷ See Persons with disabilities and the European Convention on Human Rights, *Semikhvostov v. Russia*, 2689/12, Judgment 6.2.2014, 5 (The case originated in an application (no. 2689/12) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr. Aleksandr Yuryevich Semikhvostov (“the applicant”), on 28 December 2011, court decision:

the Court held that there has been a violation of Article 3 of the Convention, because the conditions of the applicant's detention, in particular, his inability to have access to various premises in the correctional facility independently, including the canteen and sanitation facilities, as well as the lack of any organised assistance, must have caused him such unnecessary and avoidable physical and mental suffering, diminishing his human dignity, that would have amounted to inhuman and degrading treatment. The Court also found a violation of Article 13 of the Convention (right to an effective remedy). The European Court of Human Rights has made it clear that living conditions include not only adapted buildings, but also an environment provided with hearing and visual aids and other auxiliary equipment, as well as personnel, which together create normal conditions for a person with disabilities to serve the sentence.

Within the Optional Protocol to the Convention, the Committee adopted guidelines stating that under article 14(2) of the Convention, persons with disabilities deprived of their liberty have the right to be treated in compliance with the objectives and principles of the Convention, including conditions of accessibility and reasonable accommodation. The Committee has recalled that States parties must take all appropriate measures to ensure that persons with disabilities who are detained may live independently and participate fully in all aspects of daily life in their place of detention, including ensuring their physical access, on equal basis with others. The committee identified a list of particularly important areas and services, such as bathrooms, yards, libraries, study areas, workshops, and medical, psychological, social, and legal services. Finally, the Committee concluded by saying that *"a lack of accessibility and reasonable accommodation places persons with disabilities in*

there has been a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy with which to raise claims of inadequate conditions of detention; Article 3 of the Convention on account of the inhuman and degrading conditions of the applicant's detention).

sub-standard conditions of detention that are incompatible with article 17 of the Convention and may constitute a breach of article 15(2).”²⁴⁸

Creating an adequate living environment for persons with disabilities should not be seen as a short-term process that covers the period from a person’s detention to his or her release. It has a longer lasting consequences and impacts the life after release and the process of integration into society. The publication “Disabled Behind Bars” explains that an appropriate, *safe* environment, and accessible facilities and programming are critical to ensure that the needs of prisoners with disabilities in prison and jail are met, and to facilitate successful reintegration into society upon release.²⁴⁹

Given the high importance of providing a person with appropriate living conditions, it should be concluded that creating an adequate environment and providing reasonable accommodation for persons with disabilities to serve their sentences should be part of the state policy and should be regulated by legislation that would be binding for any facility where a person may be deprived of liberty.

The provision of living conditions should include a provision of an adapted cell in which a person with disabilities will be allocated. The following factors should be included in the list of living conditions that shall be determined by the legislation and internal regulations of the facilities:

- Residential buildings and cells, visiting rooms (for both prisoners and visitors with disabilities);
- Amenities for physiological and hygienic needs: toilet, bath (show-

²⁴⁸ See Committee on the Rights of Persons with Disabilities, Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities, adopted during the Committee’s 14th session, held in September 2015, 5.

²⁴⁹ See *Vallas R.*, *Disabled Behind Bars: The Mass Incarceration of People With Disabilities in America’s Jails and Prisons*, July 2016, 10.

er), which a person can utilise independently, in accordance with his or her physical condition;

- Walking yard, which will be in line with the conditions of other prisoners; Also, the time spent outside in the fresh air should be defined as at least 2 hours, during which the person will be able to engage in physical activities, depending on his or her physical condition;
- Access to rehabilitation and education programmes shall be discussed directly in relation to the living environment and prison infrastructure. Programs should be designed and arranged in such a way that persons with disabilities can participate in them on equal terms with others; physical access to employment areas should also be considered; in deciding the issue of employment, the conclusion of the doctor should be decisive only in the case if the working settings or type of work may harm the condition of a PWD;
- Rules and methods of providing information to a person with a disability upon his or her admission to prison should be developed, taking into account the type of the disability, in order to ensure the provision of information in a form and manner that is understandable to him or her.

CHAPTER 9. CONTACT OF PERSONS WITH DISABILITIES WITH THE FAMILY AND THE OUTSIDE WORLD

Contact with the family and the outside world is a sensitive topic for any detainee, in general, and especially for a person with a disability, as they are often deprived of the skills and means to communicate freely. Relationship with the family is the right of every person and the disability of a person cannot in any way interfere with the family life or, in this case, the relationship with the family. This approach is supported by Georgian scholars with the following argument – *“it is true that a person may have disabilities and be recognized by court to have diminished capacity, but he or she still has the right to family life.”*²⁵⁰

The importance of contact with the family and the outside world is due to many factors, such as the fact that family members who have lived with a person with disabilities for years are well aware of the problems the person faces and the possible means and methods of solving them, as well as of the needs, which may result from the disability.

Arrest/detention of persons with disabilities, in addition to the stress caused by this process, is also related to the stress caused by being away from family members, which greatly complicates their daily lives, as in most cases persons with disabilities have no contact with a wide circle of persons and spend most of their time with family members. Thus, getting used to the new environment is more difficult for them than for other individuals in penitentiary facilities. *“Research shows that the existence and maintenance of good family relationships helps to reduce re-offending, and that the support of families and friends on release can help successful reintegration back into the community.”*²⁵¹

²⁵⁰ See *Toria A.*, Protecting The Rights of Disabled Parents In Case of Adopting Their Children in *Korkelia K. (ed.)*, Protection of Human Rights: Achievements and Challenges, collection of articles, Tbilisi, 2012, 96.

²⁵¹ *Crétenot M.*, From National Practises to European Guidelines: Interesting

Contact with the family and the outside world may be ensured in the penitentiary facility, but the access may be restricted to persons with disabilities for the sole simple reason that rooms and furniture may not be adapted for persons with physical disabilities. According to a respondent with disabilities interviewed for the research, *“wheelchair users should have a separate cell and a bathroom arranged (adapted) to enable the person to rest and maintain hygiene in human conditions.”*²⁵²

The list of problems hindering effective communication with the family, in addition to the adaptation of buildings, also includes, for example, the layout and accessibility of rooms for wheelchair users, door size and its ratio to wheelchair size, room size and furniture layout for wheelchair or crutch users, room layout and space for persons with visual impairments, etc. *“It may be necessary to adapt some furniture in the visits hall, or exceptionally, to provide a hearing aid to consider the needs of hearing-impaired prisoners especially in large, noisy visits halls.”*²⁵³

If we consider the guarantees established by national law in the context of contact of persons with disabilities with the outside world, we do not find such a provision in the law at all. It should be noted that the national law and international standards, which generally set standards for the functioning of the prison system, explicitly indicate the state’s obligation to assist prisoners in maintaining adequate contact with the family members, which is one of the main contributing

Initiatives in Prisons Management, European Prison Observatory. Detention conditions in the European Union, Rome, December 2013, 20.

²⁵² A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

²⁵³ See Prison service Order, PSO 2855 - The Management of Prisoners with Physical disabilities, 3. 3.9.2. Date of Initial Issue 20/12/99, Date of Update: 13/10/03.

factors to their rehabilitation process. *“A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”*²⁵⁴

It is noteworthy that Georgian law prohibits the complete isolation of the accused/convicted persons and outlines, in detail, various forms of contact with the outside world, such as: a meeting with close relatives (visitations), with a defence lawyer, with representatives of a diplomatic mission or a consular office, and with other diplomatic representatives (in the case of a foreign citizen); telephone conversations and correspondence²⁵⁵; the possibility to receive and send parcels and money, and describes the types and methods, as well as the rules of the meetings, however, it should be noted that neither the law nor any by-laws refer to any special needs and their provision for persons with disabilities.

Given that in relation to the contact with the outside world there are multi-layered problems in the places of deprivation of liberty, and due to the fact that in Georgian reality, the absolute majority of persons with disabilities live together with their families and are primarily dependent on them, and family members have supported the persons with disabilities for long periods of time and are aware of their problems, we consider it appropriate that the penitentiary system creates an appropriate environment for the involvement of family members in the

²⁵⁴ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988, principle 19.

²⁵⁵ “A penitentiary facility shall, at the request of an accused/convicted person, provide him/her with writing means and paper, and an accused/convicted person with disabilities – with appropriate means of correspondence”, Law of Georgia on Amendments to the Imprisonment Code, 14 July 2020, art 1(2).

process of serving the sentence.

It is advisable to create a coordination group, which will have systematic contact with family members of prisoners with disabilities and will receive and consider their vision and recommendations regarding treatment and care. On the other hand, the administration should be given the right to allow family members to have additional visits depending on the degree of disability and the identified needs of the PWD.

Family members (with the consent of a convict and a family member) should be allowed to spend a certain amount of time on daily basis as a caretaker with persons with disabilities who due to their condition, are placed in a medical unit, especially where the institute of caretaker is not functioning. The time may be determined based on doctor's recommendation, depending on the patient's condition, and should be regulated at the legislative level.

Prison administrations should pay particular attention to prisoners with multiple needs (LGBT, older prisoners, women, juveniles, foreigners, etc.) and their contact with their families and friends, as this is a group that often loses contact with family due to long prison terms, nature of the crimes committed or other reasons. In this case, the efforts of the administration and the social and other relevant services of the prison should be aimed at restoring family ties in the process of serving the sentence by prisoners, and especially in the preparation process for release, so that persons with disabilities have family support after their release.

CHAPTER 10. FOOD FOR PERSONS WITH DISABILITIES IN A PENITENTIARY FACILITY

It is no news that in the penitentiary system often food products or meals are of low quality, food ration is inappropriate, etc., which is caused by various reasons, such as: lack of funding, prison overcrowding, lack of professional personnel, when instead of cooks, food is prepared by prisoners who may have been trained to perform this activity or have not undergone any special training at all.

Non-standard periodicity of food supply (there shall be three meals a day with reasonable intervals between them)²⁵⁶ and inadequate conditions, poor food quality and inadequate rations, as well as other similar violations create an environment that harms the health of any prisoner and may exacerbate the existing diseases or cause the acquisition of diseases. Due to the fact that poor nutrition conditions negatively affect a healthy person, who is located in a closed environment, the negative impact is much more severe for a person with disabilities, for whom it may lead to complications of existing physical or mental health problems, disabilities and/or problems that have not occurred before.

In a publication published in the American Journal of Public Health, the authors cite a study as an example. The study found that prisoners suffer foodborne illness at a rate of 45% per 100,000 people, compared to only 7% per 100,000 people in the general population.²⁵⁷

In addition to the standard quality of food and ration, special attention is paid to the development of a special food ration and its use for people with different types of needs, on which their lives and health often depend, *“prisoners shall be provided with a nutritious diet that takes*

²⁵⁶ See European Prison Rules, Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states, 11 January 2006, Rule 22.4.

²⁵⁷ See *Fassler J. and Brown G.*, Prison Food Is Making U.S. Inmates Disproportionately Sick, 2017.

into account their age, health, physical condition, religion, culture and the nature of their work."²⁵⁸

In Georgian legislation we find an attempt to partially regulate the issue of food in relation to prisoners with disabilities. In particular, the joint legal act²⁵⁹ of the Minister of Corrections of Georgia and the Minister of Labour, Health and Social Affairs of Georgia imposes obligation on the penitentiary system authorities to provide special/dietary nutrition for those prisoners who need it for medical reasons. The fact that such a regulatory mechanism exists should be positively evaluated, however, we encounter issues in approach to the medical and social model of disability here as well, as the need for special diet may not be caused by a health condition but by a physical problem of the person. For example, a wheelchair user who does not have a disease in accordance with the medical nosology that requires special nutritional diet is clearly not covered by this regulation, although it is also clear that a wheelchair user who is unable to move freely and engage in physical activities needs special diet, depending on his physical condition, to avoid further complications.

Recommendations from a number of international organizations can be applied to ensure that prisoners with disabilities are given clear and understandable explanations on how to address these issues in person upon arrival to the penitentiary facility, if they need special diet due to their health condition, they should inform the medical personnel about it. The information book for prisoners with disabilities explains that special food will be prepared for them in prison, if required by the healthcare service, and that everyone should be given a choice. This

²⁵⁸ See European Prison Rules, Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states, 11 January 2006, Rule 22.1.

²⁵⁹ Joint Order №388 – №01-18/n of the Minister of Justice and the Minister of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Affairs of Georgia on Determining the Nutrition and Sanitary-Hygienic Norms of the Accused and Convicted Individuals, 2019.

statement, in addition to informing persons with disabilities, also aims to show the administration's obligation to ensure that prisoners have the right and opportunity to choose food. The information book also explains the procedures for how this should be handled in prison so that a person with a disability is not confused: *"You will be asked to fill in a form to say what you want to eat. The menu might have pictures on it so that you know what food to choose. If you have problems filling out the form for your food, ask an officer on the wing for help."*²⁶⁰

In addition to the above, the problem with food and nutrition may be related not to the quality of the food but to the physical condition of the person. In particular, a person may not be able to receive food because he or she is a wheelchair user or with visual impairment and has been unable to arrive on time or reach the kitchen or dining area on the premises due to a mobility problem. Also, due to lack of adaptation of the infrastructure, a person may not be able to reach these amenities at all and there might be no person in the facility who will be responsible for delivering food. A Russian expert describes a case in one of the Russian prisons in 2010-2011, when one of the prisoners was repeatedly deprived of the opportunity to receive hot food for the reason that he did not have an assistant who would be able to bring him food. She describes that *"in the "detachment" it is impossible to reach the dining room in a wheelchair. The convict sometimes did not receive food for 7 days. The lack of regular hot food, in addition to eating from unclean utensils, had a devastating effect on the health of the seriously ill S. – he had bleeding, swelling of the limbs, pain of his internal organs, etc."*²⁶¹

²⁶⁰ See Information book for prisoners with a disability, Offender Health and Prison Reform Trust 2009, Prison Reform Trust office (020 7251 5070 or PRT, Freepost, ND6125, London EC1B 1PN).

²⁶¹ See *Radnaeva N.*, Expert of the Foundation, In Defense of the Rights of Prisoners, article - A wheelchair user in a colony: punishment or torture? 16 January 2012.

After discussing the existing problems with food and nutrition, we come to the conclusion that in order to solve the problems, first of all, new approaches should be introduced in penitentiary facilities, in particular, in addition to the dietary menu prepared based on doctor's recommendations for persons with health problems, to make it obligatory to provide a special menu for persons with disabilities. In particular, for persons with disabilities who have restrictions in movement, free movement or are unable to participate in physical activities, should be provided with food that will not aggravate their health condition. The diet for persons with disabilities should be developed individually based on the degree of their activity and health status. When discussing the Georgian practice, the problem is that the issue of providing special food to persons with disabilities is not regulated by the order that generally deals with the food and nutrition of prisoners. The diet indicated in the order can be obtained by an adult person only based on medical indications.²⁶²

Given this, although the positive change²⁶³ in the Imprisonment Code made in 2020 eliminated a shortcoming of covering only a narrow circle of persons with disabilities in need of special nutrition, but this change could not completely solve the problem of providing adequate food to persons with disabilities. Accordingly, first of all, it should be mandatory to develop a special menu for persons with disabilities in penitentiary facilities, which will set general standards for nutrition. The document should be prepared with the participation of both medical personnel and relevant experts. Also, an appropriate position should be created in the penitentiary system for a specialist, who will be responsible to develop a special dietary ration tailored to the individual needs

²⁶² See Joint Order №388 – №01-18/n of the Minister of Justice and the Minister of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Affairs of Georgia on Determining the Nutrition and Sanitary-Hygienic Norms of the Accused and Convicted Individuals, 2019.

²⁶³ Law of Georgia on Amendments to the Imprisonment Code, 14 July 2020.

of persons with disabilities, which will be based on interviews with persons with disabilities and coordination with medical personnel. The same employee should be responsible for informing the person with disabilities about the required food ration.

CHAPTER 11. SANITARY-HYGIENIC CONDITIONS OF PERSONS WITH DISABILITIES IN A PENITENTIARY FACILITY

The national legislation does not stipulate a special obligation to provide separate and/or adapted sanitary-hygienic amenities for persons with disabilities during the construction of a penitentiary facility. The law does not include an obligation to later adapt the building either. Georgian legislation includes a provision about the personal hygiene of prisoners, which says that an accused/convicted person shall have the possibility to satisfy his or her natural physiological needs and maintain his or her personal hygiene without degrading his or her honour and dignity. Also, by law, as a rule an accused/convicted person shall be provided with possibility to take a shower twice a week, and with a hairdressing service at least once a month. It should also be emphasized that the legislation does not set standards to ensure that these services are accessible to those who do not have access to these amenities due to disability.

For persons with disabilities, the periodicity of changing clothes and linen may be grounds for violating the terms of the sentence. As the Association for the Prevention of Torture explains, clean clothes and bedding, in sufficient quantity and adapted to the climate, are essential elements of good personal hygiene and decent living conditions in detention.²⁶⁴ In facilities that are overcrowded and/or have a lack of laundry services, prisoners with disabilities with upper limb problems or vision impairment may have to sleep in dirty linen or wear unwashed clothing. As a result, they are often the victims of aggression and violence from other prisoners. Therefore, for these individuals, these con-

²⁶⁴ See Material conditions of detention, Clothing and bedding, Association for the Prevention of Torture (APT), <<https://www.apt.ch/en/knowledge-hub/detention-focus-database/material-conditions-detention>>, [15.03.2020].

ditions constitute degrading treatment.

Access to the toilet should be considered as an extremely difficult problem in terms of meeting physiological needs. For many PWDs, this is one of the major obstacles. Penitentiary facilities often have one or two stairs leading to the toilet, or the toilet in the common cells is so narrow that it is impossible to enter by a wheelchair, etc. This situation forces prisoners with disabilities to depend on other prisoners. In this case, the risk of violence and humiliation or ridicule is extremely high. The person may not be able to reach the toilet and take care of the physiological need on the spot. Due to the unsanitary environment created, other prisoners in the cell may request the removal of such a person from the cell, which may result in placing the PWD in solitary confinement.

If we review the practice of the countries of the former Soviet Union, where the architecture and design of prisons were almost the same by default, it is possible that the case described in the report of the Russian expert is typical for many post-Soviet states. The expert paints a picture of a building without adaptation on the example of one of the prisons in Russia, and notes that the toilets in this prison are not adapted for wheelchair users (there are no rails to rely on and the toilet is located at floor level) and in the light of these conditions describes the problems faced by one of the persons with disabilities in the given facility. *“During the need to use a toilet, each time S. is forced to ask for help from a stranger. Not everyone agrees to provide such help. Due to the fact that S.’s lower limbs are fully paralysed, and he has a pelvic incontinence, this leads to degrading and humiliating treatment of S.”*²⁶⁵

Inaccessibility to the toilet, in addition to causing harm to health, can also most likely amount to degrading treatment. The prison admin-

²⁶⁵ See Radnaeva N., Expert of the Foundation, In Defense of the Rights of Prisoners, article - A wheelchair user in a colony: punishment or torture? 16 January 2012.

istration should not allow this and should take all measures to prevent harm to a person's health due to disability and his or her degrading treatment. All of this should be addressed by legislation and become an integral part of personnel training.

Provision of sanitary-hygienic conditions should be one of the priority areas of regulation, because PWDs who are wheelchair-bound, persons who have amputations of limbs (both lower and upper), crutch users, persons with visual impairments and those that are bed-ridden, when entering detention facilities, find the lack of access to hygiene as the number one problem, especially in cells with open toilets.

In order to ensure the conditions that provide the persons with disabilities with the process of serving the sentence in the penitentiary system in line with the human rights standards, it should be mandatory for prison authorities to arrange adapted sanitary facilities. Hygienic amenities should be available at all times of the day and night, regardless of overcrowding or other circumstances. When designing a toilet and a shower, the location, room size and auxiliary equipment should be considered, so that a person with a disability can use them without obstacles. Legislation should also introduce the institute of a caretaker for persons with disabilities, which will continuously provide adequate assistance to persons with severe disabilities.

CHAPTER 12. TREATMENT OF PERSONS WITH DISABILITIES IN A PENITENTIARY FACILITY

Any issues discussed in Part III, such as infrastructure, accommodation conditions, food, care, etc., are components of the treatment of persons in penitentiary facilities, however, this chapter discusses the human factor, i.e. the treatment of persons with disabilities by the personnel of the penitentiary facility.

Treatment of prisoners varies according to the specifics of the penitentiary system, the type of facility (high, medium and low security facilities) and the prison regimes in post-Soviet states.

It should be noted that in countries where international standards for the treatment of prisoners are not in place, prisoners are treated strictly, inhumanely. In countries where rehabilitation of prisoners and their integration into society is a priority, treatment is humane and focused on the requirements of the legislation.

In addition to the type of facilities, the treatment of prisoners also depends on the regulations and legislation that governs the work and activities of penitentiary facilities. It should be noted that the less information there is in the legislation defining framework of personnel activities, the more likelihood there is for the prison personnel to carry out activities in accordance with their personal inner nature and show aggression, which people often have against perpetrators of various crimes, in general, or of specific crimes. The lack of regulations has a particularly severe impact on the treatment of prisoners with disabilities, because unless the legislation explicitly states how the personnel should treat persons with various disabilities due to their needs, then simply good behaviour of the personnel cannot be sufficient grounds to prevent ill-treatment, although treatment should be free from any discrimination. The treatment of prisoners should be based on their needs,

without discrimination.²⁶⁶

The next aspect in the treatment of prisoners is the training of personnel and their psychological readiness to work with prisoners and especially prisoners with disabilities. The personnel should be aware that prisoners need to be treated with *“the respect due to their dignity as human beings.”*²⁶⁷ They must be ready to carry out their activities in compliance with these very principles.

Analysis of the European case-law also shows that a significant share of ill-treatment of persons with disabilities falls on personnel. Ill-treatment is caused, first of all, by the lack of awareness and qualification of the personnel, and consequently, by the lack of appropriate regulatory mechanisms and other factors.

Prisoners in a penitentiary facility should have an adequate and safe environment for serving their sentences. Moreover, a person with a disability should be subject to special care due to his or her condition. The expert approach is that the penitentiary system should ensure to create not only a safe but also an equal environment where prisoners with disabilities feel that their mental well-being is as protected as other prisoners, although the introduction of this approach may require some additional measures, such as: *“conducting the searching of prisoners with disabilities with special sensitivity, first explaining the reasons for searching and the procedure,” to ensure that prisoners with disabilities feel safe.*²⁶⁸

In our view, in order to create a safe and secure environment for persons with disabilities in the penitentiary system, the main priority

²⁶⁶ Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), 2015, Rule 2.

²⁶⁷ *Inid*, art. 5.

²⁶⁸ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 55.

should be to train personnel and provide them with access to appropriate professional development so that they are ready to work both in a stressful environment typical of penitentiary system, as well as with prisoners and visitors with special needs, while respecting human dignity.

In addition to the above factors, the treatment of prisoners is often impacted by prison overcrowding and other circumstances. For example, according to studies,²⁶⁹ the personnel may have to work with more people than they are required to. Improper working conditions of personnel; low pay, which in many countries is often lower than in other state structures; low social status; high risk to health and safety; lack of adequate rest time; disrupted social relationships due to a busy work schedule, which leads to professional “burnout” of the person; and other factors especially aggravate the negative attitude of personnel towards prisoners or, in general, work activities, which has a negative impact on the treatment of prisoners.

According to existing research and information received by the public through the media on the violations of the rights of prisoners, the treatment of prisoners, and in particular prisoners with disabilities, needs to be improved in many countries. This situation often leads to the conclusion that, in fact, imprisonment is more harmful, especially for persons with disabilities and other vulnerable groups, than the rehabilitation period. Because of the attitude of the personnel and the fact that due to the lack of appropriate services persons with disabilities become dependent on other prisoners, the risk of violence against them increases. Also, convicted persons with disabilities are often not considered eligible for rehabilitation and because of this they are often not given the opportunity to participate in similar programmes, or they

²⁶⁹ See *Wilmar J. Schaufeli and Maria C.W. Peeters, Job Stress and Burnout among Correctional Officers: Literature review, International Journal of Stress Management, Vol 7, 2000, 32-34.*

are often “ridiculed”. “*They may not be allowed to enroll in programs and prerelease training or education because of their problems with learning, mobility, or being housed in a medical or psychiatric unit.*”²⁷⁰

Persons with disabilities are not fully involved not only in prison life, but also outside in public life, which means that in many cases prisoners with disabilities have several problems, such as poor education, lack of profession and communication skills, due to the fact that they are mostly surrounded by family members, which further limits their disability.

If the penitentiary system is not aware how to treat prisoners with disabilities or intentionally treats them inappropriately simply because they have disabilities, if the administration does not respond to personnel behaviour and/or address the problem that leads to this type of treatment, the ill-treatment continues. This situation negatively affects persons with disabilities not only during serving their sentences, but also after their release, which intensifies the feeling that he or she is different from other people, he or she is stigmatized and as a result, these people are imprisoned again.

The existence of rules regulating the treatment of prisoners in penitentiary facilities significantly reduces the risk of ill-treatment of prisoners, however, there are a number of circumstances that the prison authorities often use as justifications for violations, such as overcrowding, understaffing, poor qualification of personnel.

In order to ensure humane and highly professional treatment of persons with disabilities by personnel, it is advisable to develop national standards for the treatment of vulnerable groups within the penitentiary system, especially persons with disabilities, which will be used to train personnel of penitentiary facilities and which will become a manu-

²⁷⁰ See *Greifinger R. B.*, Disabled prisoners and reasonable accommodation, *Criminal Justice Ethics*, 25, 253-55, 2006, in *Shunk C.*, *The Treatment of Criminals with Disabilities: An Ongoing Debate*, Submitted as partial fulfillment of the Requirements for The Master of Liberal Studies, The University of Toledo, 2008, 14.

al for those who have direct contact with persons with disabilities.

Information booklets should be prepared for prisoners with disabilities in different languages, as well as in Braille, about their rights and the conditions they should have in penitentiary facilities. A reference book on the provision of information should also be developed, which will enable personnel to provide the person with disabilities with the information they need upon arrival at the facility.

Legislation or by-laws should determine that there should be at least one employee in a penitentiary facility at any time of the day who has undergone special training in working with persons with disabilities.

A person with a disability, at any time he or she needs, should have the opportunity to meet with the prison administration or possibility to address in writing, if he or she is physically able to do so.

CHAPTER 13. PENITENTIARY SYSTEM PERSONNEL AND THEIR TRAINING

From the approaches discussed in the context of treatment, it is clear that the personnel of the penitentiary system are the most important link who have been in contact with a prisoner with disabilities from the very first day of entering the penitentiary facility. The role of personnel may not differ according to their status, rank, or profession in countries where disability is considered to be a medical problem only. In the penitentiary system, priority is given to medical personnel. However, any employee who has any contact with persons with disabilities must be properly trained. The respondent with disabilities explained that *“the penitentiary system should have specially trained personnel who will have more knowledge on how to work with prisoners with disabilities, as well as specially trained psychologists and social workers.”*²⁷¹

The personnel who carry out admission procedures are, first and foremost, persons who, with professional, proper behaviour, can make it easier for a person with a disability to overcome the stress he or she experiences as a result of being in a penitentiary facility. However, personnel can also, on the contrary, increase the stress received by a person with a disability and/or instill a fear of the penitentiary system in him or her, which will affect not only the process of serving the sentence but also reintegration into society after release. *“The attitude of staff is a key element in ensuring the protection of the human rights of prisoners with disabilities and reducing discrimination in prison.”*²⁷²

²⁷¹ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

²⁷² See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 77.

In Georgia and other post-Soviet states, in addition to the absence of special training programmes for penitentiary system personnel to enable them to conduct qualified work with prisoners with disabilities, penitentiary facilities do not have an employee responsible for admitting and working with persons with disabilities,²⁷³ which is not a direct obligation of prison administrations under national law, however, having such an employee would make the situation much easier for persons with disabilities and would also help the administration to avoid certain problems.

It is important to improve the quality of personnel training and awareness, which should exclude inhuman, degrading treatment towards persons with disabilities. The handbook for prisoners with special needs explains what issues need to be emphasised during personnel training, namely *“that prisoners with disabilities have the same human rights as all other prisoners and that they should not be treated more harshly, isolated or taunted due to their disability and difficulties arising from their condition. Appropriate techniques of dealing with prisoners with disabilities, when difficulties arise, should be included in staff training.”*²⁷⁴

Given that persons with disabilities belong to one of the most vulnerable groups of prisoners, the selection and training of personnel should aim not only at ensuring that the offenders do not commit any offences, but also at developing the knowledge and skills to identify and evaluate all possible risks, and to conduct their activities in such a way as to exclude violence and ill-treatment of prisoners with disabilities by other prisoners.

²⁷³ Order №150 from 21 June 2013 of the Minister of Corrections on the approval of the instruction on the implementation of the legal regime in the places of detention and deprivation of liberty; Order №6 from 12 January 2011 of the Minister of Corrections on approval of the statute of the Penitentiary Department of the Ministry of Corrections.

²⁷⁴ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 49.

A respondent, who assessed the practice in Georgia, explained the list of problems related to personnel: *“Low level of priority of the issue, absence of relevant training programmes/courses in regard to legal issues as well as communication skills.”*²⁷⁵

Part of the personnel training is their ability to work in a coordinated manner with each other, as working with persons with disabilities is not only the responsibility of one of the units but must be a complex measure jointly planned by all prison personnel, with all personnel responsible.

Due to the particularly important role of personnel, the penitentiary system needs to introduce novelties in personnel selection procedures. In particular, first of all, after the selection of candidates according to general criteria, the second stage should be an application, which should include questions prepared and approved in advance, which should reveal the respondent’s attitude towards the offenders in general, including persons with disabilities. Discriminatory or stigmatised attitude towards persons with disabilities should be a reasonable ground for refusing to hire a candidate, which shall be established by internal regulations.

The penitentiary system should introduce the institute of caretakers and create new vacancies for caretakers who will work with persons with severe disabilities and assist them in their daily lives. In this case, specifically trained personnel must be hired or trained before being allowed to work. Legislation should also introduce the employment of a prisoner for a paid job as a caretaker, with the consent and willingness of both parties – the prisoner with disabilities and the caretaker – based on a pre-designed job description.

²⁷⁵ A respondent from Public Defender’s Office; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

CHAPTER 14. ACQUISITION OF DISABILITY AND HIGH RISK OF VIOLENCE IN PRISON

Every person who is placed in a closed institution is more or less at high risk of torture, violence, and degrading treatment, depending on the standards or practices of the country and its institutions. Also, the risk stems from the fact that they are in the hands of government officials and they do not have the ability to fully defend themselves independently and have limited contact with other individuals due to their status. A rapporteur of the Parliamentary Assembly of the Council of Europe explains in his report²⁷⁶ that persons in pretrial detention and convicted persons may not only have a disability before being placed in detention but may also develop such a disability in prison due to an accident or illness.

We find many examples in practice when people became victims of violence in police stations, penitentiary facilities, etc., which are reflected in numerous international or local reports. For example, a person who was placed in a penitentiary facility without physical or mental problems became a person with disabilities while in the facility. Such an example can be mentioned from the history of the Georgian penitentiary system: one such case is described in the report of the Public Defender, where it is mentioned that the convicted G. K.'s health problems started occurring since 2 September 2010, when he was transferred to №16 penitentiary facility. Here, upon arrival, he was admitted to the facility he was beaten by a group with cruelty. After the given fact G. K. started having severe back pain as well as testicular pain. Despite his condition and request (from September 2010 to 2012) to be taken to a prison hospital for examination and treatment, he was given only pain-killers and therefore the medical diagnosis was unknown to him. As a

²⁷⁶ See *Tornare M.*, Rapporteur of the Committee on Equality and Non-Discrimination, Report on Detainees with disabilities in Europe, 2018, 6.

result of such treatment, when G. K. was finally taken to a prison hospital in November 2012 and underwent immediate surgical intervention, the result was logical: *“he was gradually losing sensitivity in his lower limbs. On 22 January, he underwent a second surgery, which completely restricted the movement of his lower limbs, and he started defecating and urinating involuntarily.”*²⁷⁷

Practice shows examples of similar treatment in other countries. We review the case of Kalief Browder, a citizen of the United States. He was arrested in the Bronx, New York, for allegedly stealing a backpack in May 2010. He was then transferred to a juvenile facility where he was subjected to violence by the officers as well as other inmates. In addition to physical violence, the case describes that for some period of time he was also deprived of food, was forbidden to take a shower, participate in educational programs, receive psychological support. Moreover, two out of three years he spent in solitary confinement, where he attempted suicide several times. He was released from prison in May 2013. Six months after his release, he committed suicide on 5 June 2015.²⁷⁸

Any person who is held in closed institutions can become a victim of this type of violence, however, persons with disabilities are a particularly vulnerable category, whose vulnerability is much higher, depending on their physical or mental condition.

Although, according to all international standards or national law, the prohibition of torture is an absolute right, it still requires the most control and attention from the state, precisely due to the high risk

²⁷⁷ See Special Report of the National Preventive Mechanism of the Public Defender’s Office: Situation of Persons with Disabilities in Penitentiary Facilities, Temporary Detention Isolators and Involuntary Psychiatric Treatment Facilities, 2014, 12.

²⁷⁸ See *Gonnerman J.*, Before the Law, The New Yorker, October 6, 2014, *In May 2010, a sixteen-year-old Kalief Browder was arrested in the Bronx, New York, on charges of stealing a backpack. The bail amount set at three thousand dollars was out of reach for his family, so he was sent to a juvenile facility.*

caused by many factors, such as: unqualified personnel, both professionally and psychologically; vulnerability of detainees, low level of control, weakness of existing regulations or their incompliance with human rights standards, absence of needs assessment standards in regards to persons with disabilities and/or weak commitment to its implementation. The existence of any of these reasons and/or their combination subsequently becomes the basis for torture and/or inhuman, degrading treatment or other forms of violence against persons with disabilities.

The Special Rapporteur on Torture clarifies in his report²⁷⁹ that it is inadmissible to deviate from this right. It focuses on Article 15 of the Convention on the Rights of Persons with Disabilities, which says that no one shall be subjected to “medical or scientific experimentation” without his or her free consent and provides that the States Parties “shall take all effective legislative, administrative, judicial or other measures” to ensure the protection of persons with disabilities from violence.²⁸⁰

One of the top priorities of prison management should be to protect persons with disabilities from torture. The Special Rapporteur, who received information on various forms of violence and ill-treatment against persons with disabilities (women, men, children) during his mandate, explained that such people are often the targets of abuse and ill-treatment due to their disabilities. The Special Rapporteur highlights the situation of persons with disabilities who have been deprived of their liberty for a long period of time and are placed in various institutions in isolation from the society, such as prisons, social care centres, children’s homes, and mental health institutions. The Special Rapporteur sees the risk that such a situation may continue throughout life

²⁷⁹ See *Juan E. Méndez*, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, summary, 1 February 2013, 1.

²⁸⁰ See the UN Convention on the Rights of Persons with Disabilities, 13 December 2006, art 15.

either against their will or without their free and informed consent. In these institutions, persons with disabilities are often subjected to “*unspeakable indignities, neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence.*”²⁸¹

The Special Rapporteur in his report expressed concern that such practices of torture and ill-treatment when perpetrated against persons with disabilities remain invisible or “justified” and are not recognized as torture or other cruel, inhuman or degrading treatment or punishment. He expressed hope that the Convention on the Rights of Persons with Disabilities and its Optional Protocol would provide a timely opportunity to review the antitorture framework in relation to persons with disabilities.

Degrading treatment of persons with disabilities may not be related to any type of physical violence. This may be an action taken against him or her by the prison administration, such as confiscating any necessary attributes (wheelchair, crutch, hearing aid, etc.) or leaving a person without assistance, who is unable to move around, get to food and hygienic amenities, change their clothes or take a shower independently.

²⁸¹ See *Nowak M.*, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment. Interim report on torture and other cruel, inhuman or degrading treatment or punishment, submitted in accordance with Assembly resolution 62/148, 2008, Summary, 2; as well as Mental Disability Rights International (MDRI) reports on Argentina (2007), Serbia (2007), Turkey (2005), Peru (2004), Uruguay (2004), Kosovo (2002), Mexico (2000), the Russian Federation (1999) and Hungary (1997), International Disability Rights Monitor regional report of Asia (2005); Mental Disability Advocacy Centre report on cage beds in Hungary, the Czech Republic, Slovakia and Slovenia (2003); Amnesty International reports on Bulgaria (2002) and Romania (2005; and Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness* (2003); Committee on the Rights of the Child, concluding observations on the initial report of the Democratic Republic of the Congo (CRC/C/15/Add.153, para. 50), on the initial report of Serbia (CRC/C/SRB/CO/1, paras. 35 and 36) and on the third periodic report of Colombia, (CRC/C/COL/CO/3, para. 50).

We come across such cases in many countries. In this case, the paper discusses an example of Russia. According to an expert from the Foundation “In Protection of the Rights of Prisoners”, on 6 January 2012, *“an officer of the security department of IK-11, E., rudely confiscated the items of personal hygiene and a wheelchair from S. and threatened him with reprisals if he continued to complain against the actions of the colony officers. Since S.’s lower limbs are paralyzed, the wheelchair is his only way of transportation, having lost it, S. was deprived of the elementary opportunity to visit the toilet room, which is obviously equated with the creation of torture and degrading conditions of detention and inhuman treatment.”*²⁸²

The placement of a wheelchair user in an unadapted prison, where, despite the unintentional action by government officials, he or she is unable to move around the facility for a long time and access the necessary services, shall be recognized as degrading treatment. Similar practices are found in countries where the law does not specify how the convicted persons with disabilities should serve their sentences, nor does it include instructions on the technical equipment of penitentiary facilities to accommodate a person with a physical disability.

According to various reports published about violence, one of the most painful issues is sexual violence, which is often used against persons with disabilities, especially women with disabilities, when they end up in the police stations or in prison. *“The exact amount of sexual violence that occurs in prison is difficult to ascertain, but the experiences of many inmates and empirical research suggest this is a frequent and serious problem.”*²⁸³

In connection with this issue, we find studies that confirm the facts

²⁸² See Radnaeva N., Expert of the Foundation, In Defense of the Rights of Prisoners, article - A wheelchair user in a colony: punishment or torture? 16 January 2012.

²⁸³ See Prison Life and Life After Prison, SAGE publication, 2015, 307.

of sexual violence against persons with disabilities in such institutions. For example, a study published by SAGE Publications surveyed 441 prison directors. The study explored the incidents of coerced and “consensual” sex. Prison directors were asked three questions: 1. What percentage of inmate sexual assaults did they believe they personally knew about; 2. In the past 12 months what percentage of the inmates in their institution did they believe have engaged in sexual activities with other inmates because of pressure and/or force? 3. What percentage of inmates in their institutions did they believe have engaged in sexual activities with other inmates consensually? The results of the study showed that prison directors *“do not believe a high percentage of the inmates in their facilities engage in sexual activity, and they believe that only a few experience rape.”*²⁸⁴

Protection from torture and inhuman, degrading treatment is a universal human right. Torture is the most egregious violation of human rights, a violation of their personal inviolability and dignity, and implies human feebleness when the victim is under the control of other persons. Persons with disabilities often find themselves in such situations when they are deprived of their liberty and are in prison. In a given context, an individual’s specific disability may make him or her more dependent and an easier target for ill-treatment.

In order to avoid torture or degrading treatment of prisoners with disabilities in the penitentiary system, and due to the high degree of vulnerability of persons with disabilities, the system should develop an action plan for protection against torture, violence and degrading treatment of persons with disabilities. The plan should include the admission, allocation and accommodation, provision of an adequate living environment, food, participation in programmes, and preparation for release. Special attention should be given to informing other prisoners

²⁸⁴ See *Prison Life and Life After Prison*, SAGE publication, 2015, 308.

about the treatment and communication with persons with disabilities.

It should be emphasised that the main priority in this field is training of the personnel. Thus, new approaches to improving the work with and treatment of prisoners with disabilities should be added to the existing standards. For this purpose, a separate chapter should be devoted in the training programme of the personnel to the specifics of treatment and work with persons with disabilities in the penitentiary system. All employees should undergo this training programme, so that they have some general knowledge of any kind of disability and acquire skills they must possess when working with persons with disabilities.

The next and foremost priority should be given to the effective implementation of the risk and needs assessment system in all penitentiary facilities. Accordingly, the prison authorities should develop special training modules for those employees of the penitentiary system who work directly with persons with disabilities and participate in risk and needs assessment and sentence planning upon their admission to a facility. The training programme should include both theoretical knowledge as well as the development of specialised skills.

Special training programmes should be developed for caretakers who work with persons with severe disabilities. The programme, in addition to developing skills, should include training on human rights and psychological aspects.

Finally, the list of priorities should include adaptation of all facilities in the penitentiary system to ensure full access to any services for persons with disabilities, so that the lack of such access does not lead to any inhuman, degrading treatment.

CHAPTER 15. MEDICAL SERVICES AND CARE FOR PERSONS WITH DISABILITIES IN PENITENTIARY FACILITIES

Adequate medical services and care for prisoners with disabilities is one of the most sensitive issues as they need these services, which vary depending on the type and degree of disability, more than other prisoners. Due to this peculiarity, prisoners with disabilities should have access to all medical services on an equal basis with other prisoners. In addition to accessibility, provision of medical care for persons with disabilities also requires the involvement of more specialists than is possible within prison medical care.

Medical services for persons with disabilities may include services such as: physiotherapy, speech and occupational therapy, treatment of sensory disabilities, as well as access to/availability of hearing aids, wheelchairs, crutches. The quality of such services in prisons often does not correspond to the medical services provided outside in the civil sector, which poses a threat to the condition of persons with disabilities. Equivalence of health care is a principle that applies to all prisoners, who are entitled to receive the same quality of medical care that is available in the community.²⁸⁵ However, this right is rarely realized in prisons, where usually health care services, and especially the provision of mental health care, are extremely inadequate.

The issue of medical care for persons with disabilities in the penitentiary system of Georgia was addressed by almost all respondents surveyed for this research. The respondents pointed out the problems such as: *“lack of adapted environment, lack of medical and rehabilitati-*

²⁸⁵ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 51.

*on services tailored to their needs.*²⁸⁶

Access to inadequate medical care for persons with disabilities is related to various negative external factors, which are indirectly related to their health status, such as: the risk of violence and ill-treatment, while a person with disabilities depends on another prisoner or prison personnel due to his or her condition. *“It is in the medical context that persons with disabilities often experience serious abuse and violations of their right to physical and mental integrity, notably in relation to experimentation or treatments directed to correct and alleviate particular impairments.”*²⁸⁷

Closely related to the issue of medical care is also the lack of the institution of a caretaker. Like many countries in the world, it does not exist in the practice of the Georgian penitentiary system, except for the medical facilities of the penitentiary system. When reviewing the example of Georgia, we can cite the report of the National Preventive Mechanism of the Public Defender’s Office, which emphasises the problem of absence of caretakers and assistants. According to the report, the absence of such services is, on the one hand, vital to the daily lives of persons with disabilities and, on the other hand, tantamount to human rights abuses and often degrading treatment for those who care for their cellmates with disabilities against their consent and without having such obligation. The report notes that most facilities do not have caretakers and it is not established who and how should assist the individuals with

²⁸⁶ A representative from the Public Defender’s Office; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

²⁸⁷ See *Nowak M.*, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Interim report on torture and other cruel, inhuman or degrading treatment or punishment, submitted in accordance with Assembly resolution 63/175, 2008, paragraph 57, 13.

disabilities. It explains that only cellmates help the prisoners who are bed-ridden. This vicious practice is described in the report as an irrational solution to the problem. It is obvious that the practice described in the report leads to the dependence of prisoners with disabilities on the will of their cellmates to help them meet their physiological and other needs. The report explains that *“such dependence exposes them to undesirable subordination and creates a risk of manipulation that can easily escalate into oppression and violence.”*²⁸⁸

In its report reviewing the results of the visit to Italy, the Committee for the Prevention of Torture (CPT) cites a similar case and explains that there is a special unit for the persons with physical disabilities where most of the prisoners were accommodated in a double room together with another prisoner who were selected by the management to act as permanent caretaker. It should be emphasized that the caretaker receives appropriate remuneration for this work. The Committee welcomes such practice, but also criticises the fact that these prisoners have not received any training for the specific tasks they were supposed to perform as a caretaker and stresses that fellow inmates should be involved in the care of persons with disabilities with caution, all the more so when the prisoners concerned require more specialised care.²⁸⁹ The need to use this practice as one of the alternative forms is confirmed by the specific case described in the report of the Public Defender, when in one of the penitentiary facilities the administration did not assign a caretaker for the person who, accord-

²⁸⁸ See Special Report of the National Preventive Mechanism of the Public Defender’s Office: Situation of Persons with Disabilities in Penitentiary Facilities, Temporary Detention Isolators and Involuntary Psychiatric Treatment Facilities, 2014, 17.

²⁸⁹ See Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 25 May 2012, 50/51.

ing to the inmates of the cell, had severe incontinence (defecation and urination). The person was not able to bathe independently or maintain any other hygiene conditions.²⁹⁰

The institution of a caretaker was widely discussed by a respondent, who explained the obligation of the prison administration in regard to care and treatment of persons with disabilities. In addition, the respondent expressed an opinion on how the problem of the caretaker can be solved: *“prison administration is obliged to provide an assistant for such people. They should pay salary for this job, which may be performed by another prisoner, if desired. Otherwise, a cellmate or another prisoner should not be obliged to assist and should not rebuke the person with disabilities for assistance.”*²⁹¹ Here the respondent focuses on ways to avoid such an important problem as discrimination on the grounds of disability, as persons with disabilities inevitably need the presence of a support person to meet their daily basic needs. And when these services are not provided by the state, prisoners with disabilities become dependent on their cellmates or, in extreme cases, prison staff who might abuse this dependency to their advantage.

A clear example of inadequate medical care, inadequate medical environment and inadequate living conditions, as well as the absence of a caretaker institute, is the case of the European Court of Human Rights – *Arutyunyan v. Russia*, according to which, the existing daily problems became the reason for denial of medical care and other services for the convicted person, which could have been extremely harmful to his life

²⁹⁰ See Special Report of the National Preventive Mechanism of the Public Defender’s Office: Situation of Persons with Disabilities in Penitentiary Facilities, Temporary Detention Isolators and Involuntary Psychiatric Treatment Facilities, 2014, 17.

²⁹¹ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

and health. However, considering the above external factors, it is possible to avoid similar cases when the right and rational decisions are made. The Court found a violation of Article 3 of the Convention as the domestic authorities had failed to treat the applicant in a safe and appropriate manner consistent with his disability.²⁹²

The handbook for prisoners with special needs describes that prisoners with disabilities may have particular health care needs related to their disability. It is also clarified that the prison administration should create the conditions to address mental health issues, as, according to the handbook, prisoners with disabilities are also likely to be in need of mental health care in penitentiary facilities. It also refers to people with certain types of disabilities who often need help with mental health, such as people with sensory disabilities (blind, deaf, with hearing impairments, etc.) or prisoners with communication problems – *“conditions which are isolating in themselves and more so in prisons, where they can be victims of psychological abuse and bullying. The situation may be aggravated by the lack of access prisoners with disabilities may have to mental health care and counselling programmes.”*²⁹³

When discussing the example of Georgia, the issue of mental health care should be considered in the list of problems, first of all because the penitentiary facilities, except for medical facility and a number of

²⁹² See *Arutyunyan v. Russia*, 10 January 2012, The case originated in an application (no. 48977/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Armen Vladimirovich Arutyunyan (“the applicant”), on 6 August 2009. Court decision: there has been a violation of Article 3 of the Convention on account of the conditions of the applicant’s detention and Article 5 § 1 of the Convention on account of the applicant’s detention from 24 to 28 January 2010.

²⁹³ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 46.

facilities, do not have a professional psychiatrist and on the other hand, many surveyed respondents stressed this issue and pointed out that with traumas that can even lead to a mental disorder. *“People are coming out of prison with psychological traumas, which can even lead to mental disorders. For example, one boy who was arrested in a subway argument was released from prison with a mental disorder.”*²⁹⁴

Numerous international instruments and recommendations include the requirement that the penitentiary system should have the equivalent medical services as the civil sector, on the basis of which it will be possible to prevent the inadequate condition of prisoners with disabilities. Also, the system should effectively cooperate with service providers, community medical services, to provide the most appropriate services related to the health of persons with disabilities.

In order to provide appropriate medical services to prisoners with disabilities, the following would be appropriate:

- First of all, disability should be considered not as a medical but as a social model.²⁹⁵ Therefore, it should be prohibited to place a person with disabilities in a medical unit or to transfer him or her to a medical institution and to allocate persons with disabilities in one facility without the presence of medical indications, simply because they are persons with disabilities.
- Accordingly, medical personnel should be instructed to visit a PWD

²⁹⁴ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <<https://www2.le.ac.uk/library/help/referencing/footnote>>, [15.11.2019].

²⁹⁵ See *Ionatamishvili R.*, “Today there are two approaches to disability in the world – traditional (medical) and modern (social) approaches. The first model is mainly based on the traditions that society has had towards disabilities and persons with disabilities since ancient times, while the modern vision significantly distinguishes the diagnosis from disability and focuses on changing the environment and public opinion”, *History of Disability*, 2007, 14.

at least once a day, in any facility, whether medical or otherwise.

- Medical personnel shall be involved as a permanent member in the team carrying out needs assessment for persons with disabilities.
- To provide access to medical care for persons with disabilities on an equal basis with any other convicted individuals. Thus, the placement of medical facilities in hard-to-reach areas without adaptation should be prohibited. For people with disabilities who use a wheelchair, are bed-ridden or have difficulty moving around, call buttons should be installed in an accessible place to enable them to call medical personnel independently.

CHAPTER 16. PRISON REGIME AND DISCIPLINARY MEASURES

16.1 Use of disciplinary measures against persons with disabilities

Due to the fact that persons with disabilities in prison are unable to use the daily services provided to other prisoners in the facility, lack of proper medical care, penitentiary stress, which a person with disabilities experiences with particular severity, may lead to violation of the prison regime by him or her. This, on the one hand, might be provoked by his or her condition and not necessarily intended to disrupt the regime and on the other hand, it may be an expression of aggression against discriminatory treatment or condition.

There are regulatory mechanisms in penitentiary facilities that are used in case of disciplinary misconduct by prisoners. These rules automatically apply to all persons with disabilities who are placed in the given facility. Considering that the regulatory mechanisms apply equally to all prisoners, a person with a disability who violates the discipline cannot be an exception solely on the basis of his or her condition. Impunity can further complicate the situation in the facility and the behaviour of prisoners. Therefore, the rules provided by the legislation should be applied equally. However, in the case of persons with disabilities, there should be special review mechanisms, which, above all, involve professionals. The use of disciplinary measures against prisoners with disabilities should be considered with caution, as changing and further deteriorating daily living conditions can adversely affect any person but can have devastating impact on prisoners with disabilities. Regardless the type of disability of the prisoner, the use of disciplinary sanctions, especially when it is associated with changes in daily living conditions,

adversely affects both the mental and physical state of the PWD. Thus, the decision on this issue should be made by a commission, with participation of specialists.

According to a report by the United Nations Special Rapporteur on Torture, Juan Mendez, it shall be prohibited to detain a prisoner in solitary confinement for more than 15 days. The report states that “*prolonged seclusion and restraint may constitute torture and ill-treatment*” and inflict psychological pain and suffering, which is in violation of the terms of the Convention.²⁹⁶

When the prison administration decides to use a disciplinary measure and to select its types, it should be aware exactly what kind of harm this restriction may cause to the person with a disability. The administration, the commission, or the individual making the decision must first and foremost be professionally trained to determine in advance the extent of the potential harm that, for example, disciplinary sanction or solitary confinement and alteration of living conditions may cause. Otherwise, the prison administration must establish the mandatory participation of a specialist in the decision-making process. Professor Murdoch explains that restraints should not be applied other than in exceptional circumstances, when no other options are available, for example, “*in order to prevent the prisoner from inflicting injuries to others or themselves, or to prevent escape during a transfer*”, where the use of restraints is legitimate in principle.²⁹⁷ However, he emphasises the essential requirements that exist when applying such restrictions. Firstly, the manner in which they are applied must not be degrading or

²⁹⁶ See Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 1 February, 2013.

²⁹⁷ See Murdoch J., Professor of Public Law, University of Glasgow, School of Law, United Kingdom, Jiricka V., Head Psychologist, Prison Service, Czech Republic, A handbook for prison staff with focus on the prevention of ill-treatment in prison, Council of Europe, April 2016, 68.

painful (for example, handcuffing a person tighter than necessary) and secondly, proper recording of the use of restraints should be mandatory, which will allow for proper scrutiny of whether the use of restraints was appropriate.

In the legislation and prison regulations of any country, we find an explanation that the disciplinary sanction imposed on a prisoner should be proportionate with the violation committed by him or her. This provision is of particular importance for persons with disabilities. Here, if we follow Murdoch's explanation, first of all, vulnerabilities need to be taken into account, for example, in the case of sick or injured detainees, older prisoners or persons with disabilities. In addition, it explains the following important approaches to persons with disabilities that: 1. the method of restraint chosen must be proportionate to the situation; 2. restraints must never be used on a discriminatory basis... regardless of the existence of explicit procedures.²⁹⁸

During the disciplinary process, prisoners with disabilities, like all other prisoners, in addition to being able to defend themselves, need to be provided with the necessary assistance so that they can fully participate in the process. In particular, the prison administrations should provide the assistance of a sign language interpreter for those with hearing or speech impairment, etc.

In addition to disciplinary measures, it is also important to have emergency procedures and an appropriate special plan to ensure smooth and safe evacuation and transfer prisoners with disabilities to safe and secure conditions. Georgia and Kyrgyzstan can be cited as examples of negative practices in this regard, because the legislation does not provide for special plans for the safety and evacuation of persons

²⁹⁸ See *Murdoch J.*, Professor of Public Law, University of Glasgow, School of Law, United Kingdom, *Jiricka V.*, Head Psychologist, Prison Service, Czech Republic, *A handbook for prison staff with focus on the prevention of ill-treatment in prison*, Council of Europe, April 2016, 68.

with disabilities. In particular, the UK Prison Service Order explains that *“it will be necessary to make specific plans for the evacuation of disabled prisoners during an emergency, particularly those who are hearing impaired or having difficulty moving quickly. These will need to be tailored to the particular circumstances of the individual prisoners and made known to the appropriate staff.”*²⁹⁹

In my opinion, a person with a disability does not have the right to disobey the internal regulations of the facility if he or she, due to his or her physical condition, is able to follow the rules established in the facility. Also, a person with a disability cannot be given a privilege solely due to his or her condition, so that no disciplinary action is taken against him or her, for a violation for which other prisoners are or may be punished.

In addition to penitentiary facilities, a study conducted in Georgia in 2019 also talks about the evacuation plan in the judicial system. According to the study the alarm system in the court buildings and security norms do not take into account the needs of persons with disabilities. Court staff do not have special evacuation equipment and knowledge for the evacuation of persons with disabilities.³⁰⁰ The existence of a special evacuation plan is of high importance in the practice of any institution where a person with a disability may end up for any period of time. The special importance of such a plan is emphasised by the physical condition of the PWD, when he or she does not have the ability to perform the actions that would be necessary for his or her safety.

To avoid this and other types of confusions and to maintain the effectiveness of the system of application of disciplinary rules in the peni-

²⁹⁹ See Prison service Order, PSO 2855 - The Management of Prisoners with Physical disabilities, article 11. 3.2.4. Date of Initial Issue 20/12/99, Date of Update: 13/10/03.

³⁰⁰ See *Nadiradze K., Arganashvili A., Abashidze A., Gochiashvili N., Lord J.*, Evaluation on Accessibility to Court Buildings for Persons with Disabilities, 2019, 13-14.

tentiary system, I consider it expedient to introduce new, more flexible approaches. In particular, the administration should take the following steps:

- Develop restrictions that will be applied to a person with a disability when applying a disciplinary measure, given the type and complexity of his or her disability.
- Changing living conditions as a disciplinary measure against a person with a disability, such as being transferred to a disciplinary room or a cell, should be used only as a last resort. The use of this type of measure should not cause any kind of physical or mental harm to a person with a disability.
- The law should stipulate the frequency of visits by medical personnel, social workers and psychologists in case of placement of a person with disabilities in a disciplinary or solitary confinement cell.
- The disciplinary measures against a person with disabilities should be applied only with the participation of an employee who has undergone appropriate training.
- Penitentiary facilities should develop a plan for working with and evacuating persons with disabilities in states of emergency, which will minimize the risk of ill-treatment of persons with disabilities in such cases.

16.2. Placement of persons with disabilities in solitary confinement

What is solitary confinement? It is, first of all, a decision to place a prisoner separately from other prisoners. It can be used based on different grounds, for example, according to one of the CPT reports, such grounds may be *“a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or*

*the protection of the prisoner concerned.*³⁰¹

From our practical experience, we can mention that there are cases when the administration of penitentiary facilities makes a decision to place a person with disabilities separately and/or in solitary confinement and relates this decision to the safety of the prisoner or other needs. Solitary confinement is particularly commonly used against the prisoners with mental health problems, whose accommodation with other prisoners may be connected to difficulties due to their condition, however, solitary confinement is also used against prisoners with limited mobility or physical disabilities. For example, when due to lack of adequate living conditions, the administration places them in solitary confinement and often justifies this by the interests of the same prisoners, the necessary security measures, and so on.

We also find the practice of placing persons with disabilities in solitary confinement in Georgia. The 2014 report of the National Preventive Mechanism reflects a number of such cases, for example, when a person with a disability entered facility N3 on 17 September 2014 and was placed in solitary confinement three times (once for 4 days, once for 15 days and once during the NPM visit, the order indicated 10 days). The report explains why solitary confinement should not be used against persons with disabilities, indicating that, according to the General Comment of the United Nations Human Rights Committee (CCPR, General Comment 20/44, April 3, 1992), “*prolonged solitary confinement of the detained or imprisoned person*” may amount to torture or cruel, inhuman or degrading treatment.³⁰² The Public Defender also draws atten-

³⁰¹ See Solitary confinement of prisoners, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 21st General Report of the CPT, published in 2011, 1.

³⁰² See Special Report of the National Preventive Mechanism of the Public Defender of Georgia on the State of Rights of Persons with Disabilities in Prisons, in Institutions for Involuntary and Forced Psychiatric Treatment – Analysis of the

tion to the conclusion of the UN Subcommittee on Prevention of Torture (SPT), which says that solitary confinement should not be used in the case of minors or the persons with mental disabilities.

Placement in solitary confinement has a depressing effect on any prisoner, regardless of his or her condition, and when it comes to a person with a disability whose physical condition is intensified by the stress and vulnerability caused from detention, solitary confinement is particularly severe.

The administrations of penitentiary facilities often come up with a number of arguments that the placement of a person in solitary confinement was justified, for example, due to his or her safety, health condition or the interests of other prisoners. In some cases, this may even be justified if it is done in a reasonable, short-term manner and not against any person, however, these arguments cannot be taken as a clear justification. The Special Rapporteur on Torture refers to such arguments when he notes that *“persons with disabilities are often held in seclusion or solitary confinement as a form of control or medical treatment, although this cannot be justified for therapeutic reasons, or as a form of punishment.”*³⁰³

As regards to the solitary confinement or isolation, the European Committee for the Prevention of Torture (CPT) listed principles,³⁰⁴ on which the application of such measures should be based. Namely:

a. Proportionate: linked to actual or potential harm to be addressed, with the stronger the reason for confinement the longer it continues;

Fulfilment of the Recommendations, 2014, 10 (the present report is the latest special report on the state of persons with disabilities in the penitentiary system).

³⁰³ See Human Rights Committee, concluding observations on the second periodic report of Slovakia (CCPR/CO/78/SVK), para 13.

³⁰⁴ See CPT standards, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2011, 30-31.

b. Lawful: provision must be made in domestic law for each kind of solitary confinement which is permitted in a country, and this provision must be reasonable and communicated in a comprehensible form to everyone who may be subject to it;

c. Accountable: full records should be maintained of all decisions and these records should evidence all the factors which have been taken into account and the information on which they were based;

d. Necessary: The restrictions used must be a last resort and necessary to obtain a particular result and it must be substantiated that this result can only be achieved by using such a measure;

e. Non-discriminatory: not only must all relevant matters be taken into account in deciding to impose solitary confinement in accordance with the standards set by law, but care must also be taken to ensure that irrelevant matters are not taken into account.

The CPT considers that the maximum period of solitary confinement should be no higher than 14 days for a given offence, and for juveniles it should preferably be lower. The Committee argues that solitary confinement may be *“used as a disciplinary punishment only in exceptional cases and as a last resort, and for the shortest possible period of time... Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period.”*³⁰⁵

The negative impact of solitary confinement on the mental and physical condition of the prisoner, in addition to his or her isolation, is also caused by the conditions in which they are placed. Solitary cells are often located fully or partly underground and their space is much smaller than other cells. Consequently, due to the size and territorial

³⁰⁵ See *Murdoch J.*, Professor of Public Law, University of Glasgow, School of Law, United Kingdom, *Jiricka V.*, Head Psychologist, Prison Service, Czech Republic, A handbook for prison staff with focus on the prevention of ill-treatment in prison, Council of Europe, April 2016, 70.

location of the cell, daylight and air often do not reach it at all. Such cells either have no window at all or it is very small in size. Thus, being in such conditions has a devastating effect on any prisoner, including persons with disabilities. Lack of ventilation and heater or its inadequate quality, depending on the season, aggravates the health status of a person with disabilities and exacerbates the degree of disability.

Solitary confinement is associated with the physical inactivity of a person with disabilities, because due to the small size and conditions of the cell, he or she cannot move inside the cell, and has only one hour outside the cell (Law of Georgia – Imprisonment Code, Article 88), and that is if the building is adapted for wheelchair users or persons with visual impairments, if there is an institution of a caretaker. In similar cases, the person is deprived of assistance from other prisoners. In the absence of such circumstances, the prisoner may be locked in a cell for the entire period of solitary confinement.

With regard to procedures for the use of solitary confinement, the Committee for the Prevention of Torture focuses on the conditions in the cells in which persons are to be placed during solitary confinement. According to the Committee, prisoners undergoing solitary confinement should be accommodated in decent conditions. According to it, the measure should involve the minimum restrictions on prisoners consistent with its objective and the prisoner's behaviour. The Committee also stresses the role of the personnel, whose strenuous efforts should be directed at resolving the underlying issues that led to the person being placed in solitary confinement. Thus, we must conclude that, in itself, the use of this type of punishment should not mean the problem is solved, but rather it should be used as a measure to solve the problem. To this end, the Committee recommends that *“regimes in solitary confinement should be as positive as possible and directed at addressing the factors which have made the measure necessary. In addition, legal and practical safeguards need to be built into decision-making processes*

*in relation to the imposition and review of solitary confinement.*³⁰⁶

In view of the above reasoning, in order to avoid the negative consequences of solitary confinement for persons with disabilities, it would be appropriate by law to prohibit the isolation of persons with disabilities on the basis of their mental or physical condition. This prohibition will be a barrier for the prison administration not to isolate a person with a disability due to the non-adaptation of the premises or in the “interests of other prisoners”. Since isolation complicates the situation of persons with disabilities both physically and psychologically, thus, a package of legislative changes should be developed that prohibits isolation of PWDs from the general mass.

Isolation can be allowed only for a short period of time, under the supervision of a doctor, based on the safety requirements of the person, by the decision of the head of the facility, following all legal procedures and full involvement of the person with disabilities in the decision-making process.

If necessary, as an alternative to isolating a person with a disability, the person should be transferred to any other facility, including for security purposes.

³⁰⁶ See Solitary confinement of prisoners, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 21st General Report of the CPT, published in 2011, 8.

CHAPTER 17. ACCESS TO REHABILITATION PROGRAMMES AND PSYCHOLOGIST SERVICES FOR PERSONS WITH DISABILITIES

Rehabilitation and resocialisation of convicted individuals and support of their return to society are the main purposes of the penitentiary system, which should serve as the basis for the activities of the system from the admission of a person to their release, and later coordinated by the probation service. During the interview the respondents also focused on the role of rehabilitation. One of the respondents explained that *“the main problem remains the lack of access to rehabilitation programmes for persons with disabilities and lack of access to information for the blind people. A person with psychosocial disabilities who is in remission while in prison puts himself or herself and others at risk.”*³⁰⁷ The respondent also addressed the issue of the lack of rehabilitation programmes, which complicates both the physical and mental condition of PWDs.

Why is the number of people convicted of reoffending high in the penitentiary system? There may be many different answers to the question, but it is clear that this result largely depends on the rehabilitation programmes in prison and their accessibility for all convicted individuals. This is especially true for persons with disabilities, for whom such programmes might often be inaccessible, as they are mainly designed for the majority of those in prison, for example, young prisoners who do not have any additional needs. As for persons with disabilities, they are often unable to participate in programmes due to their physical disabilities or participate only in programmes specifically created for them,

³⁰⁷ A PWD; The interviews and survey were conducted by Z. Khasia as part of the research in Tbilisi, in April 2017. The interview used in the research was in accordance with the standards set by the University of Leicester available at: <https://www2.le.ac.uk/library/help/referencing/footnote>, [15.11.2019].

which are only a small part of the programmes that need to be provided.

In the case of persons with disabilities, the particular importance of participating in rehabilitation programmes is due to the fact that in addition to the stress of detention/imprisonment of persons with disabilities, which is equally characteristic of all detainees or prisoners, especially those detained for the first time in closed institutions, is stress caused by mental and/or physical condition and disability. Their participation in various programmes is considered to be one of the ways to overcome this stress.

In general, the steps taken in recent years in Georgia in the direction of programmes should be noted. For example, the Action Plan of the Government of Georgia for 2016-2017 focuses on the introduction of habilitation/rehabilitation programmes tailored to the needs of persons with disabilities. The indicator is set to be the increased number of accused/convicted persons with disabilities participating in psycho-rehabilitation and rehabilitation programmes adapted for persons with disabilities.³⁰⁸ The same approaches are further reinforced in the Action Plan for 2018-2020, which focuses on risk and needs assessment, training of personnel on the specifics of working with PWDs, preparing PWDs for release, and supporting their reintegration into the community after release.³⁰⁹

In the report on the implementation of the plan, the penitentiary system explains that: at this stage, the habilitation/rehabilitation of beneficiaries with special needs is being carried out through an individual approach. Individual approach towards juveniles has been introduced

³⁰⁸ See Human Rights Action Plan of the Government of Georgia for 2016-2017, 4.6.10.1, introduction of habilitation/rehabilitation programmes adapted to the needs of PWDs, 2016.

³⁰⁹ See Human Rights Action Plan of the Government of Georgia for 2018-2020, task 4.4, rehabilitation-resocialisation of accused/convicted persons and former convicted persons, 2018.

since 2009, and towards adults this process started in 2015. Given that the inclusion will take place in stages, preference will initially be given to people with certain disabilities, including those with special needs, even if they do not have disability status. For example, in a juvenile facility, a person was engaged in an individual approach and the habilitation was carried out by social workers and a psychologist through a special programme. In one of the facilities where the approach was being introduced at a given stage, preference was given to a person with sensory disability. Within the plan, development programmes and various types of support activities were designed. In 2015 audiobooks were purchased for accused/convicted persons with disabilities in all institutions.³¹⁰

Since convicted persons with disabilities cannot be identified,³¹¹ there is neither a list of special requirements, at this stage and, consequently, nor rehabilitation programmes adapted for them in the penitentiary system. People with special needs are not distinguished when involved in rehabilitation programmes. They are adapted to the environment and the specialists adapted to their needs on the spot.

The next aspect of rehabilitation programmes that the Action Plan focuses on is *“development of a social model³¹² for accused/convicted persons with disabilities and adoption of a standard of care for accused/convicted persons with disabilities based on a psychosocial model.”* The report of the penitentiary system clarifies that: with the involvement of the Social Service Agency and external experts, standards for the treatment of accused/convicted persons with disabilities in penitentiary facilities have been developed, which includes the following: 1. Identification of the target group; 2. Individual approach. 3. Social inclusion; 4.

³¹⁰ Information is received from the Ministry of Justice through the Department of Public International Law in September 2017.

³¹¹ See Human Rights Action Plan of the Government of Georgia for 2016-2017, 4.6.8.2.

³¹² See Policymakers’ Guide to Making Inclusive Decisions, British Council 2014, 10.,

Health care; 5. Psychosocial rehabilitation; 6. Risk classification, placement in the facility; 7. Safety and protection from violence; 8. Protection of confidentiality; 9. Competence and human resources; 10. Preparing for release.

For example, if we talk about the practice in Georgia, in terms of the involvement of prisoners in workouts, sports and other activities and the results, which are well described in the legislation governing the activities of the penitentiary system, international organisations advise the states to address the needs of persons with disabilities, which is not properly addressed in the legislation. The Committee for the Prevention of Torture in its report calls upon the Georgian authorities to take decisive steps to ensure a variety of programmes for all categories of prisoners³¹³ and defines the objectives of why such programmes should be introduced. Develop the programmes of activities with the aim *“to ensure that prisoners are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activities of a varied nature (work, education, sport, etc.) tailored to the needs of each category of prisoners (adult remand or sentenced prisoners, inmates serving life sentences, female prisoners, juvenile, etc.)”*³¹⁴

If we look at the international practice, we will see that, according to the legislation regulating the penitentiary system, the participation of prisoners in rehabilitation programmes and the support of their return as full members of society is the main goal of the penitentiary system of any country.

In our opinion, countries can be divided into groups in terms of implementation of rehabilitation programmes for convicted individuals

³¹³ Under “all categories of prisoners” the report means the convicted, as well as accused individuals on remand.

³¹⁴ See Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 23 November, 2012, 14.

in practice:

First – countries where rehabilitation of convicted individuals and rehabilitation programmes are only part of the legislation and are not implemented in practice. The whole effort of the system is aimed at ensuring that the convicted individuals are locked up (to avoid prison escapes, mass rallies, etc.) and keep them without any incidents until their release. The practice of post-Soviet states shows that the main thing is to “uphold the regime”. Systems with Soviet practice are characterized by so called operative service that provides information to the Ministry of Interior and the penitentiary system.

The second type of countries understand the role and importance of rehabilitation programmes and develop such programmes, but it is all facade and does not quite serve the real purpose – rehabilitation of convicted individuals. The main purpose of the systems of these countries is the priorities mentioned in the previous paragraph (access to rehabilitation programmes and psychologist services), however, such programmes are in the form of a PR campaign to increase the prestige of the system and cooperate with international organisations to cover the real face of the system.

The third type of countries have the above programmes introduced, but they are not specifically designed and available for people with special needs, especially for persons with disabilities.

Finally, countries where rehabilitation of prisoners is a priority within the system and, therefore, they concentrate on persons with disabilities to participate in programmes. In these countries, the relevant legal act stipulates that programmes must be reasonably adjusted so that persons with disabilities can participate. It is also important to consider communication needs.³¹⁵ For examples, those prisoners who have

³¹⁵ See Prison service Order, PSO 2855 - The Management of Prisoners with Physical disabilities, article 11, 3.2.4, Date of Initial Issue 20/12/99, Date of Update: 13/10/03.

hearing impairments may need the help of a sign language interpreter to participate effectively in discussions.

In general, in addition to designing programmes, the involvement of persons with disabilities in such programmes is also associated with difficulties, as it requires flexibility and high professionalism on the part of the penitentiary system. In particular, we need to consider the special cases where during the course of the programmes it may be necessary to change certain activities in which specific individuals participate on the recommendation of a doctor. In other cases, sports equipment and a gym should be available for prisoners with disabilities. Some prisons have special sports sessions for older prisoners or prisoners with mental health problems. It should be noted that prison gyms should have trained staff who can provide advice to a person with a disability so that their involvement in the programme does not complicate their disability.

Participation in these types of activities is an important factor for the stability of both the physical and psychological condition of persons with disabilities. Based on the British practice, the Prison Reform Trust³¹⁶ explains that penitentiary facilities “*must take reasonable steps to ensure that disabled prisoners have access to physical education facilities.*”³¹⁷

Participation in educational and employment programmes is also important in the rehabilitation process. On the one hand, there are frequent cases when persons with disabilities belong to socially vulnerable groups and, before their arrest, did not have access to normal educational and vocational training programmes, which makes it especially important for them to be involved in relevant programmes as needed.

³¹⁶ The Prison Reform Trust is an independent UK charity, working to create a just, humane and effective penal system.

³¹⁷ See Information book for prisoners with a disability, Offender Health and Prison Reform Trust 2009, Prison Reform Trust office (020 7251 5070 or PRT, Freepost, ND6125, London EC1B 1PN), 3.3.3.

On the other hand, persons with disabilities, who have learning and cognitive problems, should be provided with appropriate training programmes in order to enable them to adapt to the specifics and regime of the facility, etc. In order to properly select the appropriate programmes, the identification and planning must be an integral part of the admission process of persons with disabilities to the system. *“Each prisoner should have their learning needs assessed on reception so that their individual learning plan can be drawn up highlighting any special requirements.”*³¹⁸ Prison administrations will need to assess whether the educational facilities and programmes are accessible to prisoners with disabilities. This may be necessary to change the location of classes or to change the teaching approach to allow their participation. The teaching materials should be appropriate and available for individuals with hearing or visual impairments or those who have learning difficulties. Human resources such as a sign language interpreter may need to be considered for communication. Penitentiary facilities *“must take positive steps to ensure that disabled prisoners have access to education facilities and programmes and that their communication needs are met.”*³¹⁹

The library should also be accessible to all prisoners. If it is physically inaccessible, the administration should provide alternative means of service.

One of the important components of rehabilitation programmes should be the participation of persons with disabilities in training programmes on preparation for release. Lack of such opportunities can significantly lengthen the period of detention, as decision-making units and/or individuals pay attention to the fact that the person has not un-

³¹⁸ See Prison service Order, PSO 2855 - The Management of Prisoners with Physical disabilities, article 11, 3.3.1, Date of Initial Issue 20/12/99, Date of Update: 13/10/03.

³¹⁹ Ibid.

dergone programmes that should show their readiness to be released.³²⁰

Another and one of the most painful issues would be the employment programmes and programmes to study/develop the job skills, where there is a discriminatory approach towards persons with disabilities. Persons with disabilities are denied for the very reason of their disabilities, they either do not participate in such programmes at all, or participate in programmes that, regardless their preferences, are selected by prison administration. The prison facilities *“must take reasonable steps to ensure that disabled prisoners have access to the full range of employment opportunities available.”*³²¹ There are often cases when the administration unilaterally decides that this or that prisoner cannot work for the reason that he or she has a disability. *“Access to work should not be denied solely on the basis of a prisoner’s disability.”*³²² The information book for prisoners with disabilities explains that where there is a possibility for prisoners to work, prisoners with disabilities should be given equal access to that opportunity. If such an opportunity is not already available, the prison administration should consider providing work or purposeful activity by alternative means.

Given that prisoners with disabilities are often from economically disadvantaged families, or they have no contact with families, and their need is much greater than of other prisoners, their participation in employment programmes can have a significant impact on their physical and psychological wellbeing. First of all, restricting access to work

³²⁰ See *Russell M. and Stewart J.*, Disablement, Prison and Historical Segregation, Monthly review, 15 July 2001, <<https://monthlyreview.org/2001/07/01/disablement-prison-and-historical-segregation>>, [15.11.2019].

³²¹ See Prison service Order, PSO 2855 - The Management of Prisoners with Physical disabilities, article 11, 3.3.2.

³²² See Information book for prisoners with a disability, Offender Health and Prison Reform Trust 2009, Prison Reform Trust office (020 7251 5070 or PRT, Freepost, ND6125, London EC1B 1PN).

for persons with disabilities should be prohibited only on the grounds that the person has a disability. If suitable work is not already available, the penitentiary facility should consider providing work by alternative means. *“This may involve offering work of a different nature from that which has been traditionally available.”*³²³

Due to the high need, we come to the conclusion that a systematic and sustainable system of rehabilitation of prisoners with disabilities should be established in the penitentiary system, for which rehabilitation programmes should be developed or programmes effective in different countries of the world should be adapted. The priority should be given to introducing programmes for persons with disabilities that are accessible to other prisoners. In penitentiary facilities where such programmes do not exist, the introduction of programmes should be included in the system development strategy.

In addition to common programmes, the penitentiary system should develop and implement programmes that include the regulation of various stages of serving the sentence by persons with disabilities, for example:

- Primary programmes for newly admitted prisoners with disabilities, which will be aimed at adapting a person to a penitentiary facility and overcoming penitentiary stress, which is particularly acute in persons with disabilities.
- Programmes for wheelchair users and other persons with physical disabilities, which include developing skills such as: self-care, moving around the prison area, adapting to the environment, getting used to prisoners and personnel, and communicating with them.
- Given that persons with disabilities are often from socially vulnerable families and have not had access to adequate education, the sys-

³²³ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 52.

tem should develop programmes and training in both general and secondary education as well as personal development, stress management and communication skills. Attention should also be paid to the skills they already have, and which will help them develop new skills for successful reintegration into society after release.

- A standard of continuous programme should be introduced so that a person can continue to participate in it after being subject to probation and full release from punishment.
- The penitentiary system should establish a coordination council that will ensure the inclusion of persons with disabilities in programmes and their continuity. The council should include government agencies, NGOs, and academic institutions with the experience working with persons with disabilities.

CHAPTER 18. SPECIAL CHALLENGES AND PROTECTION NEEDS OF PERSONS WITH DISABILITIES

Disability is a circumstance that gives a person the status of a vulnerable person while in prison, which puts persons with disabilities at high risk of their rights being violated by both the administration and other prisoners. In addition to some of the main problems that are common to all persons with disabilities, prisoners with disabilities also have special needs that depend on the nature of their disabilities. Due to their vulnerable physical condition, prisoners with disabilities face abuse and violence from personnel or other prisoners. For example, *“guards are known to confiscate from inmates with disabilities whatever will be most acutely missed: wheelchairs, walkers, crutches, braces, hearing aids, glasses [...] and medications.”*³²⁴

In institutions where there is no institute of a caretaker, or its appointment depends on a lengthy status determination procedure, prisoners with disabilities rely on the goodwill of other prisoners who are under no obligation to assist any other person, including taking care of a person with a disability, which can be very difficult, due to the degree of the disability. Prisoners who require assistance with daily activities such as eating, going to the bathroom, getting dressed, bathing, are more likely to be neglected. This can also lead to more serious consequences – in the interests of other prisoners, to transfer PWDs to solitary confinement in isolation, which in itself can lead to deplorable consequences. Examples of isolation of prisoners with disabilities due to their disability are often found in the practice of post-Soviet states.

Putting a person with a disability in the above situation can lead to discrimination and a gross violation of his or her rights. In particular, first

³²⁴ See *Russell M. and Stewart J.*, *Disablement, Prison and Historical Segregation*, Monthly review, 15 July 2001, <<https://monthlyreview.org/2001/07/01/disablement-prison-and-historical-segregation>>, [15.11.2019].

of all, they become dependent on the prisoners who take care of them and are compelled to pay them if they have the resources to do so. In the absence of such resources, in exchange for help received, persons with disabilities may be forced to act as instructed by their caretakers and do whatever they ask for, which does not exclude sexual “requests”. On the other hand, this situation often leads to obvious discrimination, as prisoners with disabilities may be subjected to psychological abuse, such as verbal abuse, ridicule, and so on. Particular emphasis should be placed on the situation of women and juvenile prisoners who, due to their high level of vulnerability, may become victims of manipulation, violence, sexual assault and rape.³²⁵ It is clear that this risk is particularly high for women and juveniles with disabilities, whose vulnerability is further intensified by their condition.

People with disabilities face a high risk of being directly or indirectly discriminated against throughout their lives, although discrimination is prohibited by the constitution in most countries and there are anti-discrimination laws in many. The discriminatory environment that persons with disabilities face in the society does not decrease and it can be said that it increases even more in prison conditions. The article “Disablement, Prison and Historical Segregation”³²⁶ explains the areas in which prisoners with disabilities face discrimination in prisons, such as: access to various services, compliance with internal regulations, participation in prison activities, etc. Discriminatory approaches are caused because the special needs of persons with disabilities are not considered. The article cites examples where prisoners with reduced mobility due to ar-

³²⁵ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January, 2016, paragraph 19, 6.

³²⁶ See *Russell M. and Stewart J.*, *Disablement, Prison and Historical Segregation*, Monthly review, 15 July 2001, <<https://monthlyreview.org/2001/07/01/disablement-prison-and-historical-segregation>>, [15.11.2019].

chitectural barriers are unable to access dining halls, libraries, work and recreational areas, and visiting rooms. Prisoner with visual impairments may face a radically different but crucial difficulty, as without assistance they will not be able to read their own mail or prison regulations unless it is provided to them in Braille. Finally, the article mentions the most important stage in the life of a prisoner when they may not be able to participate in and hear information during their own parole or disciplinary hearings, since prisoners with hearing or speech impairments “*are denied interpreters*”.³²⁷

For the above or other reasons, penitentiary systems should use a variety of means to avoid discriminatory approaches, such as adapting prison infrastructure to the needs of persons with disabilities (for example, adapting buildings), training personnel, etc., although none of these guarantees a complete solution to the problem. Thus, the fight against such risks of discrimination must be an ongoing process. There are also other mechanisms in place to provide such a guarantee. In addition to penitentiary systems, the existence of external monitoring systems should play an important role in detecting or preventing similar types of violations. The Special Rapporteur explained that independent human rights monitors (e.g., national human rights institutions, national anti-torture preventive mechanisms, civil society) should regularly monitor institutions that may house persons with disabilities, such as prisons, social care centres, orphanages and mental health institutions.³²⁸

This reasoning leads us to conclude that the protection of all prison-

³²⁷ See *Russell M. and Stewart J.*, *Disablement, Prison and Historical Segregation*, Monthly review, 15 July 2001, <<https://monthlyreview.org/2001/07/01/disablement-prison-and-historical-segregation>>, [15.11.2019].

³²⁸ See *Nowak M.*, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Interim report on torture and other cruel, inhuman or degrading treatment or punishment, submitted in accordance with Assembly resolution 63/175, 2008, paragraph 75, 18.

ers and especially persons with disabilities should be the main job of the penitentiary system. Thus, we consider it appropriate for penitentiary facilities to take tangible steps to ensure the protection of persons with disabilities.

In order to avoid the risk of stigmatisation of persons with disabilities and discriminatory attitudes towards them, the terminology, which is prohibited to be used against persons with disabilities under the Convention, should be removed from usage.

The practice of using other prisoners as caretakers without remuneration should not be allowed. The employment of a prisoner for paid job as a caretaker should be done only with the willingness of both parties, in order to avoid the dependence of a person with a disability on another prisoner who has no obligation to take care of him or her, which puts the person at high risk of abuse considering his or her condition.

The job description of the management of the facility should indicate that they are obliged to hold regular meetings with persons with disabilities in order to avoid any kind of threat, violence or discriminatory approach.

CHAPTER 19. PRISONERS WITH DISABILITIES WITH MULTIPLE NEEDS

In addition to the fact that prisoners with disabilities are vulnerable because of their condition, as their physical and mental disabilities predispose them to special vulnerability in dangerous and closed environments such as prisons,³²⁹ there are other, special categories of prisoners among them, who are given the status of persons with multiple needs at the places of deprivation of liberty.

The concept of the status of persons with multiple needs is not found in the legislation of any country. However, the following categories of persons with disabilities can be considered as persons with multiple needs: national, religious, ethnic and racial minorities, foreign national prisoners, women, juveniles, lesbian, homosexual, bisexual and transgender prisoners,³³⁰ who face a particularly high risk of intense discrimination, ill-treatment, sexual and other types of violence. In order to assess the needs of these categories of persons with disabilities and the ways in which they can be met, their special needs must be considered in conjunction with disability-related needs.

³²⁹ See Alejandro Forero Cuéllar, María Celeste Tortosa, Klaus Dreckmann, Dimitar Markov, Maria Doichinova, *A handbook on Vulnerable groups of prisoners* (The compilation of this Handbook was coordinated by the research team of the Observatory on the Penal System and Human Rights of the University of Barcelona (Spain) and the Center for the Study of Democracy (Bulgaria) based on national reports elaborated by each country team), 2015, 55.

³³⁰ This group is considered as a category of persons with special needs by the following UN publication – *Atabay T.*, *Handbook on Prisoners with special needs*, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009.

19.1 Foreign national prisoners, ethnic and racial minorities

International organisations distinguish between three main categories of foreign national prisoners in prisons. The first category consists of persons traveling from one country to another for the specific purpose of committing a crime such as drug smuggling or human trafficking. The second category includes individuals who have lived in a foreign country for a long time or who may have been born there but do not have citizenship for a variety of reasons. The third category legally resides in the country for a short period of time (e.g., employed migrant). There is a fourth category in countries where illegal migration is considered a criminal offense. Such irregular migrants may be arrested and placed next to prisoners who have committed an internationally recognised criminal offense.³³¹

Among the factors causing additional needs for foreign prisoners, we must first consider the language barrier that prevents them from having contact with the administration or other prisoners. Often because of the language barrier they are unable to provide the administration with information about their disabilities and request appropriate services from them.

It is especially problematic when the disability is not clearly expressed, and the administration cannot detect it. In such a case, and before the status is determined, the person has to verify his or her condition, which he or she may not be able to do due to the language barrier. The problem is more pronounced in systems where the institution of an interpreter is not developed or even more so when a foreigner speaks a language that is not widely spoken in a given country. These needs may

³³¹ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 81.

be similar to the needs of ethnic and racial minorities, but a number of them are specific to a specific situation.

As for ethnic and racial minorities, the language barrier should not be so severe for them, because due to their long stay in a given country they may know or at least understand the state language. However, their additional needs may be related to their culture, traditions, religion, and nationality, which prison systems are often unable to meet.

For example, the language barrier becomes a major cause of human rights violation when prisoners with disabilities are required to submit a written request to meet a prison director or a doctor or to receive appropriate services, which they or national and ethnic minorities may not be able to do without assistance, due to the lack of knowledge of the state language or lack of relevant education. If the help of a doctor or a psychologist is available to foreign prisoners, they depend on an interpreter whose services are often not available. If the administration or the prisoners themselves turn to other prisoners for help (when possible), the confidentiality necessary for medical and psychological care is violated.³³²

The language barrier may lead to unintended breaking of prison rules and the use of a disciplinary punishment, *“there may not be copies of prison rules and regulations in a language that they understand, they may not be provided adequate interpretation during disciplinary hearings.”*³³³ Thus, a PWD representing such a group may not be aware that the action he or she committed was a disciplinary offence, on the other hand, he or she is not given the opportunity to defend himself/herself during the hearing of the case and to present arguments in his or her favour.

³³² See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 59-60.

³³³ *ibid*, 61.

Experts explain that the risks that the above factors may cause are primarily related to discriminatory approaches, such as disregard for different cultures and religions, in which case foreign prisoners are particularly vulnerable to physical and verbal abuse by prison personnel and other prisoners. The discriminatory approach is also due to the fact that the cultural and religious needs of foreign prisoners are not taken into account during the application of search, accommodation and disciplinary sanctions.³³⁴ In Georgian practice, such a discriminatory approach might be manifested in the lack of access to food rations, lack of access to participation in religious rituals, etc.

Discrimination towards such persons can be manifested in many ways. One of them is accommodation: isolation from other prisoners, when the above-mentioned prisoners are placed separately, in isolation due to their language barrier and/or religious affiliation, and the administration defines this as a security measure and does not take into account that these persons have to stay in a closed environment without basic daily communication. *“Foreign national prisoners who were not resident in the country of imprisonment are usually cut off from their families and communities, and therefore lack the contact and support that is vital to reduce the harmful effects of imprisonment and assist with social reintegration.”*³³⁵

Georgian law,³³⁶ as well as prison regulations in many other coun-

³³⁴ See Alejandro Forero Cuéllar, María Celeste Tortosa, Klaus Dreckmann, Dimitar Markov, María Doichinova, A handbook on vulnerable groups of prisoners (The compilation of this Handbook was coordinated by the research team of the Observatory on the Penal System and Human Rights of the University of Barcelona (Spain) and the Center for the Study of Democracy (Bulgaria) based on national reports elaborated by each country team), 2015, 14.

³³⁵ See Atabay T., Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 2.2, 82.

³³⁶ “An accused/convicted person, who is a foreign national, has the right to an

tries, entitle foreign nationals to have contact with the diplomatic representatives of their own country, but often they are unaware of this right or it may not be granted to them because they either do not have access to it or are not explained due to lack of proper education or language barriers.

The work of the Georgian penitentiary system with the foreign prisoners is more or less regulated, as according to the agreement signed by the Ministry with various interpretation agencies, any person should be provided with appropriate assistance, when necessary. Despite this, the issue cannot be considered resolved, as it takes time to send and deliver a request to the Ministry, which in itself is a challenge, especially given the number of foreign prisoners and the number of countries they represent. Obviously, no system can have personnel who speak all the languages. The situation is complicated by multilingual needs, as well as national, religious, cultural and other peculiarities related to them.

Statistics of foreign prisoners and its ratio to the total number of prisoners, according to the data of the Georgian penitentiary system as of 31 September 2019: ¹	
Total number of prisoners	9,869
Total number of foreign and stateless prisoners	701
Juveniles	0
Women	86

unlimited number of meetings with a representative of a diplomatic mission or a consular office of his/her own country, or with an authorised diplomatic representative of the country who protects his/her country's interests in Georgia. Accused/convicted persons, who are foreign nationals or stateless persons, may have relationship with diplomatic missions and consular offices of their countries. Citizens of those countries that do not have diplomatic missions or consular offices in Georgia may have relationship with diplomatic missions and consular offices of the countries that undertook to protect their interests, or with inter-state bodies that protect interests of these persons", the Imprisonment Code, art 14, 17, 24 March 2010.

Statistics of foreign prisoners by country:³³⁷

Afghanistan – 1, Argentina – 1, Armenia – 35, Australia – 1, Azerbaijan – 108, Bangladesh – 3, Belarus – 1, Brazil – 3, Bulgaria – 1, Cameroon – 2, China – 1, Colombia – 1, Cyprus – 1, Ecuador – 1, Egypt – 4, Estonia – 1, Finland – 1, France – 1, Germany – 3, Greece – 4, India – 15, Iran – 158, Iraq – 9, Ireland – 1, Israel – 7, Jordan – 5, Kazakhstan – 6, Korea – 1, Kyrgyzstan – 2, Lebanon – 1, Mexico – 1, Moldova – 2, Morocco – 4, the Netherlands – 1, Nigeria – 9, Pakistan – 2, Palestine – 1, Poland – 1, Portugal – 1, Russia – 98, Saudi Arabia – 1, South Africa – 7, Syria – 1, Tajikistan – 1, Turkey – 136, Turkmenistan – 2, Uganda – 1, Ukraine – 36, Uzbekistan – 8, USA – 5, stateless prisoners – 8.

Discriminatory accommodation can be reflected in the quality of housing, by selecting certain ethnic groups randomly and placing them in rooms or cells with less favourable conditions. Ethnic minorities or foreigners are often placed in the same cell for the reason that they can contact each other, although the prison administration in this case does not take into account the degree of their disability and the suitability of the cell environment, the prisoner's desire, the living conditions in the cell, etc. *“Access to education, health care and prisoner programmes may be affected by ethnicity, race and descent, with a detrimental effect on the social reintegration needs of overrepresented groups, increasing the risks of re-offending after release.”*³³⁸

This suggests that prisoners with disabilities in this category may also not be offered education, employment or other rehabilitation programmes on the grounds that they are persons with disabilities or are foreigners, members of national or ethnic minorities, and the adminis-

³³⁷ Unified report of criminal justice statistics, reporting period - September 2019, 118/120.

³³⁸ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, Chapter 4, 60.

tration does not have appropriate programmes. It is possible that these groups are offered less attractive jobs or programmes in which individuals will be forced to participate due to the lack of other alternatives.

Prisoners belonging to national and ethnic minorities, as well as foreigners with disabilities, may face a problem due to their religious affiliation, as they may have different religious and spiritual needs that the prison administration may or may not be able to provide.

According to the handbook on prisoners with special needs, foreign prisoners and national or ethnic minorities are likely to be ill-prepared for release, since language barriers will have prevented their participation in preparation for release programmes and given that they are often not eligible for welfare and probation services.³³⁹ The same handbook explains that if the foreign prisoners are to be deported, they are often not selected for participation in any preparation for release programmes. Those who are deported are often given little time to prepare and inform relatives in their home country. Collaboration between the authorities of the country of imprisonment and home country for the purposes of post-release support is usually non-existent.

Georgia has acceded to the Council of Europe Convention on Transfer of Sentenced Persons, which is enshrined in national law. Thus, a foreign national prisoner, if he or she so wishes, may be transferred to his or her home country to serve the sentence. The transfer of prisoners is possible when both countries have signed the relevant prisoner transfer treaty. In order for a transfer to take place and for it to serve the purposes of social reintegration, the prisoner must express a desire to serve the sentence in his or her home country.³⁴⁰ One of the most

³³⁹ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, Chapter 4, 85.

³⁴⁰ See Council of Europe Convention on Transfer of Sentenced Persons (1983); General considerations.

important conditions of transfer is that there should be no risk of the prisoner being tried and sentenced again for the same offence. extradition is the risk of a double trial. The receiving State shall not have the right to aggravate or prolong the sentence, although it may reduce the sentence in any form.

A transfer obviously alleviates all the additional difficulties that foreign nationals face in prison and facilitates their social reintegration. However, the Convention does not address the needs of persons with disabilities or the assessment of the extent to which the receiving country can provide for his or her disability-related needs.

19.2 Lesbian, Gay, Bisexual, Transgender (LGBT) prisoners

LGBT prisoners are at high risk in many countries, including post-Soviet states, due to their status. Since stereotypes are often stronger in prisons than in the outside world, LGBT prisoners remain a particularly vulnerable group in several aspects.³⁴¹ First of all, they have higher protection needs, the risk of which is further exacerbated by their disability. Thus, the main task in relation to this category of prisoners is to meet their needs as persons with disabilities, as well as to protect them from sexual violence and rape by other prisoners, and in some cases by prison personnel.

According to a study carried out by Human Rights Watch, women and girls become victims of serious human rights abuses in prison. Often this violence is related to their sexual orientation, gender identity

³⁴¹ See Alejandro Forero Cuéllar, María Celeste Tortosa, Klaus Dreckmann, Dimitar Markov, Maria Doichinova, *A handbook on Vulnerable groups of prisoners* (The compilation of this Handbook was coordinated by the research team of the Observatory on the Penal System and Human Rights of the University of Barcelona (Spain) and the Center for the Study of Democracy (Bulgaria) based on national reports elaborated by each country team), 2015, 31.

and disability. Research has shown that women who have been sexually abused in prison were bisexual or lesbian.³⁴²

Based on the experience of prisons in post-Soviet states, it should be noted that homosexual prisoners in prisons, as well as those who have been victims of sexual violence and are considered “homosexuals”, are considered to be the lowest in the prison hierarchy by both prisoners and prison personnel.

Violence does not only mean sexual intercourse. It also includes forced obedience when this category of prisoners is made into servants by other prisoners, and they are forced to perform the most degrading work on the orders of prisoners and/or the administration. If a prisoner with disabilities belonging to this category is not able to perform the work due to his or her disability, he or she will be placed in complete isolation. For example, a study conducted in the United States found that *“nearly a fifth (18.5 percent) of inmates who identified as homosexual and 9.8 percent who identified as bisexual or “other orientation” reported being sexually victimized, compared with 2.7 percent of heterosexual inmates.”*³⁴³

Clearly, this type of violence can only be perpetrated with the support of personnel or with their tacit consent, for example, various studies have suggested that sometimes prison staff themselves facilitate sexual violence in return for bribes. There are reports of prison guards having LGBT prisoners beaten up or allowing other prisoners to rape them, and

³⁴² See Women and Girls Deprived of Liberty, Human Rights Watch Submission to the UN Working Group on Discrimination Against Women in Law and Practice, 2018, <<https://www.hrw.org/news/2018/10/01/human-rights-watch-submission-un-working-group-discrimination-against-women-law-and>>, [20.11.2019].

³⁴³ See National Prison Rape Elimination Commission Report, June 2009, 57 (The National Prison Rape Elimination Commission (NPREC) was established when President signed the Prison Rape Elimination Act of 2003 (PREA) on September 4 2003. The NPREC has authorization to conduct a broad-based study of prison rape in the United States).

of prison personnel placing LGBT prisoners in cells with known sexual predators.³⁴⁴

One of the major problems is stigmatisation. A PWD in this category may be assigned a female name by other prisoners or prison personnel. In some countries they are made to be identifiable by a special label or mark placed in their prison files, medical files, on their clothes, tables in dining areas, prison cells and prison badges.³⁴⁵

19.2.1 Allocation, accommodation and programmes for lesbian, gay, bisexual, transgender (LGBT) prisoners

Allocation of LGBT inmates may be a key factor for placing them in a vulnerable situation.³⁴⁶ It is often accepted in the prison system that LGBT prisoners can be placed in isolation, in the worst living conditions. This is especially true of prisons that are overcrowded. In prisons where there is no appropriate classification system, LGBT persons may be placed in residences or cells where abusive prisoners are held, including perpetrators of sexual violence, although it is unclear to what extent persons with disabilities may be subjected to violence by prisoners.

Accommodation of transgender prisoners who are placed in penitentiary facilities in accordance with their sex at birth, is problematic. This paves the way for sexual violence against them. In Georgian prac-

³⁴⁴ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 106.

³⁴⁵ Ibid.

³⁴⁶ See *Alejandro Forero Cuéllar, María Celeste Tortosa, Klaus Dreckmann, Dimitar Markov, Maria Doichinova*, A handbook on Vulnerable groups of prisoners (The compilation of this Handbook was coordinated by the research team of the Observatory on the Penal System and Human Rights of the University of Barcelona (Spain) and the Center for the Study of Democracy (Bulgaria) based on national reports elaborated by each country team), 2015, 31.

tice, there is no sentence planning that would protect these individuals from violence. LGBT prisoners might be discriminated against if they show interest in participating in prison activities, in which they are not allowed to participate on the grounds of protection from violence.

One of the problems that LGBT prisoners face is complaint procedures. In many prison systems complaints on sexual harassment and rape, especially if they are against prison personnel, as a rule, are not considered or the response by the administration is minimal. This attitude is especially acute when such complaints are made by LGBT prisoners with disabilities. For example, there are cases where when a gay prisoner complained of rape, the administration explained that the sexual intercourse took place by consent or was provoked by a gay prisoner. In addition to reviewing the complaint, rape is associated with many other problems and stigmatisation of the person, for example, even *“when complaints are acted upon, and for example the prisoner separated from the aggressor and/or the aggressor punished, the stigma of having been raped remains with the prisoner and the information spreads rapidly in the prison system. The victim is therefore at risk of further victimization, unless he or she is provided with adequate and constant protection.”*³⁴⁷

In the process of preparation for release, LGBT prisoners with disabilities have a special need while participating in release training programmes, firstly, because other prisoners do not want to participate in programmes with them, and secondly, the reason might be their disability. Thus, they experience the feeling that they have no further support for the release. Also, often LGBT prisoners with disabilities experience a loss of contact with their families, which exacerbates possible trauma in prison, while there is lack of adequate support mechanisms for such a

³⁴⁷ See. *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 2.1, 105.

group in the community as well.

In countries where the probation service operates effectively, the latter can take responsibility for the reintegration of such persons into society. In the absence of such a service, the social service should be held accountable for preventing discrimination against LGBT persons with disabilities in finding housing and/or employment in the community.

19.3 Older prisoners

Older prisoners are a vulnerable group in their own right, due to their age, as they need special care, proper accommodation, medical care, and programmes appropriate to their age, both in a free society and in the penitentiary system. Given the restrictions in closed institutions, the vulnerability of older prisoners with disabilities is even higher and their needs are also bigger.

Studies identify three main categories of older prisoners:³⁴⁸

a. *“The first group consists of those who were sentenced to long prison terms while young and have grown old in prison.”* For the majority of this group this is the first offence and for a violent crime. It has been noted that due to their long period of institutionalisation and loss of community links and limited work history, this group faces the most difficulties in social reintegration after their release.

b. The second group is made up of habitual offenders, who have been in and out of prison throughout their lives. This is a category which adjusts reasonably well to prison life, though older persons with disabilities often have chronic health problems, including particularly, a history of substance abuse, etc. Older prisoners with disabilities are well

³⁴⁸ See. *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 2.1, 126.

acquainted with the prison environment, know what to ask from the prison administration and how to get help from them. They encounter difficulties in resettlement.

c. The third group consists of those who have been convicted of a crime in later life. Their crimes are usually serious. This group experiences the most severe adjustment problems in prison and are likely to be victimised by other prisoners. Included in this group are those who, throughout their lives, until old age, have had stable support from family or state services and have not been adjusted to solving the problems associated with their disabilities independently. Such people may become victims of violence, due to the high degree of vulnerability.

One of the major challenges facing older prisoners is the selection of suitable accommodation. Given their age and disabilities, we must assume that they have difficulty climbing stairs, accessing sanitary facilities independently, excessive heat or cold, as well as many architectural features³⁴⁹ that may lead to a situation where fellow prisoners request their transfer to another cell. If this proves impossible due to prison overcrowding, the prisoner may most likely become a victim of violence. They may be adversely affected by excessive heat or cold, as well as other architectural deficiencies that prevent persons with disabilities from meeting their basic needs. *“In some systems, such as the United States, older prisoners are sometimes placed in separate, protected units, where the layout corresponds to their needs and where they can receive specialist care.”*³⁵⁰

³⁴⁹ See Alejandro Forero Cuéllar, María Celeste Tortosa, Klaus Dreckmann, Dimitar Markov, Maria Doichinova, A handbook on Vulnerable groups of prisoners (The compilation of this Handbook was coordinated by the research team of the Observatory on the Penal System and Human Rights of the University of Barcelona (Spain) and the Center for the Study of Democracy (Bulgaria) based on national reports elaborated by each country team), 2015, 49.

³⁵⁰ See Atabay T., Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 127.

The law of Georgia – the Imprisonment Code, does not provide in detail, but still provides adequate living conditions for persons with disabilities and older prisoners (Article 15, Part 5). However, it should be noted that the number of older prisoners in Georgian penitentiary facilities is not small and creating more adequate conditions for them requires more effort.

Statistics of elderly prisoners in the Georgian penitentiary system as of September 2019: ²	
Total number of prisoners	10 042
Age 60 to 64	197
Age 65 to 69	85
Age 70 and above	50

Provision of special accommodation can have both positive and negative sides. In particular, we can consider protecting them from the violence of other young, healthy prisoners as positive. Such isolation may lead the prison administration to develop, using personnel and resources, special programmes for older prisoners. Another factor may be creating a positive atmosphere for mental health that promotes understanding and social interaction of prisoners of the same age, as well as developing a suitable menu and providing adequate food. The Law of Georgia, the Imprisonment Code, provides for such type of food for older prisoners (Article 23, Part 4).

Placing older prisoners with disabilities with general prison population is also characterised by its advantages, namely: first of all, it allows prisoners to have interaction with other prisoners, which fills the gap they experience due to their distance from family or the loss of such contacts altogether. The decision to place older prisoners with disabilities with general population is based on a risk assessment and does not require much effort, as they are less likely to harm other persons

or impede the normal functioning of the prison due to their age and complex disabilities. Finally, placement with general population enables older prisoners to have equal access to all programmes, not only those designed specifically for them, which may not meet their needs.³⁵¹

Participation in rehabilitation programmes is one of the biggest challenges for older prisoners with disabilities: in some cases, these programmes are not age-appropriate, as prison programmes are typically designed to meet the needs of young prisoners and primarily to reduce the risk of reoffending and improve their education and skills. On the other hand, the programmes do not address the needs of persons with disabilities. In addition, it is obvious that in most cases older prisoners with disabilities have needs that are different from those of younger ones.

Employment programmes is a good example. Older people with disabilities often lose contact with their families, due to the crime committed or long-term imprisonment, and do not have access to their assistance. Thus, they need to be employed the most, although the existing programmes in the facilities are not provided for such category of prisoners. Therefore, if the prison administration does not make relevant changes, which is often the case, it is clear that the above-mentioned category of prisoners cannot participate in such programmes.

There are cases when participation in such programmes has an impact on the release of prisoners from serving their sentences. Thus, if older prisoners with disabilities are not offered participation in such programmes, they will not benefit from early conditional release, regardless of their behaviour or need, leading to discriminatory approaches.³⁵²

Older prisoners with disabilities have specific different needs in the context of early release, depending on their age, disability, length

³⁵¹ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 127.

³⁵² *ibid*, 129.

of sentence, and other specific characteristics. The needs vary according to their social, economic and health status, thus, individual early release programmes are necessary for older prisoners, depending on all of these factors. It should be taken into consideration that for older prisoners, and especially those who have spent a long time in prison, social security may be the only way to return to society.

19.4 Women prisoners with disabilities

The number of female prisoners is lower than that of male prisoners. Studies show that by country and prison system, the proportion of female prisoners ranges between 2% and 8%. It is obvious that this figure should be evaluated positively, however, if we review the same studies, prisons are not built for women, but are mostly designed on the basis of the needs and requirements of male prisoners. This applies to architecture, as well as to security and to all other amenities. As a rule, any special provision for women prisoners is usually something which is added on to the normal male provision.³⁵³ The above approach is an indication that women are often placed in penitentiary facilities where their needs are either not met at all or, if they are, only to the extent that does not correspond to real requirements.

Statistics of women prisoners in the penitentiary system of Georgia:3	
Total number of prisoners	10 042
Women	384
Accused women	80
Convicted women	304
Female juveniles	1

³⁵³ See *Coyle A.*, *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, International Centre for Prison Studies, 2nd edition, 2009, 143.

The fact that the United Nations and its member states have recognised that the Standard Minimum Rules for the Treatment of Prisoners did not meet all the needs and requirements of female prisoners in penitentiaries and developed the rules³⁵⁴ that regulate the standards of treatment of female prisoners in all areas of administration of justice, confirms the special importance of managing the process of sentencing female prisoners. Although it does not detail the specifics of treating women with physical disabilities, it is still an important guideline for many countries around the world.

As a number of research papers discuss, the special needs of women prisoners cover a wide range. In particular, the challenges faced by women in many countries in terms of access to the criminal justice system compared to men are the high risk of sexual and physical violence prior to arrest and hence the need for mental health care; gender-specific³⁵⁵ health care; security; accommodation and contact with family; pregnant women and women with children; risk of sexual violence in prisons; high probability of caretaking responsibilities towards children and family members and stigmatisation after release, etc.³⁵⁶ All of the above should be the subject of special care when these needs are combined with the needs caused by physical disabilities.

There are frequent cases when pregnant women are imprisoned and experience special stress due to their condition. And when such a woman has a disability, she finds it difficult to care for herself or her child independently. In such a case, not only the life of the prisoner

³⁵⁴ See The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), 2010, paragraph 1, 6.

³⁵⁵ Gender-specific – for, characteristic of, or limited to either males or females. Definition available at: <<https://www.dictionary.com/browse/gender-specific>>, [15.11.2019].

³⁵⁶ See Handbook for Prison Managers and Policymakers on Women and Imprisonment, United Nations Office on Drugs and Crime, Vienna, 2008, 15.16.

but also the life and health of the child is at stake. Thus, unless there is absolutely no alternative, placement of such a woman in detention should be avoided. However, due to the gravity of the crime committed by them, pregnant women are still sent to prison, although experts unequivocally state that detention should be only an extreme measure. However, *“If this has to happen, special arrangements need to be made for them while they are awaiting the birth of their child and also during their nursing period. There are particularly sensitive issues concerning the application of any security restrictions during the actual birth. The presumption should always be that no expectant mother will give birth inside a prison.”*³⁵⁷

One of the first areas of discrimination against women with disabilities is that of accommodation. As a rule, due to a small number of women prisoners, the penitentiary systems of Georgia and many countries of the world have only one prison where all convicted women are accommodated. This primarily violates their rights under law and international standards – to be placed close to their place of residence, and on the other hand women, including women with disabilities, are particularly in need of family support, and their accommodation far away from their families makes family contact much more difficult.

For all detainees, especially for women prisoners, and specifically for women prisoners with disabilities, family contacts are a particularly sensitive topic because they are at high risk for these contacts to become complicated or for family members to abandon them. This issue is especially problematic if a woman is a single mother or is a primary caretaker for her children or other dependents.

One of the important issues for women prisoners, especially women prisoners with disabilities, is to undergo proper medical examination as soon as they are admitted to the facility to identify their medi-

³⁵⁷ See Coyle A., *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, International Centre for Prison Studies, 2nd edition, 2009, 144.

cal needs. Also, as soon as such need arises, the medical examination should be repeated and, if needed, based on the physiological needs of women, necessary medical treatment should be offered free of charge. Women should be provided with advice on women's health issues. Coyle explains in his handbook that in many cases concerns about their children will be a great cause of worry and stress for women prisoners, especially women prisoners with disabilities, which will have a significant impact on their mental well-being and make imprisonment psychologically more painful. Healthcare arrangements available to women prisoners should reflect that.³⁵⁸

The following circumstances are considered to be the causes of women's differentiating needs and their high degree of vulnerability: the investigation process of domestic violence or rape, which negatively affect their psychological state, alcohol and drug dependence, sexual violence and ill-treatment in places of deprivation of liberty, where male personnel are employed, specific medical needs due to their physiological specificities, separation from the family when women need to take care of their children and the family. It should also be noted that detention itself causes an extreme stress on women, which can lead to a mental disorder, or aggravation of an existing condition, which is associated with the risk of stigmatisation and negative public attitudes after release.

According to research³⁵⁹ conducted in the United Kingdom, 80 per cent of women prisoners suffer from diagnosable mental health problems, 66 per cent are drug dependent or use alcohol to dangerous ex-

³⁵⁸ See *Coyle A.*, *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, International Centre for Prison Studies, 2nd edition, 2009, 148.

³⁵⁹ See *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, Criminal Justice Handbook Series (The handbook was prepared for the United Nations Office on Drugs and Crime (UNODC) by Tomris Atabay, consultant on criminal justice issues, based in Turkey), United Nations, New York, 2009, 17.

cess, 50 per cent have experienced domestic violence, 33 per cent have suffered from sexual assault, around one-third of women prisoners lose their homes, and often their possessions, while in prison, 37 per cent say that they have attempted suicide at some time in their life.

Women with disabilities may develop general fears when arrested, which is likely to exacerbate their disabilities. For this purpose, the Bangkok Rules encourages Member States to adopt legislation to establish alternatives to imprisonment, however, in the case of imprisonment, the prison administration should have an appropriate plan in place to provide adequate conditions for women with disabilities to serve their sentence, as well as to have a properly trained staff. *“Capacity-building for staff employed in women’s prisons shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities.”*³⁶⁰

19.5 Juvenile prisoners with disabilities

All rights related to persons with disabilities apply to any person deprived of their liberty, however, among persons with disabilities with multiple needs, priority should be given to juvenile prisoners with disabilities. When working with this category, the prison administration must take into account the additional circumstances, which are related to their age, first of all, the aspect that they are still adolescents and, due to their developing nature, the crimes they commit are often serious, but unconscious. Therefore, this category cannot be evaluated as a high-risk group and placed in a high-risk facility or the juvenile unit of such a facility until qualified personnel working with the juveniles assess the risk at a highly professional level. A juvenile who has committed a crime should not be sentenced to a long term. A wide range of early

³⁶⁰ See United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), rule 29, 2010.

release opportunities should be available to him or her.³⁶¹

Number of juvenile prisoners in the Georgian penitentiary system as of September 2019:⁴	
Total number of prisoners	10 042
Total number of juvenile prisoners	52
Accused juveniles	26
Convicted juveniles	26
Number of juvenile prisoners by age	
14 - 15	5
16 - 17	47
18 -19 ⁵	138

International law favours non-institutional over institutional approaches, which implies that *“deprivation of liberty for children is not prohibited, although it is undoubtedly used as a last resort.”*³⁶² Thus, in any case the punishment imposed on a juvenile should be an extreme measure. The use of imprisonment for juveniles with disabilities requires special caution, as in general and in Georgian practice in particular, they are completely dependent on family members or other persons responsible for their care. They have almost no experience of living independently and thus, their degree of vulnerability is extremely high. Thus, if a juvenile is to be detained, it should be a priority to prepare them for their release, and as experts point out, even if the juveniles are detained in exceptional circumstances, all efforts should be made to release them as soon as possible. *“They should never be detained in prison accommodation, but rather be provided with accommodation*

³⁶¹ See *Khasia Z.*, Overview of International Standards on Juvenile Sentencing, Journal, Overview of Current Criminal Matters №1, 2017.

³⁶² See *Shalikashvili M., Mikanadze G.*, Juvenile Justice, 2016, 83.

*in institutions equipped with personnel and age-appropriate facilities. Their accommodation should be separate from adults.*³⁶³

Any measure taken against juveniles should aim at and serve to prevent crime. In the case of juveniles, and especially vulnerable groups, priority should be given to the use of alternative sentences, diversion and mediation, so that the sentence does not cause more physical and mental harm. The manual “Juvenile Justice” prioritises not the use of imprisonment against juveniles, but early intervention for the prevention of juvenile delinquency, for which it considers appropriate to make individual, group and organisational efforts aimed at preventing juvenile delinquency. The manual discusses the different methods used by different states to prevent delinquent and criminal acts and explains that *“some are focused on punitive policies aimed at intimidating potential offenders with the expected harsh punishment that may result from their possible action. It is also possible to implement measures that prevent the reoffending and include explanation of the negative impact the offender caused by his or her actions and reconciliation with the victim/injured party.”*³⁶⁴

As already mentioned, placement of a juvenile in prison should be an extreme measure only when there is absolutely no available alternative due to the gravity of the crime committed by him or her and its dangerous nature to the society. Evidence from a number of countries shows that early imprisonment does not mean the rehabilitation of a juvenile, but rather *“the earlier a young person is dealt with in the criminal justice system the greater the danger that he or she will become involved in further criminality.”*³⁶⁵ In addition, as the UN Convention on the Rights

³⁶³ See Handbook on European law relating to the rights of the child, European Union Agency for Fundamental Rights and Council of Europe, 2015, 174.

³⁶⁴ See *Shalikhvili M., Mikanadze G.*, Juvenile Justice, 2016, 80.

³⁶⁵ See *Coyle A.*, A Human Rights Approach to Prison Management: Handbook for Prison Staff, International Centre for Prison Studies, 2nd edition, 2009, 133.

of the Child stipulates, in all actions concerning children, “the best interests of the child”³⁶⁶ shall be a primary consideration. Thus, both the judiciary and the prison administration must be fully mobilised to ensure that any action taken against a juvenile is in the best interests of the juvenile. It should also be noted that special efforts should be made to ensure that the personnel of the system, in which the juvenile is placed, is trained and specialised in working with juveniles and understands the best interests of juveniles with disabilities and the importance of their protection. These institutions should also have appropriate policies and strategies in place to work with juveniles and, in particular, juveniles with disabilities.

The reform of the criminal justice system in Georgia in relation to juvenile offenders is significant, given that the new law, the Juvenile Justice Code, introduced procedures in line with current international standards, from the start of the criminal justice process to the release of a person and support in probation or post-release, which freed juveniles from general procedures, in which they participated in accordance with rules and procedures set for adults, and established the presence of specialised staff at all stages. *“Only persons specialised in juvenile justice may administer juvenile justice procedure.”*³⁶⁷

In addition, it should be noted that the new law has established certain regulations for juveniles with disabilities, which aims at placing them on an equal basis with others. A juvenile with a disability participating in the juvenile justice process enjoys all the services he or she needs to get acquainted with the case and participate in the proceed-

³⁶⁶ See the Convention on the Rights of the Child, the United Nations, 20 November 1989, Article 3(1): “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

³⁶⁷ See Law of Georgia, Juvenile Justice Code, art 16, 12/06/2015.

ings free of charge.³⁶⁸

Although the above topic is not the subject of this publication, it is noteworthy that the law established the diminished capacity of the juvenile as one of the grounds for the release from criminal liability.

According to Coyle, if a young person does have to be kept in prison special arrangements should be made to ensure that the coercive elements of prison life are kept to a minimum.³⁶⁹ Maximum use of the educational, sports, rehabilitation and personal development support programmes and possibilities should be ensured for juveniles, and given his or her age, a special effort needs to be made to help the young person to maintain and to develop family relationships. Georgian legislation leaves a very positive impression in this regard. However, it should be noted that in terms of sentencing, special attention is not paid to the standards of serving the sentence by juveniles and the creation of adequate conditions for them. The only exceptions are sports and recreational activities, when the law addresses the special needs of juveniles with disabilities and clarifies that *“Appropriate recreational and physical training programmes shall be provided for juveniles, including juveniles with disabilities.”*³⁷⁰

Also, if we discuss Coyle’s views on juveniles, he said that despite the existing principles, the reality is that in many countries children and young people are committed to prison custody. When this happens, the prison administration has an obligation to care for them in a manner which takes account of their age and special needs. There are two reasons that justify such special treatment. The first is that children and young people are more vulnerable than adults and therefore need to be protected from violence or ill-treatment by older prisoners or even

³⁶⁸ See *Coyle A.*, *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, International Centre for Prison Studies, 2nd edition, 2009, 126.

³⁶⁹ *Ibid*, 138.

³⁷⁰ See Law of Georgia, Juvenile Justice Code, art 86, 12/06/2015.

prison staff.³⁷¹ The second reason is that such young people are usually more likely to respond to positive influences, to training and to educational activities. So, even in places of deprivation of liberty, this can be used to pursue their true interests and prevent reoffending.

Numerous international standards on administration of juvenile justice make it possible for countries, where juveniles are put in prison custody, to meet the needs of juveniles by referring to these standards. First of all, attention should be paid to the Beijing Rules, which discusses the standards for placement in a penitentiary facility and explains that *“Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.”*³⁷²

Another factor is the specifics of the treatment of juveniles placed in penitentiary facilities. It differs from the conditions provided for adults, in which the provision of services is considered to take into account their needs as juveniles. Juveniles placed in this type of facility should receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical – *“that they may require because of their age, sex, and personality, and in the interest of their wholesome development.”*³⁷³

Another major aspect we encounter in the Rules is the use of early conditional release. The Rules calls on States to use early conditional release more frequently and efficiently. However, it does not ignore the need for post-release supervision and its forms and methods. *“Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the*

³⁷¹ See Coyle A., A Human Rights Approach to Prison Management: Handbook for Prison Staff, International Centre for Prison Studies, 2nd edition, 2009, 140.

³⁷² See The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 29 November 1985, Rule 26.3.

³⁷³ Ibid, Rule 26.2.

*community.*³⁷⁴ Another approach mentioned in the Rules is to create and provide semi-institutional arrangements that may assist the juveniles in their proper reintegration into society.

It would be appropriate to conclude the discussions about the Beijing Rules with a point on its approach towards research, planning, policy formulation and evaluation with respect to juveniles. Such approaches are not a natural part of administration of justice in many countries. The process of execution of the sentences of juveniles is based solely on the administration's decision and sometimes outdated legislation, which can often be the reason why legislation and practice with regard to juvenile prisoners with disabilities is unrealistic. In this respect, the Beijing Rules aims to organise and promote necessary research as the basis for effective planning and policy formulation. In addition, according to the Rules, the review and appraisal should be made periodically and focus on the study of the trends, problems and causes of juvenile delinquency and crime, as well as the varying particular needs of juveniles deprived of their liberty.

The Beijing Rules calls on States to establish a permanent evaluative research mechanism within the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

As for the Havana Rules, it is devoted to the development of standards that must be upheld by the juvenile justice systems. First of all, the rules require that the deprivation of liberty should provide the conditions and circumstances which ensure respect for the human rights. Another aspect that the Rules require from the prison administration is to provide meaningful activities and programmes to juveniles, which would serve to promote and sustain their health and self-respect. It further explains the purpose of providing these conditions: *"to foster their*

³⁷⁴ See The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 29 November 1985, Rule 28.2.

*sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.*³⁷⁵

A specific recommendation of the Havana Rules regarding the size of the penitentiary facility is also notable. The rules stipulate that the number of juveniles in closed facilities should be small enough to enable individualised approaches.

The Rules repeatedly state that priority should be given to the application of individual approaches to juveniles. It stipulates that *“As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report [...] should be prepared.”*³⁷⁶ The purpose of this interview is to determine the specific type and level of care and programme required by the juvenile. The rules stipulate that the detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. Here, it can be said that this provision of the Havana Rules directly responds to the needs of juveniles with disabilities and the responsibility of prison administrations to plan their sentences based on these needs. For example, regarding recreational activities, the Rules clarifies that a juvenile must have the adequate time, space and appropriate equipment for daily physical exercise. Here the Rules also point to the need to take physical abilities of juveniles into consideration and provide medical training, which is of great importance for juveniles with disabilities. *“The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical*

³⁷⁵ See United Nations Rules for the Protection of Juveniles Deprived of their Liberty: Adopted by General Assembly resolution 45/113 of 14 December 1990 (Hereinafter – “The Havana Rules”), paragraph 12.

³⁷⁶ Ibid, Paragraph 27.

*education and therapy should be offered, under medical supervision, to juveniles needing it.*³⁷⁷

The Rules discusses medical care for juvenile offenders and their availability, which should be appropriate for their age, sex, needs, emphasising the quality of service and the special importance of the qualifications of medical personnel. Here we find stipulations that place much higher demands for juveniles: *“The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society.”*³⁷⁸

Discipline and supervision are integral parts of the penitentiary system. However, their use has a particularly stressful effect on detainees, especially juveniles, who are already experiencing stress due to separation from their family and daily environment. When severe conditions are added to this situation, it has a special psychological impact on the juvenile. The Rules provide a detailed review of the standards on disciplinary procedures, but it is important to note the general requirement that the Rules impose on the prison administrations that disciplinary measures and procedures should be applied only if it serves the interest of safety and an order community and is consistent with the protection of the inherent dignity of the juvenile and the main purpose of deprivation of liberty, such as a sense of justice, self-respect and respect for the fundamental rights of every person.³⁷⁹

The process of administration of juvenile justice should be systematically monitored and inspected, as it should meet the juvenile development standards in the community so that, firstly, he or she is ready to

³⁷⁷ See United Nations Rules for the Protection of Juveniles Deprived of their Liberty: Adopted by General Assembly resolution 45/113 of 14 December 1990 (Hereinafter – “The Havana Rules”), paragraph 47.

³⁷⁸ Ibid, paragraph 51.

³⁷⁹ Ibid, paragraph 66.

reintegrate into public life after serving the sentence, and secondly, and very importantly, to avoid stigmatisation.

All of the above should be guaranteed by two key aspects: the existence of an independent monitoring system and effective complaints mechanisms. The Rules provides for effective regulatory standards in connection to both components. The Rules explicitly states the existence of an independent inspection mechanism and clarifies that the qualified inspectors who will conduct inspections should enjoy full guarantees of independence and should not belong to the administration of the facility. The necessity of conducting inspections on a regular basis, both planned and at the discretion of the inspector, is also stressed. It is noteworthy that the Rule requires an unrestricted access to any facilities, employees or prisoners during the inspection process. *“Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.”*³⁸⁰

Personnel and their qualification are essential for the penitentiary system and their role in achieving the purpose of punishment is significant. All international standards aimed at increasing the efficiency of the penitentiary system focus on the quality of the system personnel and their training and qualification. The Havana Rules addresses the qualification of the personnel, as well as their categorisation, and explains that the penitentiary system should include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. The Rules addresses selection procedures, focusing on characteristics such as: humanity, ability and professional capacity to deal with juveniles, etc. The Havana Rules provides the specifics of training and explains that *“The personnel should receive such*

³⁸⁰ See United Nations Rules for the Protection of Juveniles Deprived of their Liberty: Adopted by General Assembly resolution 45/113 of 14 December 1990 (Hereinafter – “The Havana Rules”), paragraph 77.

*training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child.”*³⁸¹

19.6 Life- and long-term prisoners with disabilities

When defining a long-term prisoner, we will inevitably encounter terminological differences as to who is considered in this category. In a number of prison systems, for example in the Scandinavian countries, any person serving more than six months is considered a long-term prisoner. However, in some other prison systems, for example, in Eastern European countries a long-term prisoner is someone serving more than ten years. In the United States there are many examples of prisoners who are sentenced to more than hundreds of years, which is clearly longer than a normal life span.³⁸²

Until 2000, Georgian law did not provide for the concept of life and long-term imprisonment. We find the definition in its current form in practice since 2000, when it was introduced by the new criminal law. There is no different approach to sentencing this category of prisoners, as they serve their sentences in closed penitentiary facilities, in compliance with all the standards set for other prisoners in such facilities. The legislation does not mention long-term and life-long prisoners with disabilities, who belong to a particularly vulnerable group, depending on their condition and their long prison sentence. These two concepts are in fact absolutely incompatible, insofar as, first of all, a person with

³⁸¹ See United Nations Rules for the Protection of Juveniles Deprived of their Liberty: Adopted by General Assembly resolution 45/113 of 14 December 1990 (Hereinafter – “The Havana Rules”), paragraph 85.

³⁸² See *Coyle A.*, *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, International Centre for Prison Studies, 2nd edition, 2009, 151.

a disability is at high risk of exacerbation of his or her condition in the event of prolonged imprisonment due to the inconvenient conditions in prisons. Prisoners with disabilities often lose all contact with the outside world due to long periods of imprisonment and have minimal chances of integrating into society after release. The situation becomes especially complicated when there is no special approach and procedures in prisons to work with this category of prisoners.

International standards governing the sentencing of life and long-term prisoners focus on identifying individual needs and developing relevant sentencing procedures. The standards explain what documents the state must develop in order to achieve general objectives and underline that comprehensive sentence plans should be developed for each individual prisoner. The approach set out in the recommendation is particularly important for the development of the plan. These plans should be prepared and developed as far as possible with the active participation of the prisoner. The plan should reflect not only the unequivocal opinion of the prison administration, but also the opinion of the person for whom the plan is being developed. The recommendation also talks about the timeline that the plan should include. Sentence planning should start as early as possible following entry into prison, be reviewed at regular intervals and modified as necessary. It should be developed, *“particularly towards the end of a detention period, in close co-operation with post-release supervision and other relevant authorities.”*³⁸³

The main provision of the recommendation, which should be the main purpose of sentencing life and long-term prisoners, especially those with disabilities, is an approach that *“Prison life should be arranged so as to approximate as closely as possible to the realities of life in*

³⁸³ See Council of Europe Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, 2003, 3.

the community (normalisation principle)."³⁸⁴ The significance of this provision is to ensure that prisoners in this category do not experience the degree of institutionalisation and alienation from society which would hinder their further reintegration and return them back to the places of deprivation of liberty due to the lack of other alternatives. Such a risk is highest for prisoners with disabilities, who, due to their condition, need systematic care and assistance.

It is logical that when managing life and long-term prisoners their increasingly dangerous nature, the gravity of the crime committed by them, the socially dangerous nature of the action and other circumstances must be taken into account. However, it should also be borne in mind that stricter security regime, combined with their isolation from other prisoners and restrictions on free movement, can cause severe disruptions in their physical and mental health.³⁸⁵ It should also be noted that practice does not show that all persons with long-term sentences are dangerous. For example, life-sentence prisoners are no more dangerous than those with multiple short-term sentences or any other prisoners. Coyle notes that this category of prisoners can often have a calming influence on other groups of prisoners, such as those who are younger or are serving shorter sentences. Since the final date of release for long term prisoners will often, at least in part, depend on how they respond in prison, they have an interest in not causing trouble of any kind.³⁸⁶

³⁸⁴ See Council of Europe Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, 2003, 3.

³⁸⁵ See *Alejandro Forero Cuéllar, María Celeste Tortosa, Klaus Dreckmann, Dimitar Markov, Maria Doichinova*, A handbook on Vulnerable groups of prisoners (The compilation of this Handbook was coordinated by the research team of the Observatory on the Penal System and Human Rights of the University of Barcelona (Spain) and the Center for the Study of Democracy (Bulgaria) based on national reports elaborated by each country team), 2015, 75.

³⁸⁶ See *Coyle A.*, A Human Rights Approach to Prison Management: Handbook for

The policy of sentencing life and long-term prisoners with disabilities should be especially considered with such approach, as such prisoners, due to their physical condition, are in themselves less of risk. Thus, their sentence planning should be aimed at releasing them from serving their sentence as soon as possible and reintegrating them into society.

Discussing the specifics of serving sentences by prisoners with disabilities with multiple needs provides the basis to conclude that effective steps need to be taken to ensure safe conditions for this category of prisoners in line with the requirements of international standards. First of all, the term “multiple needs” should be introduced in the penitentiary system, which will allow the system to properly assess the condition of each person with disabilities and each of their needs, and finally plan the sentence of such a person with multiple needs with respect for his or her dignity, and without harming his or her physical or mental state.

The introduction of the institute for individual sentence planning in all facilities of the penitentiary system and the creation of a common database available to all relevant personnel, allows the prison systems to take appropriate measures towards persons with disabilities with multiple needs upon their admission to the penitentiary facility to avoid any risk of human rights violations or ill-treatment and to facilitate their adaptation.

Multiple needs are related to sex and age, as well as to the discriminatory hierarchy created by the criminal world within the system, which further complicates the already difficult situation of persons with disabilities. Thus, the penitentiary system should develop security mechanisms that are not related to disciplinary measures.

CHAPTER 20. PREPARATION FOR RELEASE AND EARLY CONDITIONAL RELEASE FROM SERVING THE SENTENCE

One of the most sensitive issues in the operation of the penitentiary system is early release from serving a sentence. In relation to this issue, European standards set out the requirements that it must meet and serve, namely: legislation and the practice of conditional release should comply with the fundamental principles of democratic states governed by the rule of law, whose primary objective is to guarantee human rights in accordance with the European Convention on Human Rights and the case-law of the organs entrusted with its application.³⁸⁷

Early release is associated with many specific difficulties. One is that it involves several important actors: the convicted individual, whose main motivation when serving the sentence is the preparation for early release and access to it, on the other hand, there is the victim, who has suffered moral and/or material damage and has an internal protest against the idea that the person who inflicted this harm on him or her might not fully serve the sentence, and lastly, the society and its safety in which the convicted individual is to return and which, in most cases, is not quite friendly towards the former prisoner. However, if we look at the Council of Europe's definition of the purpose of early release, it clearly shows its advantages in relation to all the above risks. In particular, first of all, conditional release should aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the community. This should be achieved through post-release conditions and supervision that promote this end and contribute to public safety and the reduction of crime in the community.³⁸⁸

³⁸⁷ See Council of Europe Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole), Preamble.

³⁸⁸ *Ibid*, General principles.

Due to the difficulties that a person encounters in the process of being released from serving a sentence, as well as stigma, which is an unresolved problem in many countries, a person released from serving a sentence finds it difficult to integrate into the society in which these barriers exist. And if we take into account the situation of persons with disabilities in a given case, when their disability is added on top of the common problems, these people face much more difficulties. However, it should be clearly stated that early release from punishment is the right of any person and he or she should be informed about this right as soon as he or she is detained. As Givi Mikanadze notes in his paper, early release procedures are particularly important in relation to such key components as reducing the negative effects of deprivation of liberty and reintegrating convicted individuals.³⁸⁹ Thus, its role is much broader and more important than just release from the place of deprivation of liberty.

However, a particularly important contribution of the prison administration shall also be mentioned: first of all, if a prisoner returns to the community equipped with various life skills, the probability that a former prisoner with a disability will easily integrate into the community is high. On the other hand, there is also a high probability that the society will be protected from new crimes. European standards pay significant attention to the process of preparation for release, during which the relevant prison services should ensure that prisoners can and are encouraged to participate in appropriate pre-release programmes that prepare them for life in the community.³⁹⁰

³⁸⁹ See *Mikanadze G.*, *The Right of a Prisoner to Early Conditional Release – European Experience and the Georgian Reality*, Human Rights Protection: Achievements and Challenges, collection of articles., Tbilisi, 2012, 137.

³⁹⁰ See Council of Europe Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole), Preparation for conditional release.

Statistics on Early Conditional Release as of September 2019:⁶	
Total number of prisoners	10 042
Number of persons released	644
Scheduled release	188
Conditional sentence	45
Early conditional release from serving the sentence	82
Replacement of the unserved part of the sentence with a lighter sentence (community service/house arrest)	15
Amnesty	0
Pardon	0
Deferment of sentence due to serious illness/pregnancy	1
Release due to serious illness	0
Other types of release (bail, termination of the case, extradition, etc.)	313

What is the solution so that prisoners with disabilities do not find themselves in a hopeless situation after release, facing the risk of having to return to places of deprivation of liberty? How should they be prepared for their release from prison? First of all, the prison administration should make every effort to ensure that prisoners with disabilities are involved in all the training programmes available for any other prisoner in the facility. In addition, if necessary, according to the needs of persons with disabilities, programmes should be developed that will be available to meet these needs. However, it should be noted that the absence of such programmes or the lack of access to them for persons with disabilities should not be a reason for a person to be refused early conditional release. Especially the fact that they may have been unable to participate in the sufficient number of prisoner programmes due to their disability should not be used against them in deciding early condi-

tional release.³⁹¹

In addition to internal prison programmes, the Council of Europe recommendation puts emphasis on the important role of other state or non-governmental institutions in the implementation of preparation for release and post-release support programmes.³⁹² Which will facilitate the integration of any person, and especially a person with disability into society. Coyle's explanation that prison arrangements should be put in place to help PWDs find somewhere to settle after release and to create form of social structure which help them to be re-accepted into society, corresponds well to the issue of arrangement of life after the release of a person with disabilities.³⁹³ Persons with disabilities are the risk group that most often need this type of assistance due to their condition.

In the practice of different countries, we often encounter factors that hinder participation in preparation for release training programmes, such as: overcrowding in prisons, when the administration has no infrastructure to implement such programmes, or when programmes are not available to persons with disabilities only due to lack of adapted infrastructure; Lack of financial resources for the implementation of programmes, when it is not possible to implement programmes tailored for persons with disabilities, due to their small number, as the resources are mainly directed to the needs of the majority of prisoners; shortage and/or absence of specialists at the facility.

³⁹¹ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 53.

³⁹² See Council of Europe Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole), Preparation for conditional release.

³⁹³ See *Coyle A.*, A Human Rights Approach to Prison Management: Handbook for Prison Staff, International Centre for Prison Studies, 2nd edition, 2009, 88.

In addition to the programmes within the penitentiary system, an important role is played by the various systems and services in the community, which, based on their professional experience, should assist penitentiary facilities in developing preparation programmes for release, offer post-release support programmes without which adapting to the community after release poses an additional challenge and difficulty for a person with a disability. In the list of such services, first of all, due to its functional purpose, we should include the probation services, considering that, in principle, early conditional release should also be accompanied by supervision, which consists of help and control measures.³⁹⁴ Just as probation services should be involved in the preparation process for release, the prison administration should also be obliged to provide probation services with the necessary information about the release of a person with a disability and his or her needs.

In view of the above, in order for such cooperation to take place, the relevant prison services must have active communication with various governmental or non-governmental services, which can assist persons with disabilities in their reintegration into society. Due to their convictions, access to community services and assistance is difficult and sometimes impossible for persons with disabilities released from penitentiary facility. The way to solve this obstacle or problem is to involve qualified state or non-governmental organisations in the process of preparation for release and the provision of post-release services.

Compound programmes for preparation for release and post-release support should be aimed at supporting the process of returning prisoners to the community to avoid reoffending and to reduce the negative impact of imprisonment, especially for persons with disabilities, as they are likely to face special difficulties after release.³⁹⁵

³⁹⁴ See Council of Europe Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole), General principles.

³⁹⁵ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations

Also noteworthy is the process of reviewing the issue of early release from sentence, which is considered by court or relevant council/ commission according to the practice in various countries. When considering the release of a person with a disability, his or her condition should be one of the criteria that may be the basis for his or her release, given the extent to which being in prison harms or complicates his or her condition.

PART IV. EXECUTION OF NON-CUSTODIAL SENTENCES/ PROBATION

CHAPTER 1. SPECIFICS OF EXECUTION OF NON- CUSTODIAL SENTENCES IN RELATION TO PWDS. ANALYSIS OF LEGISLATION AND PRACTICE

The use of non-custodial sentences for persons with disabilities, in addition to being an indicator of a humane criminal justice system, is one of the key factors in maintaining the physical and mental health for persons with disabilities. There are many reasons why priority should be given to the use of alternative sentences, firstly, it precludes the placement of a person with a disability in a cell and, secondly, the person remains in the control of the relevant state bodies, because he or she, despite his or her condition, committed the crime.

The use of non-custodial sentences should also be given priority, as prison sentences should be applied to persons with disabilities only in cases of unavoidable necessity and for the duration which will not have consequences such as complications to disability and health, psychological stress due to prolonged distance from family and usual environment, etc. The latter is especially characteristic of the Georgian reality because people with disabilities, in most cases, are attached to the family members, live with them and receive great help and support from them. *“[T]he social reintegration needs of offenders with disabilities are rarely, if ever, served in prisons and their imprisonment should be avoided as far as possible, taking into account the offence committed and public safety requirements.”*³⁹⁶

Depending on the condition and needs of the person with disabili-

³⁹⁶ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 48.

ties, instead of custodial or non-custodial sentence, it is possible to prioritise the maximum use of diversion, which shall be available at any stage of criminal proceedings when the criminal case, victim's attitude and public safety allows. According to the Committee on the Rights of Persons with Disabilities, "*deprivation of liberty in criminal proceedings should only apply as a matter of last resort and when other diversion programmes, including restorative justice, are insufficient to deter future crime.*"³⁹⁷

The Georgian criminal justice system is not a successful practice of using the practice of diversion, although, by its very nature, diversion and mediation are parallel legal mechanisms to criminal justice, which aim to prevent new crimes more effectively through liberal methods.³⁹⁸

In the case of juveniles, it should be noted that in July 2010 an amendment was made to the Criminal Procedure Code. This amendment introduced a mechanism for diversion and mediation of juveniles in conflict with the law. Based on these legislative changes, the programme was launched on 15 November 2010.³⁹⁹ Therefore, it should be noted that diversion is used in the case of juveniles, although its area of application can and should extend to other vulnerable groups, including persons with disabilities, in case of committing less serious and serious crimes by them. When possible, the mediator should be involved in the

³⁹⁷ See Committee on the Rights of Persons with Disabilities, Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, The right to liberty and security of persons with disabilities, Adopted during the Committee's 14th session, held in September 2015, 6.

³⁹⁸ See *Dvaladze I.*, General Part of the Criminal Law, Punishment and other Criminal Consequences of the Crime, 2013, 69. (LEPL "Center for Crime Prevention" under the Ministry of Justice of Georgia was established in September 2012. The mission of the Center is to promote the prevention of recidivism in Georgia, working with risk groups and implementing projects related to Primary Crime Prevention).

³⁹⁹ See Diversion and Mediation Programme, Interim Report of the Center for Crime Prevention, Ministry of Justice, 2016.

process of reaching an agreement between the victim and the accused person with disabilities, which, consequently, eliminates the neglect of the victim's interests. Where possible, persons with disabilities should be diverted from the criminal justice system at the first point of contact with law enforcement officers. Here the experts explain the period of use of the diversion, which should not be limited, and say that "*diversion should be possible throughout the criminal justice process – during prosecution, trial and on imprisonment.*"⁴⁰⁰

It should also be noted that in some cases the use of custodial sentence is inevitable due to the gravity of the crime committed and the interests of the victim and the public safety. This paper extensively discusses the standards for the use of custodial sentence and the negative and positive consequences of such punishment. However, the use of alternative sentences for persons with disabilities is a priority, given that persons with disabilities are a particularly vulnerable group and, given their physical condition, the court should use alternative sentences as much as possible.

The use of alternative sentences to imprisonment as a priority can be considered a positive practice and argued by listing a number of supporting circumstances. Namely:

Interests of a person with a disability – In the case of an alternative sentence, on the one hand, the person stays with the family and the people from whom he or she receives the usual physical or moral support and assistance. On the other hand, he or she receives support and assistance from the probation service based on his or her needs assessment, including assistance that was not previously available to him or her due to the financial state of the family, low awareness, physical disability and other circumstances related to his or her condition.

⁴⁰⁰ See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 48.

In many cases, the lack of such access might also be a reason for the committed crime.

The interests of the penitentiary system – Given that the prisons are mainly designed for young and healthy people, in most cases, its infrastructure, regulations and other conditions are not tailored to the needs of persons with disabilities. Thus, when persons with disabilities are admitted to prison, the prison administration must take extra care to create adequate conditions for them, which often requires the mobilisation of additional human and financial resources and there is need for special training of the staff. However, solving the problem often goes beyond the prison administration's authority when certain actions require legislative and other changes.

Public safety – People who, despite their condition, have committed a crime are not left without intensive control and supervision.

It is clear that the use of alternative sentence to imprisonment is a humane way of applying punishment to persons with disabilities. However, the readiness of probation services to have the appropriate qualifications and regulatory mechanisms to work with persons with disabilities should also be considered. The probation services shall enforce the sentence imposed by the court in accordance with the law and standards, protect the interests of convicted persons with disabilities, their dignity, provide them with the necessary programmes, including programmes supporting their integration into society.

The probation service shall take into account the interests of the victim and the safety of the public when enforcing a non-custodial sentence and exercising control over a person released early from serving a sentence. The reasoning provided in the Handbook on Prisoners with Special Needs that the development of appropriate non-custodial programmes for persons with disabilities, combining treatment where rel-

evant, with supervision⁴⁰¹ in the community, comprises a more humane and effective way of dealing with such persons' needs while ensuring public safety, is logical.⁴⁰² Thus, the use of non-custodial sentences for persons with disabilities and putting them under probation and supervision should be a priority measure over imprisonment.

To evaluate the existing practice of working with persons with disabilities in the Georgian probation system, we can review the legislation of Georgia (Law of Georgia on the Rules of Execution of Non-custodial Sentences and Probation) and the practice of the probation system in the area of working with persons with disabilities. The analysis of the review suggests that the regulations that set standards for working with convicted persons with disabilities/probation clients are quite weak and in fact it cannot be considered as a guarantee that alternative sentences will be served in the interests and needs of convicted persons with disabilities.

If we look at the history of the creation and development of the Georgian probation system,⁴⁰³ it is not that long. Thus, its shortcomings and gaps need to be gradually refined and developed. The Georgian probation system is characterised by similar development stages and standards as in European countries and is by no means an exception. However, compared to European systems, it is much younger. Consequently, the existing gaps are noteworthy. A comparative analysis of European probation service systems explains that the origins and devel-

⁴⁰¹ In this case "supervision" entails carrying out control over the person without isolating him or her from the society.

⁴⁰² See *Atabay T.*, Handbook on Prisoners with special needs, United Nations Office on Drugs and Crime (UNODC), Criminal Justice Handbook Series, New York, 2009, 49.

⁴⁰³ See *Magrade T., Gozalishvili N.*, Probation in Europe – Georgia, 2016, 5 (The probation service in Georgia was created in 2001. The first Law on "Rules of Execution of Non-custodial Sentences and Probation was adopted in 2001).

opment of probation are characterised by many similarities in different European countries and traces its origins to the first half of the 19th century, “when charitable and religious institutions became interested in the fate of prisoners and former prisoners and wanted to offer material and non-material assistance (Germany, Ireland, Luxembourg and Switzerland).”⁴⁰⁴

Georgia has a 19-year history of establishing the probation service and forming it into the current state. In particular, the processes unfolded as follows: Following the ongoing reforms in the field of criminal justice in 2000, changes were made in almost all legislative acts in the field of criminal justice. The legislative changes have introduced numerous modern approaches that laid the groundwork for the humanisation of the criminal justice system and the humanisation of its transition from post-Soviet standards to European standards of treatment of prisoners. For example, in the penitentiary system, the post-Soviet educational service is changed its face and a social service was created, which was focused on rehabilitation of prisoners; work began to establish a probation service, the term “probation” appeared, which was foreign to the whole system, and a bit later, on 7 May 2003, the Law of Georgia on the Rules of Execution of Non-custodial Sentences and Probation entered into force for the first time, according to which the Department of Non-custodial Sentences and Probation (hereinafter – the Department) and the territorial bodies of the Ministry of Justice – the Bureaus of Non-custodial Sentences and Probation (hereinafter - the Probation Bureau) were established in the system of the Ministry of Justice.⁴⁰⁵

The newly established Department was given the function of coordination, while probation bureaus directly execute the legal acts within their competence in practice, such as, for example, the performance of

⁴⁰⁴ See Anton M. van Kalmthout Ioan Durnescu, A comparative overview European Probation Service Systems, Chapter 1, 2, 2008.

⁴⁰⁵ See Magrade T., Gozalishvili N., Probation in Europe – Georgia, 2016, 5.

duties by probationers and persons sentenced to non-custodial sanctions by court. The main task of the probation service was to facilitate the re-socialisation of convicted individuals, to assist them and to prevent them from committing a repeated offense, although at first, it could only carry out control. Over time, probation service has developed dramatically and with its capabilities it has come closer to the probation service systems of European countries.

The law was periodically amended: on 17 July 2007, the new Law of Georgia on the Rules of Execution of Non-custodial Sentences and Probation entered into force. On the basis of the new law, instead of the Department of Non-custodial Sentences and Probation, a state sub-agency under the Ministry of Justice was established – the National Service for the Execution of Non-custodial Sentences and Probation. According to the law, the Bureaus of Non-custodial Sentences and Probation were transformed directly into territorial bodies of the National Probation Service. On 4 February 2009, the National Service for the Execution of Non-custodial Sentences and Probation transferred to the newly established Ministry of Corrections, and in 2018 it returned back to the Ministry of Justice.

Apart from the gradual formation of the service, the law on probation has undergone some changes, however, if we analyse the legislation in relation to probationers with disabilities, we have not had much progress in this regard. The law is the main regulatory mechanism, both in terms of the performance of work by employees and the rights of probationers and their treatment. Thus, its role is very large in the case of the execution of alternative sentences against any person, including persons with disabilities.

Although the Law of Georgia on Execution of Non-custodial Sentences and Probation almost does not mention the persons with disabilities and the specifics of working with them, we find some provisions that can still be considered as a guarantee of protection of the rights of

persons with disabilities. For example, the basic principles of the National Probation Agency, which describes the obligation of the staff of the National Probation Agency to respect human rights and freedoms and to uphold the rule of law, regardless of any distinctive features.⁴⁰⁶ First of all, all clauses apply to any person as well as persons with disabilities, and probation officers are obliged to equally respect the needs and interests of persons with disabilities. Also, the term “any features” mentioned in the article can be applied to a person with disabilities and their specific needs.

The next article, which should also be considered as a guarantee for the protection of persons with disabilities and efficiency of work with them, is about the objectives of the National Probation Agency, which states that *“The National Probation Agency pursues its objectives on the basis of the risk and needs assessment of convicted persons, through individual sentence planning, the necessary supervision and control of convicted persons, and the facilitation and assistance for their re-socialisation and rehabilitation.”*⁴⁰⁷ The importance of this article is particularly significant, because if the probation system assesses the risks and needs for any convicted person, it will apply to a person with disabilities whose sentence will be planned not according to general standards but according to a sentence plan prepared based on his or her individual needs assessment. This will enable probation officers, social workers, and psychologists to lead the execution of sentences effectively, by preparing the persons for release, and by promoting their integration into society.

In addition to individual sentence planning, the list of objectives of the Probation Agency also includes a provision which, unlike the penitentiary system, gives the probation system a wider opportunity to carry

⁴⁰⁶ See Statute of the Legal Entity of Public Law - National Agency for Execution of Non-custodial Sentences and Probation, art 3, 27 March 2019.

⁴⁰⁷ Ibid.

out the execution of sentences for persons with disabilities through all the activities specified in the plan and to take care of persons with disabilities at their own discretion, select appropriate programmes, services, etc. *“For the purpose of re-socialisation and rehabilitation of convicted persons, by agreement with the Minister, the National Probation Agency is authorised to finance cultural, social, healthcare and other activities from its own revenues.”*⁴⁰⁸

As mentioned above, we do not come across the term “person with disabilities” in the Law on Execution of Non-custodial Sentences and Probation. The lack of such a regulation mechanism or its general nature, on the one hand, poses a problem for the person against whom the alternative sentence has been imposed, on the other hand, it poses a problem for the probation officer in conducting the execution of the sentence against such a person. The only article, that mentions persons with disabilities in the part of non-custodial sentences and probation, is Article 12, which establishes certain privilege for persons with disabilities in case they violate the regime established within a conditional sentence and parole. This regime includes the obligation to report once a week at the time and place set by the probation officer. However, the regime may also include the performance of other duties provided for by the legislation of Georgia.

The legislation allows the probation system to apply a mitigated regime to vulnerable groups belonging to various special categories, including persons with disabilities, if it considers that it is not necessary for a person to report in a standard regime for further effective serving of a sentence, *“if a convicted individual is a person with a disability (person with pronounced physical, mental, intellectual or sensory disorders, the interaction of which with various obstacles may prevent this person from fully and effectively participating in public life on an equal basis*

⁴⁰⁸ See Statute of the Legal Entity of Public Law - National Agency for Execution of Non-custodial Sentences and Probation, art 3, 27 March 2019, art 2, 3.

*with others.*⁴⁰⁹ The law also sets out the procedures as to what benefits may be used and how it should be regulated when, by written agreement with the head of the National Probation Agency, the convicted person may be relieved of the prescribed regime by reporting to the probation bureau every three months.

The attitude towards the convicted person with disabilities who cannot move independently, should be considered as a positive practice. The law obliges the probation officer to visit the place of residence of such a probationer at least once every 3 months to carry out supervision.

If we consider the case of violation of the established regime, the law does not consider disability in the list of justified reasons. The law considers the violation of the regime justified if there is a reason such as: *“a state of health of the convicted person that makes it impossible to comply with the established regime, which is confirmed by a relevant certificate issued by a doctor.”*⁴¹⁰ If the disability is not addressed in the context of a medical model, the failure of a person with a disability to report qualifies as a violation. Many such cases can be found in practice, for example, a wheelchair user or a blind person who is unable to move independently and did not have a helper on the appointed day.

In the section on the protection of rights of convicted persons, the law does not mention any special needs of persons with disabilities and the need to protect certain rights due to their condition or to release from certain responsibilities (except for the benefits provided for in the periodicity of reporting).

Clearly, all the rights of convicted persons covered by the law apply to persons with disabilities, however, due to their particular vulnerability, they may need different guarantees of protection. The following provision can be considered as such guarantee: “the right to protection

⁴⁰⁹ See Statute of the Legal Entity of Public Law - National Agency for Execution of Non-custodial Sentences and Probation, art 3, 27 March 2019. art 12.

⁴¹⁰ Ibid, art 2, 3.

against all forms of discrimination”,⁴¹¹ which can be considered a prohibitive norm and provides that, e.g., persons with disabilities, due to their condition, should not be put in unequal conditions with other convicted persons in the execution of alternative sentences, as well as participation in programmes and control.

In addition to national law, there are extensive international standards addressing the practice of probation, which set out the rules and procedures for the treatment of convicted persons and the execution of non-custodial sentences. One such document is the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules). According to the definition, the Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

With regard to persons with disabilities, the focus should be made to the definition of the role of probation, according to which the role of probation is to provide non-custodial options, thus *“reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of offenders.”*⁴¹²

Rationalisation of the legal policy indicated in the Rules is a noteworthy institution for the Georgian practice, as in Georgia and in many countries around the world a person with a disability is admitted to a penitentiary facility on the grounds that there is no rational criminal policy for persons with disabilities, and a person who, given the gravity of the crime committed and his or her condition, does not need to be isolated from the society, ends up in prison.

The role of the probation service should start not in the process of

⁴¹¹ See Statute of the Legal Entity of Public Law - National Agency for Execution of Non-custodial Sentences and Probation, art 3, 27 March 2019. art 10.

⁴¹² United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), Rule 12.

execution of non-custodial sentences or early release, but in preparing a pre-sentence report for persons with disabilities so that the court can receive complete and exhaustive information on the condition of a person, causes of crime, living conditions and other circumstances. When preparing the pre-sentence report they are obliged to take full account of the individual characteristics, circumstances and needs of offenders in order to ensure that each case is dealt with justly, fairly and in accordance with the law.⁴¹³ The information provided will help the court to make a rational decision. This practice is actively used in many countries around the world (e.g., Scandinavian countries). The Rules describe the role of the pre-sentence report and state that report shall be prepared *“in order to assist, where applicable, the judicial authorities in deciding whether to prosecute or what would be the appropriate sanctions or measures.”*⁴¹⁴

With regard to the execution of sentences subject to probation, international standards define the importance of a system of sentencing tailored to individual needs. *“Probation agencies shall take full account of the individual characteristics, circumstances and needs of offenders in order to ensure that each case is dealt with justly and fairly.”*⁴¹⁵ The Rules indicate the obligation of probation authorities to carry out their work without discrimination on any ground.

Similar to the national law, the Rules do not specifically address persons with disabilities, although it explicitly states that probation services must enforce the law without any discrimination, and through a system of sentencing based on individual needs.

There are circumstances that significantly reduce the possibility to use most non-custodial sentences against persons with disabilities due

⁴¹³ See Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, Rule 4.

⁴¹⁴ Ibid, Rule 42.

⁴¹⁵ Ibid, Rule 4.

to their physical or financial condition, unemployment and other factors. The fact that the majority of persons with disabilities in Georgia are from socially vulnerable or economically weak families does not require additional research, and the number of cases of employment of persons with disabilities is minimal. Therefore, they usually do not have personal income. In view of all the above and considering that, according to the Criminal Code of Georgia, the court determines the amount of the fine, among other circumstances, taking into account the material condition of the convict, the fine⁴¹⁶ for the person with disabilities as well as imprisonment should be used as an exception or should not be used at all, given the needs that persons with disabilities have, in order for them to live in a society and close to other people.

In the practice of Georgia, the sanction – deprivation of the right to hold an office,⁴¹⁷ cannot be effectively used against persons with disabilities, as there are practically no cases of a person with a disability holding any position in public or state service, although the Law of Georgia on Public Service does not consider a disability as a hindering circumstance to hold an office at the public and state services.

Among the optimal and applicable sentences, non-custodial sentences may be considered, such as correctional labour,⁴¹⁸ if the person is employed. However, if we take into account the problem of employ-

⁴¹⁶ A fine shall be a monetary penalty. The minimum amount of a fine shall be GEL 2 000. If an appropriate article of the Special Part of this Code provides for imprisonment for up to three years, the minimum amount of the fine shall be at least GEL 500. – Criminal Code of Georgia, art 42(1)(2), 22/07/1999.

⁴¹⁷ “Deprivation of the right to hold an office or carry out activities shall mean that a convicted person shall not hold an appointed office in public service or in municipal bodies or pursue professional or other activities.” – Criminal Code of Georgia, art 43(1), 22/07/1999.

⁴¹⁸ “Corrective labour shall be imposed for a term of one month to two years and it shall be served at the place of work of the convicted person.” – Criminal Code of Georgia, art 45(1), 22/07/1999.

ment in the society in general, including the low employment rate of persons with disabilities, we cannot include this sentence in the list of sentences for effective use.

House arrest (Article 40, Part 1, sub-paragraph f1)⁴¹⁹ and community service (Article 40, part 1, sub-paragraph c)⁴²⁰ can be considered as the most optimal sentences, taking into account the peculiarities of their execution and the requirements associated with them. Modern scientific and public opinion is gradually leaning more toward the benefits of punishment, in the broadest sense of the word, rather than the severity of punishment. In this respect, community service is an important punishment.⁴²¹

With regard to house arrest, the main focus should be on the fact that, according to the law, house arrest is usually carried out through electronic surveillance. Thus, it does not present any additional physical or psychological stress for a person with a disability that could complicate his or her condition.

If we consider creating equal conditions for persons with disabilities in the use of non-custodial sentences with other convicted persons, it is possible to focus on community service that is often either not available to persons with disabilities due to their condition, or the job for the community service is selected solely by probation officers, which is of a discriminatory nature. Experts consider community service to be a just punishment, one of the aspects of which is pre-consultation with the

⁴¹⁹ “House arrest shall mean imposition on a convicted person of the obligation to stay in his/her place of residence during the specific period of day.” – Criminal Code of Georgia, art 471(1), 22/07/1999).

⁴²⁰ Community service shall mean free labour of a convicted person where the type of labour is determined by the National Probation Agency.” – Criminal Code of Georgia, art 44(1), 22/07/1999.

⁴²¹ See *Dvaladze I.*, *General Part of the Criminal Law, Punishment and other Criminal Consequences of the Crime*, 2013, 48.

convicted person about the work to be performed. When selecting such a sentence, the convicted person should be asked what kind of work he or she can perform. However, this approach does not mean that the convicted person makes a decision on what kind of work to do.⁴²² According to the experts, this will help the probation system to learn from the convicted person about what kind of skills he or she has, as well as receive information about the specifics such as existing work, family responsibilities, health status, disability, possibility to work on weekends and more.

European Rules on Probation sets out the obligation of probation authorities to develop community service schemes that include a range of tasks suitable to different skills and diverse needs of offenders. Such an approach eliminates the above-mentioned discrimination and allows persons with disabilities to be sentenced to community service on an equal basis with others. The Rules sets the obligation to create such programmes for different vulnerable groups for whom the creation of such programmes should be a priority, such as: women offenders, offenders with disabilities, young adult offenders and elderly offenders.⁴²³

However, the creation of special schemes or jobs should not be discriminatory and should only be tailored to the skills and abilities of offenders. European standards define that community service, firstly, should not be of a stigmatising nature, and secondly, probation authorities should seek to identify and use working tasks which support the development of skills and the social inclusion of the convicted individuals.⁴²⁴

⁴²² See *Arsoshvili G., Mikanadze G., Shalikashvili M.*, Probation Law, 2015, 302.

⁴²³ See Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, Rule 51.

⁴²⁴ *Ibid*, Rule 47.

1.1. Pre-trial Supervision

The Georgian criminal justice system is not familiar with a concept of pre-trial supervision and the involvement of probation service in it. In many cases, pre-trial detention is used by the court as a preventive measure on the grounds that a person may evade investigation or influence witnesses, regardless of whether the accused is a person with disabilities and whether he or she can perform either of these two actions. In fact, such decision gives grounds to assume that the court does not see a system that will be responsible to control the person so that he or she does not take such actions. Lack of such supervision, possibly, does not allow the judiciary not to apply a preventive measure to persons with disabilities and to any person in general, as there is no guarantee of proper supervision.

Many positive aspects of the existence of this institution can be considered, such as: reduction of the number of pre-trial prisoners and disburden of the penitentiary system, humane attitude, fight against stigma, etc. But it should be given a special role in relation to persons with disabilities, for whom it is always a high risk to be placed in closed institutions, depending on their condition. Thus, pre-trial detention of persons with disabilities should be applied only as the last resort. The institute of probation supervision would enable the judiciary to reduce pre-trial detention for persons with disabilities.

As for probation supervision over convicted persons with disabilities, it should be based on the needs of persons with disabilities. *“In order to ensure compliance, supervision shall take full account of the diversity and of the distinct needs of individual offenders.”*⁴²⁵ The role of the probation service should not be defined by the control of convicted persons only, which is usually limited to periodical reporting of convict-

⁴²⁵ See Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, Rule 54.

ed persons to the probation bureau and leaving a signature (or fingerprint in Georgian practice). Probation services should be mobilised to provide counselling to convicted persons, and especially to persons with disabilities (*Supervision shall not be seen as a purely controlling task, but also as a means of advising, assisting and motivating offenders.*⁴²⁶), referring them to state and non-governmental institutions. Cooperation with such institutions should be a priority for the probation services.

1.2 Planning probation activities and collection of statistical data in relation to persons with disabilities

In all cases, and especially in the case of probation, a special role should be given to maintaining and publishing statistics that will be available to any service provider or other interested organisation, institutions and individuals, as probation clients are not in closed institutions. Thus, the provision of services is not related to any kind of restriction, except for the restrictions provided by law. Accordingly, any necessary assistance should be accepted and encouraged within the framework of probation control and cooperation.

Planning of probation should include collaboration with internal services (risk and needs assessment, care) to determine the exact needs of a person with disability in order to provide appropriate assistance and services. Probation officers as well as social workers and psychologists should be involved in the activity planning process so that the programme can be properly and effectively tailored to the condition and needs of the person with disabilities.

The plan of execution of a sentence for a probationer with disabilities, unlike other cases, especially requires the involvement of external services due to the condition and the type and degree of disability of a

⁴²⁶ See Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, Rule 55.

PWD, as well as other circumstances related to the person with a disability. It is essential to cooperate with service providers (treatment and development of daily life skills: communication and other social skills, self-care, ability to live independently at home, professional skills, etc., as well as involvement in daily activities: education, employment, participation in programmes, etc.). The purpose is to determine whether there are institutions or individuals willing and able to provide the services that a particular person with a disability need. On the other hand, their willingness and readiness to provide the necessary assistance to this or that person, regardless of the crime committed by him or her or other circumstances should also be determined. This applies especially to crimes that represent a sensitive topic for the public.

One of the components of probation activities should also be cooperation with the family and the community (professional assistance, social services, housing, etc.), as well as professional assistance such as: health care, education, vocational training, etc. First of all, it is necessary to determine the relationship of the convicted person with disabilities with the family in order to find out what support he or she can receive from the family.

Finally, the main role among probation activities is given to the supervision/control that it has to perform towards any probation client. However, this process requires special planning in relation to a person with disabilities, taking into account what kind of control should be exercised over any individual, how often, with regard to his or her health condition, personal life planning and security.

In view of the above circumstances, we can conclude that several priority areas should be identified, the introduction of which in the Georgian criminal justice system will facilitate the selection and use of sentences for persons with disabilities, which will minimise the deterioration of the situation of persons with disabilities during serving the sentence and other risks related to the execution of sentence. Namely:

It should be mandatory to prepare a presentence report for accused persons with disabilities so that courts can take into account the situation of a person with disabilities, the ability to live independently, family and community support, and other circumstances when imposing a sentence, which will facilitate an objective and rational decision making regarding the condition of PWDs.

The institute of pre-trial supervision by probation service should be introduced in the criminal law of Georgia, which will enable the courts to avoid the use of preventive measures, except in extreme cases. On the other hand, it will facilitate the disburdening of pre-trial detention facilities and ensure the protection of the rights of persons already in the given facility. In the first stage, the mentioned institute can be piloted in relation to vulnerable groups.

The use of diversion and mediation should be piloted in relation to persons with disabilities and used as frequently as possible, which will be one of the guarantees that persons with disabilities will be prevented from being placed in penitentiary facilities and, consequently, isolated from society.

CONCLUSION

The analysis of the peculiarities of sentencing of persons with disabilities, legislation, practice of treatment of persons with disabilities in the penitentiary systems of Georgia and other countries discussed in the publication reveals the following shortcomings: non-compliance of current legislation and sub-legislative acts with international standards; lack of infrastructure tailored to the needs of persons with disabilities or incompatibility of existing infrastructure with the requirements of the Convention on the Rights of Persons with Disabilities; Low level of training of personnel working with persons with disabilities, etc. These shortcomings create a penitentiary environment where persons with disabilities do not have the same conditions as other prisoners and in which they are not protected from violence, inhuman or degrading treatment.⁴²⁷

The existence of shortcomings discussed in the publication leads to the violation of basic human rights⁴²⁸ of persons with disabilities protected under the Constitution of Georgia, such as: inviolability of human dignity and prohibition of torture; the right to equality; procedural guarantees; the right to personal and family privacy, personal space and privacy of communication; access to public information; freedom of labour, rights to education and protection of health, etc. The risks of violation of such rights, their causes and ways to address them are discussed and analysed in detail in the framework of both legislative and practice research of the publication.

This publication provides proposals to the Government of Georgia

⁴²⁷ See UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006. States Parties undertake to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention and to protect them from torture or cruel, inhuman or degrading treatment or punishment, on equal basis with others.

⁴²⁸ Constitution of Georgia, arts 9, 11, 15, 18, 26, 27, 28 and 31, 24 August 1995.

and the Ministry of Justice, the implementation of which will help to create an equal, rehabilitation-oriented environment for persons with disabilities in the penitentiary system, which will meet international standards and facilitate effective reintegration of persons with disabilities.

Despite the ratification of the Convention on the Rights of Persons with Disabilities and the enactment of various legislative mechanisms, there are still gaps in practice and the stigma towards persons with disabilities that has existed in the country for many years. This does not provide guarantees that everyone, regardless of their physical or mental condition, will serve their sentence on an equal basis with other prisoners in an environment where human dignity and other fundamental rights are protected.

The publication discusses the situation of prisoners with physical disabilities, which differs from other persons deprived of their liberty only in the fact that they have additional needs due to their physical condition. Consequently, when they are admitted to the places of deprivation of liberty, they face obstacles that they cannot overcome independently. The existence of such obstacles puts prisoners with disabilities at high risk of violation of their rights.

The circumstances presented in the publication clearly present the picture that there are problems and challenges for persons with disabilities in various fields and it concerns a wide range of state institutions (Ministry of Education, Science, Culture and Sport of Georgia, Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, Ministry of Justice, Judiciary, Prosecutor's Office, Ministry of Internal Affairs, etc.), various related fields and the civil society. These complex problems ultimately lead to the violations towards persons with disabilities in places of deprivation of liberty, which are discussed in this publication.

The publication discusses the factors contributing to the violation

of the rights of persons with disabilities in the penitentiary system, such as: the lack of the budget of state structures focused on persons with disabilities and, consequently, the lack of adequate resources; prison overcrowding or lack of adequate infrastructure to accommodate a person with a disability, while prisons are mainly tailored to the needs of young and healthy people, etc.

In Georgia, as in any other country, persons with disabilities are often among the offenders. Clearly, the criminal justice system cannot be selective against them. Consequently, persons with disabilities are and will continue to be in the penitentiary system, which must be prepared to provide effective and adequate conditions of serving the sentence for persons with disabilities and other vulnerable groups.

The purpose of this research is not to prove the necessity of creating privileged conditions of serving the sentence for prisoners with disabilities. It is an attempt to develop recommendations and mechanisms to ensure that persons with disabilities are served on an equal basis with other prisoners, taking into account their special needs. It is important that the provisions, conclusions and recommendations developed within the paper establish new approaches to the specifics of sentencing persons with disabilities, make a substantial contribution to creating adequate conditions of serving the sentence for persons with disabilities, and effectively resolve disputes related to this issue.

Violations against persons with disabilities might often not be intentional or caused by subjective reasons, but may have more objective grounds, although this does not justify the structures in which the above inconsistencies are found. For example, the problem connected to prison infrastructure, when prisoners could have had physical contact with visitors if they were standing against a wall, which was often virtually impossible for many prisoners with physical disabilities.⁴²⁹ These

⁴²⁹ See Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading

and other similar difficulties faced by the penitentiary system cannot justify possible discriminatory treatment of any person.

In view of the above, the paper does not consider the creation of conditions for persons with disabilities on equal basis with other prisoners in the places of deprivation of liberty separately, as an autonomous sphere, but it tries to identify the factors that lead the person with disabilities to such places. In order to discuss the difficulties in depth, the publication addresses, to some extent, the general access to the criminal justice system and the criminal proceedings for persons with disabilities and their full and equal participation in the process. The discussion of this area aims to present the full range of problem from the commencement of criminal proceedings to the release of a person. Since the problem is complex, it cannot be considered only in the framework of the penitentiary system, because the low level of awareness, gaps in the legislation, as well as the justice system, which cannot ensure full and effective participation of persons with disabilities at all stages of criminal proceedings, are prerequisite that persons with disabilities find themselves at places of deprivation of liberty, including when it could have possibly been avoided. All international standards unequivocally recognise that the use of a preventive measure against a person with disabilities should be a last resort, given his or her physical and mental condition. The Council of Europe Recommendation from 2018 calls on the State Parties to take a number of measures to prevent the detention of persons whose condition is incompatible with detention.⁴³⁰

A novelty that the author introduces introduces in the component of the criminal justice system is the preparation of a legislative package focused on persons with disabilities, which, in addition to the legislation regulating penitentiary and probation systems, also envisages changes

Treatment or Punishment (CPT) from 13 to 25 May 2012, 39.

⁴³⁰ See *Tornare M.*, Rapporteur of the Committee on Equality and Non-Discrimination, Report on Detainees with disabilities in Europe, 2018, 4.

in the Criminal Procedure Code. For example, it is advisable to define the term “person with disabilities” in Article 3 of the Criminal Procedure Code. In particular, first of all, in Part 18, after the sentence “due to his/her illness”, “disability” should be added and sentenced formed as follows: “due to his/her illness or disability”, as well as, for example, part 181 should be added to the Criminal Procedure Code, in which the term “disability” would be defined.⁴³¹

Article 38 – “Rights and Obligations of Accused Persons” – describes in more detail the rights of the accused persons with disabilities, which are related to their disabilities. For example, in Part 1 of Article 38, the sentence – “The accused shall be notified in a language he/she understands” should be supplemented with the term “form” and shall read as follows: “The accused shall be notified in a language and form he/she understands”. In this case, in addition to the language barrier, the needs of persons with vision, hearing, perception and other problems will be taken into account. In Section 5 of the same article, the sentence - “and if he/she does not have the means – the right to appoint a lawyer at the expense of the state” – shall be supplemented with “the person with disabilities” and shall read as follows: “and if he/she does not have the means or is a person with disabilities – the right to appoint a lawyer at the expense of the state’.

Article 117,⁴³² which defines the interrogation/interview proce-

⁴³¹ Persons with disabilities are considered persons with substantial physical, mental, intellectual or sensory impairments. The main point here is to consider that these impairments in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others – Law of Georgia on Amendments to the Law on Social Protection of Persons with Disabilities №2103 from 7 March 2014, art 2.

⁴³² The interview/interrogation of a person with a disability should be carried out taking into account the relevant amendments to the restriction, in order to ensure the effective implementation of the role of direct and indirect participant. 2. A deaf-mute shall be interviewed/interrogated with the participation of a [sign

dures for persons with disabilities and explains only the peculiarities of interrogation/interview of a person with a hearing impairment, should also specify the procedures for working with other categories of persons with disabilities, such as: “Persons with severe visual impairments” and “persons with intellectual or sensory impairments” who have perceptual problems and require assistance of a specialist.

Amendments to the Criminal Procedure Code should provide guarantees for the participation of a person with disabilities at all stages of the proceedings, regardless of the degree of disability of the person, which implies physical participation in the submission of information, evidence and other accompanying processes; choosing a defence lawyer or right to defend oneself, if he or she so wishes, which should lead to an objective and fair conduct of the whole process.

Ensuring the participation of persons with disabilities in the trial entails not only the procedural part, but also the adapted environment and the technical side of ensuring attendance, which should be regulated by the Organic Law of Georgia on Common Courts. As a result of the amendment, the provision of an accessible environment for persons with disabilities should be defined as a mandatory norm.

The paper discusses the compliance of national legislation with the requirements of international standards. The solution of this issue also goes beyond the penitentiary system. These changes are part of the initial and essential stage, which should provide an equal environment for all people in the society, should change the elements of Soviet attitudes towards persons with disabilities still remaining in state bodies,

language] interpreter having appropriate skills. If the person is deaf, he/she can be asked questions in writing, and if he/she is mute, he/she can answer the questions in writing. 3. The interview/interrogation of a seriously ill person shall be conducted with the permission and, if necessary, in the presence of the doctor.” Law of Georgia on Amendments to the Criminal Procedure Code of Georgia, art 10(1), 14 July 2020.

provide an accessible and equal environment for persons with disabilities, whether they are outside in the society or at places of deprivation of liberty. It is on the basis of harmonisation of national legislation with international standards that programmes should be developed, which will introduce individual approaches to all persons with disabilities. The state should develop an alternative, simplified form of information delivery to those who need it. Awareness raising campaigns on the specific needs of persons with disabilities and their full participation in public life should be carried out through state programmes and means of media, aimed at reducing stigma and increasing public acceptance, so that these individuals are recognised not as aid recipients but as rights holders.

In addition to the modernisation of the legal framework, the problems discussed, and the solutions sought in detail in the publication, as well as the developed proposals and recommendations introduce a wide range of novelties, which should provide adequate conditions for persons with disabilities to serve their sentence, based on the measures such as: adapting the physical environment to conditions and developing framework standards for treatment. In particular, the publication presents the stages the implementation of which should support the Georgian penitentiary system in carrying out proper sentence planning process for persons with disabilities, the production of statistics and transparency of this process, and finally, the provision of sentencing conditions for persons with disabilities on equal basis with other prisoners. Also strengthen the protection of the legal rights of persons with disabilities, so that the process of serving the sentence is carried out in accordance with human dignity, individual needs and interests.

According to the research, the steps that the penitentiary system should take to create a new and adequate environment for serving the sentence by persons with disabilities are as follows:

a. **Preparation of a package of legislative amendments** regulating the activities of the penitentiary system, which should provide an

appropriate environment and reasonable accommodation for persons with disabilities to serve their sentences. Although some amendments were made to the Imprisonment Code in relation to persons with disabilities in 2020, similar legislative changes should continue to be made with the involvement of professional circles to make their effectiveness more tangible. By-laws should also be developed to facilitate the implementation of the law in practice.⁴³³

The updated legal framework should regulate all areas related to the process of serving a sentence, separately and in detail, including admission procedures, registration of persons with disabilities, searches, accommodation/placement of persons with disabilities in the penitentiary facility through full respect for their honour and dignity, sentence planning after their placement, provision of living conditions, access to medical care, access to information about the prison regime, equal involvement of persons with disabilities in rehabilitation programmes and the preparation process for release, which will facilitate their effective reintegration into society, as well as the professional training of personnel and more. Lack of regulation on these issues causes various accompanying problems, which complicate the process of serving the sentence by persons with disabilities, their physical and psychological condition, and the consequences can be deplorable.

The issue of optimising the legal framework is based on the analysis carried out within the research, according to which there are obstacles to creating an adequate environment for serving the sentence by persons with disabilities, such as: lack of special legal procedures, absence or scarcity of specifics on working with persons with disabilities in internal prison regulations, which should regulate the internal procedures in detail, from the admission of the accused/convict person until his or her release.

⁴³³ Law of Georgia on Amendments to the Imprisonment Code, 14 July 2020.

Any country, especially countries that have acceded to a number of international human rights treaties, has a duty to create the conditions for every person to live in dignity and equality with others,⁴³⁴ no matter where they are, in places of deprivation of liberty or outside.

The fact that the publication correctly focuses on improving the legal framework, both in relation to the penitentiary system and beyond it, is confirmed by the amendments made to a number of legislative acts highlighted in the publication,⁴³⁵ including changes to the Imprisonment Code, which in fact define the term “person with disabilities” and regulate aspects of sentencing, such as the living conditions of persons with disabilities, food and contact with the outside world, in particular correspondence.

b. **Status Determination.** The complexity of the topic is highlighted by the legislative gaps that relate not only to the regulation of the penitentiary system, but also to areas such as status determination. Absence of status is directly related to problems in placing prisoners with disabilities in appropriate conditions and providing access to services. Lack of status is a problem both for the person with disabilities and for the penitentiary system, which is responsible for taking care of these persons.

The bureaucratic system of status determination becomes even more complicated in the penitentiary system, where the issue fully remains beyond the scope of legislation. A person with a disability in the penitentiary system is not offered effective mechanisms for status determination. Consequently, the bureaucratic and inflexible system of status determination is a heavy burden for persons with disabilities and their families.

Attribution of persons with disabilities to a special category is based on the special needs they have as vulnerable persons due to their physi-

⁴³⁴ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, arts 1, 7.

⁴³⁵ see pp 40-41 (Introduction) of the current publication.

cal or mental state. It is the responsibility of prison administrations to study, identify and then address such needs.

Proposal: Prisons should develop a system of preliminary assessment of the situation of persons with disabilities, which will allow a person to be provided with all the necessary services and assistance before the status is determined. The author in this publication also proposes penitentiary system to introduce the practice of primary risk and needs assessment of persons with disabilities, which will ensure the provision of accommodation and care conditions tailored to their needs. Finally, novelty related to status determination is the development and implementation of a separate, expedited status determination procedures for persons with disabilities in the penitentiary system, so that bureaucratic methods of status determination do not endanger the health and, in some cases, lives of persons with disabilities.

c. **Budget focused on persons with disabilities.** In the practice of Georgia, the obligation to develop a budget tailored to the needs of persons with disabilities remains out of focus. It should be noted that the state bodies have a strictly defined budget and, consequently, obligation to spend according to pre-defined rules.

Proposal: The novelty that the author suggests in the present publication to the penitentiary system in relation to the budget, is the introduction of a budget, focused on persons with disabilities, in practice, which should be included in the standard budget form for penitentiary facilities as a mandatory component. Such a budget will gradually enable the system to adapt to the needs of persons with disabilities.

d. **Design and arrangement of prisons.** It should be borne in mind that in many countries, including Georgia, most prison buildings were built prior to the ratification of the Convention on the Rights of Persons with Disabilities, when the legal status of persons with disabilities and their special needs and rights were virtually unfamiliar. This area lacks mechanisms of special regulation because, in the first place, its

internal regulatory mechanisms do not exist. The Decree,⁴³⁶ which sets the standards for the creation of infrastructure in the country, does not even mention penitentiary facilities. Thus, the issue of adaptation of penitentiary facilities should be regulated at the legislative level so that it provides not only for the adaptation of the cells, but also for the access of any amenity in the prison area.⁴³⁷ When planning and designing, the construction of adapted cells and other auxiliary storage amenities should be included in the list of mandatory requirements, regardless of whether there are wheelchair users or persons with other mobility problems placed in the facilities.

Proposal: The penitentiary system should establish prohibitive norms for the placement of persons with disabilities in facilities that are not fully adapted to their needs. Adaptation should include not only living cells but all auxiliary storage amenities available to other prisoners. The system should develop a special standard design that will be mandatory for all newly built facilities.

e. Management of penitentiary facilities focused on proper treatment of prisoners with disabilities. Solving the problems related to persons with disabilities can often be achieved locally with proper planning and policies. Prison management and the approaches of the prison administration should aim at eliminating all the obstacles that may be placed on persons with disabilities in conditions different from those of other prisoners, in which the prison administration plays a crucial role.

Proposal: The penitentiary system should develop a policy tailored to prisoners with disabilities, which will be strengthened, at least, by the prison's internal regulations. In particular, the specifics of working with

⁴³⁶ See Decree №41 of the Government of Georgia from 6 January 2014 on the Approval of the Technical Regulation on the Arrangement of Space for Persons with Disabilities and the Architectural Planning Elements, art 13.

⁴³⁷ See Detainees with disabilities in Europe, PACE - Resolution 2223 (2018), paragraph 7.8.2, 2.

persons with disabilities and their needs should be included in both the long-term development strategy of the system and the annual plans, which will increase the quality of responsibility and accountability of the system management.

f. Statistics and involvement of civil society in the process of serving a sentence. Apart from developing the policy, data collection and analysis should also be one of the most important components of management. At present, in Georgia it is impossible to find statistics⁴³⁸ that show the exact or maximum number of persons with disabilities in the penitentiary system, especially by types of disabilities, which does not allow for the effective intervention of external supportive actors in working with persons with disabilities.

Proposal: The publication outlines the introduction of the practice of producing statistics on persons with disabilities in the penitentiary system. The given statistics should describe in detail the number of prisoners with disabilities, by age, sex and other characteristics. The publication also highlights the need for transparency and explains that these statistics, without personal data, should be available to organisations working on issues related to persons with disabilities and have a long and extensive work experience with needs assessment as well as general work with persons with disabilities in order to ensure that the penitentiary system receives support and professional assistance from these organisations. The involvement of these organisations in the development of strategies and policies will enhance the flexibility of the system in relation to working with PWDs and managing their sentence.

g. Admission of a prisoner with disabilities to a penitentiary facility. The legislation of Georgia does not describe in detail the needs of persons with disabilities at the time of admission and the necessity to

⁴³⁸ Statistical information about the number and categories of PWDs placed in penitentiary facilities cannot be found either on the webpage of the Ministry of Justice or the National Statistics Office of Georgia.

inform them of their rights based on the given needs (hearing, vision, perception and other problems). Upon admission, any person with a disability, and especially those who enter a place of deprivation of liberty for the first time, besides their general rights, should also be informed in detail and in a language that they understand, about prison conditions, living environment and means of communication⁴³⁹ in order to adapt to the given environment.

Proposal: New procedures for admission of persons with disabilities to penitentiary institutions should be introduced in the penitentiary system. In order to avoid any kind of violations upon admission, firstly, the penitentiary system administration should ensure that the on-duty team in charge of receiving prisoners always includes at least one staff member who has undergone a qualification training on working with persons with disabilities and will be able to interview them with a pre-developed questionnaire. according to. The process should be regulated by a legal act. Also, all facilities should have access to sign language interpreters for persons with hearing impairments and documents on the rights and internal regulations in Braille for persons with visual impairments, etc.

h. Risk and needs assessment and sentence planning. Given that persons with disabilities in the penitentiary system are considered as vulnerable groups in the context to various forms of violence and degrading treatment,⁴⁴⁰ the paper concludes that these individuals need special protection in the penitentiary system not only from other pris-

⁴³⁹ See Detainees with disabilities in Europe, PACE - Resolution 2223 (2018), paragraph 2, 2.

⁴⁴⁰ See Human Rights Watch, Abuses Against People with Disabilities in Prisons in Australia, summary, 2018 (Human Rights Watch investigated 14 adult prisons across Western Australia and Queensland and interviewed 275 people, including 136 current or recently released prisoners with disabilities, as well as prison staff, health and mental health professionals, lawyers, academics, activists, family members or guardians, and government officials).

oners but also, in some cases, from personnel.

Proposal: Considering the degree of vulnerability of persons with disabilities, the publication proposes to the penitentiary system, in addition to the introduction of general standards for risk and needs assessment, to establish a mechanism of assessment of the needs of persons with disabilities upon admission and subsequent individual sentence planning in the penitentiary system. This procedure should be based on a survey of persons with disabilities admitted to any penitentiary facility conducted by professional psychologists and social workers, which will enable the system to identify the type and degree of disability, risk, and needs of persons admitted with disabilities. This approach is especially important when the physical disability is not visually noticeable. Such an approach will help the penitentiary system to prevent the violation of the rights of persons with disabilities and, consequently, to strengthen the degree of their protection.

The individual sentence plan elaborated upon admission of a person to the prison should accurately reflect the whole process of serving the sentence, taking into account the physical condition and abilities of the person. The plan should accompany the person if transferred to any other facilities. The plan should continue until the end of the sentence, including in case of transfer of the person to probation and, when the plan should be handed over to the probation service. The sentence planning and execution of the sentencing process based on this plan will facilitate the provision of tailored conditions for any person at any stage of serving the sentence.

i. **Searches of a prisoner with disabilities.** One of the main problems is searches of convicted persons with disabilities upon admission to the penitentiary facility, as well as in cases of their transfer to another facility or other cases defined by law. Persons with disabilities are more sensitive and susceptible to such searches and have more needs than others. Awareness is one of the problems when persons with disabilities

are unable to receive or are not provided with information about the procedures and screening rules. As an example, we can refer to the situation of persons with vision problems, in the absence of such information, when a person does not know what happens procedurally when there is physical touch. This in itself significantly exacerbates their penitentiary stress. *“If a prisoner with a disability is subject to a rub down search, the search shall be conducted in a manner which ensures decency while maintaining the integrity of the search.”*⁴⁴¹

The search of a person upon admission is primarily a procedure when persons with disabilities may be subjected to discrimination, degrading or inhuman treatment due to two important circumstances, namely, firstly, due to his or her physical condition, which does not allow the person with disabilities to fully comply with the requirements of the prison administration, and, secondly, due to prison personnel, which may not be equipped with the knowledge of how to search the person upon admission or is not prepared about the specificities of searching the persons with disabilities.

Proposal: In order for the searches of persons with disabilities to be conducted in accordance with their dignity, the penitentiary system should introduce new approaches to the searches of persons with disabilities. In particular, appropriate, adapted rooms should be arranged in penitentiary facilities. Special environment and search procedures should be envisaged for detainees as well as visitors, the special room should be adapted and equipped with auxiliary equipment. The searches of persons with disabilities must be carried out mainly by electronic means of examination in order to minimise the need for physical contact with them, except in extreme cases.

In connection with the searches, the penitentiary system should

⁴⁴¹ See Procedures – Searches of Prisoners, Policy Directive 26 Searches - Procedures, Government of Western Australia, Department of Correction Service, 2015, 4.

pay special attention to the issue of training of personnel. The law should prohibit the personnel, who has not undergone special training, from attending the searches of persons with disabilities. The personnel should undergo training on search standards, in general, and the treatment of persons with disabilities. Prior to the searches the personnel should consult the medical personnel, and, in case of severe disabilities, a doctor's participation should be mandatory.

The legal framework governing this process should be optimised to establish norms prohibiting the searches to be conducted under other conditions. Also, the sub-legislative acts should provide for the detailed rules and standards for searches of persons with disabilities (prisoners with disabilities, as well as visitors to the penitentiary facility, especially children with disabilities), which envisages informing persons with any type of disability about the reasons, purposes and rules of the search, before and after the search.

j. Placement and accommodation of persons with disabilities in a penitentiary facility. Placement, accommodation or transfer of persons with disabilities to another facility is a difficulty for the administration of the penitentiary system, as any mistake made during placement and accommodation can be vital for a person with disabilities.

Proposal: Due to the complexity of the issue, the publication proposes the penitentiary system to develop a programme for placement and accommodation of persons with disabilities, which will introduce the practice of creating a multidisciplinary group working on the issues of persons with disabilities. The penitentiary system administration shall be prohibited by law to place or accommodate PWDs on the basis of their personal decision, without the conclusion of the risk and needs assessment and individual sentence planning group. Any decision on changing the accommodation or transferring the persons with disabilities to another facility should be made only based on the conclusion of the mentioned multidisciplinary group, in order to avoid placing persons

with disabilities in an environment unsuitable for their health and life.

k. Living conditions of persons with disabilities in penitentiary facilities. Providing appropriate living conditions for persons with disabilities in prison involves a wide range of problems. It is irrelevant to solve any particular one. Housing problems need to be addressed comprehensively and permanently.

First of all, it will be possible to create an adequate environment and reasonable accommodation for serving the sentence for persons with disabilities only if the issue is regulated by law, which is mandatory for any facility where a person with disabilities may be placed for any term.

Provision of reasonable accommodation and living conditions includes access to any residential or other units at any time, such as: residential buildings and cells, meeting rooms (for PWDs as well as visitors); amenities for physiological and hygienic needs: toilet, bath (shower), where the persons are able to satisfy the needs independently; walking yard where the person with disabilities should be able to perform physical activities in accordance with his or her physical condition; any rehabilitation, educational and employment programmes in which persons with disabilities should be able to participate in equal conditions.

Proposal: On the provision of living conditions the present publication proposes the penitentiary system to evaluate penitentiary facilities in the context of reasonable accommodation to persons with disabilities. Assessment should include living conditions, programmes for persons with different types of disabilities, their ability of self-realisation, etc. The list of problems, in addition to the adaptation of buildings, should also include specific issues such as: layout and accessibility of rooms for wheelchair users, door size and its equivalence to the wheelchair size, room size and furniture layout for wheelchair or crutch users, the room layout and space for persons with visual impairments.

l. Contact of persons with disabilities with family and the outside

world. As the author explains, the absolute majority of persons with disabilities in Georgia live together with their families. They are primarily dependent on family members and receive assistance from them. On the other hand, family members have been helping persons with disabilities for a long time and are familiar with their problems and ways to solve them.

Proposal: The author of the publication proposes the penitentiary system to introduce innovative approaches and create appropriate environment for the involvement of family members of prisoners with disabilities in the process of serving the sentence. It is advisable to set up a coordination group that will have systematic contact with the family members of prisoners with disabilities and will receive and consider their vision and recommendations regarding treatment and care. On the other hand, the administration should be given the permission to allow family members to have additional visits depending on the degree of disability and the identified needs of the person. If necessary, family members (with the consent of a convicted person and his or her family member) should be allowed to spend certain amount of time on a daily basis as a caretaker in a medical unit, when a person with a disability is placed in such a unit, especially in the facility where the institute of caretaker does not function. The timing should be determined based on the doctor's recommendation, with reasonable boundaries regulated at the legislative level.

m. **Nutrition for persons with disabilities.** The author of the publication considers the nutrition of persons with disabilities as one of the most difficult issues, which, in addition to the standard food quality and ration, pays special attention to the development of a special food ration for people with different types of needs, on which their life and health may often depend. The problem with food may not be the quality of the food, but the physical condition of the prisoner, for example, the wheelchair users or the persons with visual impairments or mobility

problems might have difficulties of reaching or timely arriving to the kitchen or the dining area on the territory of the facility.

Proposal: A new approach to problem solving is discussed in the paper, in particular, in parallel with the dietary menu prepared for persons with health problems based on the recommendation of a doctor, it should be mandatory to create a special menu for persons with disabilities, depending on their physical condition or specific needs. Persons with disabilities, especially those who have mobility disabilities or the restricted ability to move around or participate in physical activities, should be provided with food, which will not complicate their health. In order to regulate this issue, a qualified specialist (dietitian) should be introduced as a staff unit, which will develop the food ration for persons with disabilities individually. This specialist will be responsible for developing a special diet based on interviews with the persons with disabilities and consultations with medical personnel. The same employee should be responsible for informing the person with disabilities about the necessary food ration.

n. **Sanitary-hygienic conditions for persons with disabilities in a penitentiary facility.** Problems with sanitary-hygienic conditions in penitentiary facilities can be caused by a variety of reasons, such as prison overcrowding and/or absence of laundry services. Consequently, prisoners with disabilities have to sleep in dirty linen and wear same clothes, which often leads to aggression from other prisoners and increases the risk of violence against them.

In addition to the above, one of the main problems when entering prison is the lack of access to hygiene, especially those with disabilities who are wheelchair-bound, have amputated limbs (either lower and/or upper), use crutches, have visual impairments, or are bedridden. These individuals face degrading treatment when they are placed in cells with open toilets. The Association for the Prevention of Torture clarifies that persons with a disability or reduced mobility should receive the neces-

sary support from the authorities to meet their bed linen and clothes laundry needs.⁴⁴² Thus, the regulation of this issue is a direct obligation of the administration of the penitentiary system.

Proposal: The author of the publication recommends to the penitentiary system, first of all, to ensure the provision of adapted sanitary amenities, although this will not guarantee a complete solution to the problem. Hygienic amenities should be accessible and available at all times of the day and night, without restrictions for persons with disabilities. When planning and designing the toilets and showers, their location, room size, and assistive amenities should be taken into consideration, so that persons with disabilities are able to use them without obstacles.

o. **Treatment of persons with disabilities and personnel of the penitentiary system.** The lack of detailed legislative regulations governing the activities of penitentiary system personnel increases the risk of ill-treatment of prisoners. It has a particularly severe impact on prisoners with disabilities, because unless the legislation explicitly explains how the personnel should treat persons with various types of disabilities based to their needs, then simply good behaviour of the personnel cannot be a sufficient ground for avoiding inhuman treatment.

Proposal: In order to avoid such a risk, the publication proposes the Ministry of Justice to develop national standards for the treatment of vulnerable groups, especially persons with disabilities, which will also be applied to the work of the penitentiary system; Also introduce into the penitentiary system the practice of preparing information booklets in various languages, including in Braille, about the rights and conditions of prisoners with disabilities, which will help reduce the risk of viola-

⁴⁴² See Material conditions of detention, Clothing and bedding, Association for the Prevention of Torture (APT), <<https://www.apr.ch/en/knowledge-hub/detention-focus-database/material-conditions-detention/clothing-and-bedding>>, [15.11.2019].

tion of the rights of persons with disabilities. The information booklet should also be accompanied by a reference book for the personnel on the forms and methods of providing necessary information to PWDs.

p. **Management of emergency situations.** The author pays special attention to the development of an evacuation plan for penitentiary facilities to work with persons with disabilities and evacuate them in order to minimise the risk of ill-treatment of persons with disabilities in such cases. The evacuation plan should envisage not only internal procedures but also interaction with various external structures (e.g., Ministry of Interior), depending on the scale and quality of emergency situations, it should carefully consider the details of working with persons with disabilities to ensure their safe evacuation.

Proposal: The author, first of all, considers it expedient to have at least one employee on the ground at any time of the day in the penitentiary facility, who has undergone special training in working with persons with disabilities and who will coordinate any movement of persons with disabilities in emergency situations. In addition to the evacuation plan, in order to avoid danger, persons with disabilities should be given the opportunity to meet with the prison administration as well as address them in writing if practicable, at any time they require.

q. **Risk of violence and preventive measures in prison.** It has been repeatedly mentioned in the paper that persons with disabilities who are in places of deprivation of liberty represent a risk group to be subjected to torture, violence, and degrading treatment.⁴⁴³ First of all, due to the fact that they are in the hands of government officials and they do not have the ability to fully defend themselves independently, and also, they have limited relationships with other individuals due to their status. In addition, when persons with disabilities are deprived of their liberty and are in prison, they become more dependent on others due

⁴⁴³ See Detainees with disabilities in Europe, PACE - Resolution 2223 (2018), paragraph 7.3, 2.

to their disability and, thus, easily become targets.

Proposal: In order to avoid torture or degrading treatment of prisoners with disabilities, the author proposes to the penitentiary system to include a separate chapter in the personnel training programme, which discusses the peculiarities of treatment and work with persons with disabilities, as well as to develop special training modules for the personnel who work directly with persons with disabilities. A separate training programme should be developed for personnel involved in risk and needs assessment and sentence planning upon admission of prisoners to the facility.

The training programme should include both theoretical knowledge and the development of special skills. The special training programmes for caretakers who work with persons with severe disabilities is especially new. The programme, in addition to physical development, should include training on human rights and psychological skills.

r. Medical services and care for persons with disabilities in penitentiary facilities. The medical services of the penitentiary system must fully comply with the healthcare standards set in the civil sector (Law of Georgia, Imprisonment Code, Article 119), on the basis of which it will be possible to prevent ill-treatment of prisoners with disabilities and provide adequate medical care and services. Also, the system should effectively cooperate with service providers and civic medical services, to provide the services most suitable to the health of persons with disabilities. In this section, the author recommends that the penitentiary system prohibits the existing model in practice: placing or transferring persons with disabilities to a medical unit or allocating all the persons with disabilities in one facility, without the existence of any medical indications and merely because they are persons with disabilities. Also, the medical personnel should be instructed to visit the persons with disabilities at least once a day in any facility, be it a medical facility or other type of facility.

Proposal: In order to involve the medical personnel more effectively in the work with persons with disabilities, they should be included in the needs assessment team for PWDs. Allocation of medical units in areas that are not adapted or accessible should be prohibited. Call buttons should be installed in a reachable place for wheelchair users, persons who are bedridden or have mobility impairments, so that, if needed, they can have the opportunity to call medical personnel without the assistance of other prisoners.

s. **Prison regime and disciplinary measures.** A person with a disability cannot be granted with an advantage simply because of his or her condition. It is impossible not to use a disciplinary measure against him or her for a violation that other prisoners are or may be punished for.

Proposal: In order to avoid this and other types of uncertainty, the present publication considers it appropriate to introduce new approaches. In particular, transparent and flexible procedures and restrictions on the application of disciplinary measures against persons with disabilities should be developed and implemented in the penitentiary system, which will be used when applying disciplinary measures against persons with disabilities. This is especially true for the use of measures such as transfer to a disciplinary or a cell-type room, which should be used in exceptional cases and as a last resort. The use of this type of measure should not cause any physical or mental harm to a person with a disability. Disciplinary action against persons with disabilities should be carried out only with the participation of an employee who has undergone appropriate training.

t. **Placement of persons with disabilities in solitary confinement.** The Special Rapporteur on Torture explained that solitary confinement is sometimes used as a form of treatment or punishment of persons with disabilities in penitentiary facilities or as a form to manage certain

groups of prisoners.⁴⁴⁴ This practice is also observed in places of deprivation of liberty, when the administration of penitentiary facilities makes a decision to place a person with disabilities in a separate and/or solitary cell and explains this to be related to the security of the prisoner or to other needs.

Proposal: In order to eliminate this vicious practice, the law should prohibit the isolation of persons with disabilities due to their disabilities. Isolation complicates the condition of persons with disabilities both physically and psychologically. Isolation is allowed only for the shortest period of time, under the supervision of a doctor, only in accordance with the safety requirements of the person, based on the decision and personal responsibility of the prison authority. An appropriate alternative to isolating a person with disabilities should be to transfer the person to another facility, in any case where necessary, including for security reasons.

u. Access to rehabilitation programmes and psychologist services for persons with disabilities. Rehabilitation and resocialisation of convicted persons and support of their return to society is the main purpose of the penitentiary system, and the activities of the system, from the moment of the admission of convicted persons to the facility until their release, should serve this purpose. Scott explains the strengths of the argument in support of rehabilitation, noting that it: treats people as individuals and attempts to deal with the actual person and context of the crime; promotes individual responsibilities; places emphasis on the personal lives of the offenders, focusing on offender motivations and possible processes that can be invoked to challenge offending or to

⁴⁴⁴ See *Nowak M.*, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Interim report on torture and other cruel, inhuman or degrading treatment or punishment, submitted in accordance with Assembly resolution 62/148, 2008, 20-21.

help someone to cope with life.⁴⁴⁵ Scott's approach to the role of rehabilitation confirms individual approaches, which is directly connected to the peculiarities of working with prisoners with disabilities.

Proposal: The penitentiary system should introduce new approaches and develop rehabilitation programmes or adapt programmes implemented in different countries of the world. During the implementation of programmes, priority should be given to the introduction of programmes that are accessible to persons with disabilities on an equal basis with other prisoners. In facilities where such programmes do not exist, the introduction of programmes should be included into the system development strategy.

In parallel with the general programmes, the penitentiary system must develop and implement programmes that include the regulation of different stages of serving the sentence by persons with disabilities: primary programmes, which include adaptation to the penitentiary facility for persons with disabilities and coping with penitentiary stress, which is particularly acute in persons with disabilities; and for wheelchair users and other persons with physical disabilities – programmes that include the development of skills such as: self-care, movement around the prison area, adaptation with the space, adjustment to prisoners and personnel, and communication with them.

Taking into consideration that persons with disabilities are often from socially vulnerable families and may not have access to proper education, training programmes should be developed, and training session carried out in both general and secondary education, as well as in personal development, stress management and communication skills. At the same time, attention should be paid to the skills that they already have and will help them develop new skills for successful reintegration into society after release. A standard of continuous programming should

⁴⁴⁵ See *Scott d., Flynn N.*, *Prison & Punishment*, Liverpool John Moores University, UK, 2014, 43.

be introduced so that a person can continue to participate in it after being subject to probation and full release from the sentence.

v. Special challenges and protection needs of persons with disabilities. In the facilities where there is no institute of a caretaker, or its appointment depends on a lengthy procedure of status determination, prisoners with disabilities rely on the good will of other prisoners who are not obliged to assist other persons, including taking responsibility for the care of a person with a disability, which can be very difficult, depending on the degree of the disability. There is a high likelihood that the prisoners who need help with daily activities such as eating, going to the bathroom, getting dressed, bathing, etc. to be neglected. It shall be prohibited to use other prisoners as caretakers without remuneration. A prisoner can become a caretaker only based on the consent and willingness from both sides, in order to prevent the dependence of a person with disabilities on a person who has no caretaking obligations, which would increase the risk of abuse of the person with disabilities.

Proposal: Penitentiary facilities should take specific steps to carry out these activities, given the high degree of vulnerability of persons with disabilities. In particular, the author offers a novelty to the penitentiary system:

- To introduce the institute of a caretaker in practice on the basis of specially trained personnel. Also, a convicted person can be employed as a caretaker with remuneration in case of consent of both sides – the caretaker convict and the convicted person with disabilities, which will eliminate the vicious practice of putting other prisoners in the compulsory caretaker position. The training centre should develop a special training programme for caretakers, both civilians as well as the prisoners.
- To develop an action plan for the protection of persons with disabilities from torture, violence and degrading treatment, which should include the admission, placement, accommodation, provision of

living environment, food, participation in programmes and preparation for release of persons with disabilities. However, special attention should be paid to the special training of the personnel and the provision of information to other prisoners about the treatment and communication with persons with disabilities.

- To prohibit the use of stigmatising terminology by personnel and others in the facility to avoid the risk of stigmatisation and discriminatory attitude towards persons with disabilities.
- In the job descriptions of the prison authorities, to make it obligatory for them to work with persons with disabilities, to meet with them regularly in order to avoid any kind of threat, violence or discrimination.

x. Multiple needs and special categories among prisoners with disabilities. Georgian legislation describes persons belonging to different special categories and specific mechanisms for working with and protecting these persons. The practice acknowledges persons belonging to other special categories whose lives and health are at particular risk, especially in the facilities that are distinguished by groups of prisoners belonging to criminal subculture. Multiple needs are related to sex, age, as well as the discriminatory hierarchy created by the internal criminal world of the system, which further complicates the already difficult situation of persons with disabilities.

The novelty, first of all, is the introduction of a term “multiple needs” in the penitentiary system, which will enable the system to give correct classification to the conditions of persons with disabilities and their needs, and finally, to plan the sentence of the person with such multiple needs with the respect to his or her dignity and honour and without physical or mental harm.

Also, the introduction of the individual sentence planning for execution of sentences in all facilities of the penitentiary system and the provision of a common database accessible to all relevant personnel,

allows for appropriate measures to be planned upon admission of persons with disabilities to the facility in order to prevent any violation of their rights, discrimination or ill-treatment and to facilitate their adaptation. Coordination between penitentiary facilities on the matters of working with persons with such needs, such as: exchange of information, practice sharing, study visits, etc., should also be systematic.

y. **Execution of non-custodial sentences/probation.** When considering the use of custodial sentences as a last resort, priority is given to the use of alternative sentences to prevent the severe consequences caused by being in a closed establishment, such as the complication of the disability, deterioration of the health condition and psychological stress caused by long-term separation from the family and usual environment. Thus, the use of alternative sentences to imprisonment for persons with disabilities, and their supervision by the probation service should be part of the state policy so that, first of all, to ensure that the offender does not remain unpunished due to his or her physical condition, which would create the risk of impunity syndrome in the society. At the same time, PWDs should not be separated from family and everyday lifestyle, which is often vital to their condition, especially in the Georgian reality, when people with disabilities are virtually deprived of the opportunity to live independently and live with the support and care of family members. In addition, social workers and psychologists of the probation service, as well as rehabilitation programmes, will enable persons with disabilities an access to services and assistance that they would not have had before or are in need of at a given moment.

Proposal: The novelty presented in the publication on probation concerns not only the penitentiary system, but also the criminal justice system as a whole and the state policy towards persons with disabilities, namely:

It should be mandatory to prepare a presentence report for accused persons with disabilities so that courts can take into account the

situation of a person with disabilities, the ability to live independently, family and community support, and other circumstances when imposing a sentence, which will facilitate an objective and rational decision making regarding the condition of PWDs.

The introduction of the institute of probation supervision (pre-trial supervision) in the legislation, would allow the courts not to apply a preventive measure, except in exceptional cases and as the last resort. On the other hand, this approach will help disburden pre-trial detention facilities and reduce the resources needed for additional care for persons with disabilities. The institute can be piloted with other vulnerable groups.

Priority should be given to the use of diversion and mediation towards a wider area of persons with disabilities and it should be used as often as possible when the gravity of the crime allows. Effective use of diversion and mediation will be one of the guarantees that persons with disabilities will avoid the risk of going to prisons and, consequently, the risk of isolation from society.

z. **Monitoring.** Independent human rights organisations should regularly conduct monitoring of penitentiary facilities in order to prevent inappropriate conditions and ill-treatment of persons with disabilities.⁴⁴⁶ These organisations should systematically develop recommendations for improving the accommodation and treatment of persons with disabilities. The conditions of prisoners with disabilities in penitentiary facilities should be not only the concern of the prison administration, but also in the interests of civil society.

Proposal: In order to involve civil society effectively and systematically in the process of serving the sentence by persons with disabilities, the penitentiary system should develop a programme for informing the

⁴⁴⁶ “Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.” UN Convention on the Rights of Persons with Disabilities, art 33, 13 December 2006,

public and a way of working with social structures and non-governmental organisations to ensure systematic cooperation with them.

Internationally recognised standards and the national legislation are the major guarantees in the protection of human rights and provision of equal living conditions in any country. The existence of such standards and legislation with regard to persons with disabilities is of particular importance, considering the degree of their vulnerability because, in most cases, they are unable to avoid obstacles.

The author focuses on groups that, for the most part, cannot enjoy the living environment and treatment on equal basis with other people. Also, on a big part of the society, including those who are not distinguished with their tolerance towards this group of people, but are responsible by duty for their care. The inviolability of human dignity and honour and the prohibition of discrimination of a person recognised by the Constitution of Georgia obliges the country to strive to ensure that every person, irrespective of their condition conditions and status, has equal living conditions and environment, regardless of where he or she is, in the place of deprivation of liberty or outside.

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I. Decisions of the Constitutional Court of Georgia

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II. Decisions of the European Court of Human Rights and the UN Human Rights Committee

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V. Personal Interviews

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- Director of the Penitentiary and Probation Training Center of Georgia, personal interview, questionnaire, April 2017.
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VI. Webpages

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(Footnotes)

- 1 See Unified Report on Criminal Justice Statistics, reporting period – September 2019, 118-120.
- 2 See Unified Report on Criminal Justice Statistics, reporting period – September 2019, 108.
- 3 See Unified Report on Criminal Justice Statistics, reporting period – September 2019, 108.
- 4 See Unified Report on Criminal Justice Statistics, reporting period – September 2019, 107.
- 5 The age of 19 is beyond the age of minors under Georgian law, however, due to the fact that they might be transferred to an adult facility at this age, they can be considered as a risk group.
- 6 See Unified Report on Criminal Justice Statistics, reporting period – September 2019, 121.

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