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## Standards and Practices of Serving the Sentence by Persons with Disabilities

*This article discusses the specificities of serving a sentence by persons with disabilities (hereinafter – PWDs) and the new approaches aimed at addressing this issue, which would enable the Georgian penitentiary system and the legal framework regulating the 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 prisoners.*

*The creation of reasonable accommodation and accessible environment for persons with disabilities is new to the society, in general, since it was mainly introduced in 2006 when the Convention on the Rights of Persons with Disabilities<sup>1</sup> was adopted. Georgia ratified the Convention in 2014, therefore the national legislation, the practice and legal framework regulating the penitentiary system require many novelties, changes and regulations in this regard.*

*This material is based on the analysis of the existing practice and legislation, which at present fails to create the environment of serving a sentence based on the protection of honour and dignity of persons with disabilities.*

**Key words:** *Persons with Disabilities, Penitentiary System, Reasonable Accommodation, Adapted Environment, Penitentiary Establishment, Barrier, Treatment, Status Determination, Punishment, Conditions.*

### 1. Introduction

The legislation of Georgia envisages the aspects, which should create an accessible environment for persons with disabilities in the country and support them in overcoming the obstacles they face in everyday societal life. However, these norms are mostly declaratory and often remain as ‘dead norms’. Despite the legislative regulation, limited accessibility, unadapt environment, low level of public awareness and other external factors put PWDs at a disadvantage. These obstacles are particularly acute and painful, even discriminatory, when the PWDs find themselves in penitentiary establishments, often without vital care and services.

The role of the society in providing equitable living conditions for persons with disabilities is significant. How does the society perceive a disability? Is it a status, which is often a ‘verdict’ to live only behind the walls, isolated from the outside world or is it a stigma, which substantially affects the daily life of persons with disabilities? “The hindering factors come from the society, since people do not know how to treat persons with disabilities and such behavior suppresses persons with disabilities and pushes them to stay home and away from the community”.<sup>2</sup>

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<sup>1</sup> Convention on the Rights of Persons with Disabilities, UN General Assembly, 24/01/2007.

<sup>2</sup> Personal Interview with a person with disability, Trainer, Representative of an NGO working on disability issues, Tbilisi, September, 2017.

The negative consequences of disability – a barrier that gets in the way of people at any stage of their life and puts them in unequal conditions with other people – can be overcome and minimized as a result of proper regulations, support and provision of services. The impact of unequal conditions is particularly strong when the person with disabilities is placed at the penitentiary establishment, in a foreign environment, without any support, in the information vacuum and in a situation where 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 condition of the person with disability. It is noteworthy that the recognition of problems of PWDs as a priority does not have a long history and is related to the adoption of the Convention on the Rights of Persons with Disabilities (hereinafter – the Convention). Therefore, the absence of clear mechanisms of regulation, the absence of mechanisms for the implementation of the Convention or the existing legislation and the low level of public awareness negatively affects any stage of life of persons with disabilities. Accordingly, in places where people serve their sentence it is even more painful and difficult, due to inadequate access to information, undertrained staff, improper medical service, lack of rehabilitation programs, etc.

However, the abovementioned cannot be considered as a defect of the Georgian system only. This is a problem that many developed or developing countries attempt to solve. The State should exercise special care to enable these people to serve the sentence, imposed by the court, in adequate conditions, and the state and non-governmental organizations conducting monitoring and research should focus on the conditions of persons with disabilities in such places.

## **2. Implementation of the Requirements of the Convention on the Rights of Persons with Disabilities and other International Standards in Georgia**

The United Nations Convention on the Rights of Persons with Disabilities does not directly address persons with disabilities in conflict with the law and their treatment in places of deprivation of liberty, however, its role is significant in all areas of societal life. The Convention is the first document, which gave the international community a universal and structured definition of a person with disabilities.<sup>3</sup> It is based on the principles, such as: respect for inherent dignity, respect for individual autonomy, the freedom to make one's own choice, and non-discrimination. The definition is quite general, however, according to the preamble of the Convention, 'disability' is an evolving concept and the approach of the international community to the concept of disability should be dynamic and evolving over time.

In Georgia, a number of positive steps have been taken towards the implementation of the Convention. On October 27, 2014, the Office of the Public Defender of Georgia was named as a structural unit of monitoring, protection and implementation of the Convention. Several legislative amendments and sub-laws have been adopted. Practical steps, related to the implementation of the Convention,

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<sup>3</sup> "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", Article 1, Convention on the Rights of Persons with Disabilities, UN General Assembly, 24/01/2007.

such as judicial decisions, which have been related to persons with disabilities since 2014, are especially noteworthy.<sup>4</sup>

Amongst several standards of treatment with prisoners, the United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>5</sup> (hereinafter — SMR) takes a significant place in respect to persons with disabilities. The revised version of the Rules (hereinafter — the “Mandela Rules”) significantly changed the part of the document in relation to the treatment of PWDs. Rapporteur on the Rights of Persons Deprived of Liberty of the IACHR<sup>6</sup> assessed these changes as follows: “These Rules represent a vital advance in the protection of vulnerable groups, in particular, persons with disabilities deprived of liberty. In this regard, among other provisions, the Rules require prison authorities to make reasonable accommodations to ensure that prisoners with disabilities have full and effective access to detention conditions and resources on an equitable basis”.<sup>7</sup> The revised version of the Rules focuses on the classification of prisoners, which implies the individual needs assessment as a way to detect any risks, needs and threats. Classification systems should be flexible in order to support individualization of treatment. The Rules also covers the issues of establishing relevant environment for serving the sentence, identification of any signs of psychological or other types of stress or ill-treatment and reacting to them, and other factors.

The “Mandela Rules” calls for the prison administration to adapt to the needs of individuals with physical, mental or other disabilities to ensure their equal access to services and programs and states that “measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory”.<sup>8</sup>

### **3. National Legislation in the Context of Persons with Disabilities Serving the Sentence**

#### **3.1. Review of the Constitution of Georgia**

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<sup>9</sup> does not consider disability as one of the risk factors for discrimination, the Constitution of Georgia obliges the State to ensure that the rights of persons with disabilities as well as

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<sup>4</sup> Decisions of the Constitutional Court of Georgia, <<http://constcourt.ge/en/legal-acts/judgments>>, [09.09.-2018].

<sup>5</sup> Rules 2, 5, United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Nelson Mandela Rules”), UN General Assembly, 08/01/2016, <[https://www.penalreform.org/wp-content/uploads/2016/11/PRI\\_Nelson\\_Mandela\\_Rules\\_Short\\_Guide\\_Geo\\_final.pdf](https://www.penalreform.org/wp-content/uploads/2016/11/PRI_Nelson_Mandela_Rules_Short_Guide_Geo_final.pdf)>, [20.09.2018].

<sup>6</sup> IACHR (Inter-American Commission on Human Rights).

<sup>7</sup> *Cavallaro J.*, Leading Human Rights Experts Call for Speedy Implementation of the Nelson Mandela Rules on Nelson Mandela International Day, Council of Europe, 2016, <<https://www.coe.int/en/web/commissioner/-/leading-human-rights-experts-call-for-speedy-implementation-of-the-nelson-mandela-rules-on-nelson-mandela-international-day>>, [06.07.2018].

<sup>8</sup> Rules 2, 5, 6, United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Nelson Mandela Rules”), UN General Assembly, 08/01/2016, <[https://www.penalreform.org/wp-content/uploads/2016/11/PRI\\_Nelson\\_Mandela\\_Rules\\_Short\\_Guide\\_Geo\\_final.pdf](https://www.penalreform.org/wp-content/uploads/2016/11/PRI_Nelson_Mandela_Rules_Short_Guide_Geo_final.pdf)>, [20.09.2018].

<sup>9</sup> Constitution of Georgia, 24/08/1995.

other vulnerable groups are protected in all areas of public life. The statement made by the Constitutional Court of Georgia that “the aim of Article 14 (Article 11 in the new version of the Constitution) of the Constitution is to ensure equality before the law, not to allow substantially equal to be considered as unequal or vice versa. ... The aim of the norm is much larger than the prohibition of discrimination based on the limited list provided”,<sup>10</sup> can be attributed as an argument. 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 in itself confirm that any other grounds are not discriminatory, since they are not specifically covered by the Constitution. 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”.<sup>11</sup>

In this case, it is not the legislation itself that is questionable or how well it regulates the issues of treatment towards the persons with disabilities and the provision of adequate environment or how accurately the law is interpreted, but the important issue is if it covers all areas of public life, to what extent it is implemented in practice and how equally accessible these rights are to persons with disabilities. The state is obliged to protect the rights of persons with disabilities in everyday life, assist them and create appropriate conditions for those who are not actively participating in the public life due to their physical or mental disabilities. This obligation should be applied to any area of public life, including in places for serving the sentence.

### **3.2. Brief Analysis of the National Legislation Regulating the Penitentiary System**

The Imprisonment Code of Georgia<sup>12</sup> discusses the standards of treatment of persons with disabilities, although it does not reflect all spheres of life of PWDs in the penitentiary establishment. In particular, the law mainly establishes that the accused/convicted prisoners with disabilities should have better living conditions and nutrition in comparison to others. However, what is meant by ‘better’ conditions, is not explained within the law or its sub-laws.

In spite of certain regulation attempts, in practice there is no definition of who should be considered as PWD in the penitentiary system, and what specific needs should be prescribed by law, whereas such definitions are applied by many countries, e.g. “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”.<sup>13</sup> The definition by Prison Reform Trust<sup>14</sup> made in the Information Book for Prisoners with Disabilities,

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<sup>10</sup> Citizen of Georgia, Shota Beridze and others v. the Parliament of Georgia, decision of 31 March 2008, № 2/1/392, the Constitutional Court of Georgia, 6.

<sup>11</sup> Political Unions of Citizens – New Rightists and Conservative Party of Georgia v. the Parliament of Georgia, decision of 17 September 2010, № 1/1/493, the Constitutional Court of Georgia, 14.

<sup>12</sup> Code of Imprisonment of Georgia, 24/03/2010.

<sup>13</sup> Sub-chapter 3.2., HM Prison Service, Prison Service Order – PSO 2855, Prisoners with Physical, Sensory and Mental Disabilities, 20/12/1999, <[https://bulger.co.uk/prison/PSO\\_2855\\_prisoners\\_with\\_disabilities.-doc](https://bulger.co.uk/prison/PSO_2855_prisoners_with_disabilities.-doc)>, [12.03.2019].

<sup>14</sup> Prison Reform Trust – PRT is an independent UK charity working to create a just, humane and effective penal system.

which, in contrast to the practice of post-Soviet countries, clearly demonstrates the ways of solving problems in regards to treatment of persons with disabilities, is also easy to understand.

In the countries where there is a problem of status determination, “the problem of determining the disability status of an accused/convicted prisoner with disability in the penitentiary system remains to be unresolved, and it makes it impossible to evaluate needs and to provide special services to the persons who had acquired disability while being in the Prison”.<sup>15</sup> Often it is due to the lack of status that disabled prisoners do not have appropriate environment and services. However, the initial assessment of the disability can be achieved even without the status determination, in order to ensure that the conditions of serving the sentence do not only depend on the status, but are regulated based on actual needs. Apart from status determination, the list of problems also includes the absence of PWD oriented budgeting and funding in the penitentiary system, inappropriate infrastructure and living conditions, the absence of properly trained personnel, etc.

The regulation of the rights of PWDs in places of deprivation of liberty was included in the Government Action Plan for 2014-2016, which talks about the relevant conditions that provides adequate environment for serving the sentence for persons with disabilities, such as: treatment, identification of needs and improvement, access to healthcare, awareness about the rights and, in accordance with the Convention, the protection of the rights (elaboration of the social model of the approach towards remand prisoners/convicts with disabilities), creation of a special, adapted living conditions, assessment of the needs in order to improve the infrastructure in line with the specific requirements of PWDs and the creation of a physical environment considering the reasonable accommodation. This action plan obliges the penitentiary system to include the existing problems in the list of priorities and provide resources for solving it.

## **4. Analysis of the Practice of Serving the Sentence by Persons with Disabilities**

### **4.1. Admission to Penitentiary Establishments**

The admission to a penitentiary establishment is the first contact with the penitentiary system. This is the first stress the person is suffering by the loss of his/her freedom, which in fact, determines the success or failure of the adaptation with the penitentiary system. In his handbook *Andrew Coyle* explains the factors that may have negative influence on individuals, e.g., the admission area can be very intimidating for new arrivals to prison. To reduce this influence, he draws attention to the need for special training of the receiving staff on recognising how to exercise the difficult balance between firm control, which makes clear to the person that the prison is a well organised place, and an understanding of the stress which the prisoner is likely to be feeling as he or she moves into this strange new world. Not all staff are suited for this type of work. Those who work in the admission area “should be

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<sup>15</sup> Public Defender of Georgia, National Preventive Mechanism: 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, 8, 17, <<http://www.ombudsman.ge/uploads/other/2/2253.pdf>>, [20.09.2018] (in Georgian).



specially selected and should be given specific training to enable them to carry out their work with sensitivity and with confidence“.<sup>16</sup>

If we talk about the admission process and its importance, it differs from one jurisdiction to another, for instance: “Reception is the first opportunity to identify the special needs of prisoners. This process needs to be handled sensitively especially by communicating clearly and not making immediate assumptions about prisoners reactions”.<sup>17</sup> The legislation of Georgia does not include the obligation to carry out the needs assessment of the persons with disabilities upon their admission to the penitentiary establishment. It includes the mandatory medical examination. Regarding the violations of the admission regulations and the failure on the first stages of imprisonment, also, the importance of the accurate needs assessment of the prisoners, we can discuss the decisions of the European Court of Human Rights, which states 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”.<sup>18</sup>

#### 4.2. Allocation and Separation of Prisoners in Penitentiary Establishments

The admission of the prisoner with disabilities into the establishment and his/her needs assessment during this process represents an important matter, as the needs assessment determines the allocation of the person with disabilities in the facility most suited to their needs, where s/he is provided with equal access to all services and activities, which are available to other prisoners. The needs assessment and the allocation of the person with disabilities based on this assessment should be ensured on the legislative level. For example, “the prison administrations should take into consideration the mobility level of the prisoner, the social skills, ability to adapt to the environment, and should ensure the allocation of the prisoner, despite of the level of limited mobility, into facilities with the adequate household conditions”.<sup>19</sup> Allocation of prisoners with disabilities in such facilities must be the main priority for prison administrations, in order to not expose the persons to a higher risk of human rights violations or other deplorable consequences. In practice, there are situations when “incarceration without requisite measures being taken within a reasonable time had resulted in a situation amounting to inhuman and degrading treatment”.<sup>20</sup>

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<sup>16</sup> Coyle A., Fair H., *A Human Rights Approach to Prison Management*, Handbook for Prison Staff, International Center for Prison Studies, 3<sup>rd</sup> ed., London, 2018, 49.

<sup>17</sup> Sub-chapter 3.1.1. and 3.1.2., HM Prison Service, Prison Service Order – PSO 2855, Prisoners with Physical, Sensory and Mental Disabilities, 20/12/1999, <[https://bulger.co.uk/prison/PSO\\_2855\\_prisoners\\_with\\_disabilities.doc](https://bulger.co.uk/prison/PSO_2855_prisoners_with_disabilities.doc)>, [12.03.2019].

<sup>18</sup> Price v. the United Kingdom [2001] ECHR, 33394/96, Council of Europe: European Court of Human Rights, Fact Sheet – Persons with Disabilities and the European Convention on Human Rights, 2019, 3, <[https://www.echr.coe.int/Documents/FS\\_Disabled\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf)>, [21.03.2019].

<sup>19</sup> Sub-chapter 3.2.2., HM Prison Service, Prison Service Order – PSO 2855, Prisoners with Physical, Sensory and Mental Disabilities, 20/12/1999, <[https://bulger.co.uk/prison/PSO\\_2855\\_prisoners\\_with\\_disabilities.doc](https://bulger.co.uk/prison/PSO_2855_prisoners_with_disabilities.doc)>, [12.03.2019].

<sup>20</sup> Z. H. v. Hungary, [2011] ECHR, 28973/11, Council of Europe: European Court of Human Rights, Fact sheet – Persons with disabilities and the European Convention on Human Rights, 2019, 4, <[https://www.echr.coe.int/Documents/FS\\_Disabled\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf)>, [18.03.2019].



### **4.3. Living Conditions at Penitentiary Establishments**

Admission and allocation of prisoners ensures the effectiveness of their adaptation process to the prison system. The living conditions in prison can enhance the stress caused by loss of freedom, which is particularly acute in the case of the persons with disabilities, mainly due to the fact that persons with disabilities in Georgia live in the family environment and they do not have any knowledge or experience of living independently, without the support of those people, who assist them in their daily lives. Therefore, proper individual sentence planning, through which the mentioned stress and related problems will be minimised, should be the main concern of the penitentiary system. These issues are covered in the UN handbook on prisoners with special needs, which states that prison authorities need to develop policies and strategies which address the needs of this vulnerable group in prisons. The handbook also provides that these policies “should be informed by the United Nations Convention on the Rights of Persons with Disabilities and national legislation [...]”.<sup>21</sup>

An inadequate environment in prison influences the prisoners with disabilities not only inside the establishment, but after their release, since ensuring the adequate, safe environment, accessibility of various tools and programs in prisons has the crucial importance for ensuring the needs of the prisoners with disabilities in the facility and in the cell, as well for the effective reintegration into society upon their release.<sup>22</sup> The problems listed in the report of the Public Defender of Georgia on access to services in the penitentiary system of Georgia shows the lack of such policy in the Georgian penitentiary system: the access to phones by the prisoners in wheelchairs, when the phones are installed on such a height that prisoners with disabilities cannot individually dial the number; also, the height of the boxes for requests and complaints; unadapt corridors between the prisoner’s cell and the walking area; inaccessible healthcare service, lack of sign language translation and Braille, etc.<sup>23</sup> The European Court of Human Rights considers it a violation of Article 3 of the European Convention on Human Rights if similar violations exist in practice. The court has stated, that lack of independent access to parts of the facility, including the canteen and sanitation blocks, and the lack of any organised assistance with his/her mobility “must have caused [...] unnecessary and avoidable mental and physical suffering amounting to inhuman and degrading treatment”.<sup>24</sup>

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<sup>21</sup> *Atabay T.*, Handbook on Prisoners with Special Needs, Criminal Justice Handbook Series, United Nations Office on Drugs and Crime (UNODC), New York, 2009, 43.

<sup>22</sup> *Vallas R.*, Disabled Behind Bars, The Mass Incarceration of People With Disabilities in America’s Jails and Prisons, 2016, 10, <<https://cdn.americanprogress.org/wp.../2016/07/.../2CriminalJusticeDisability-report.p>>, [09.09.2018].

<sup>23</sup> Public Defender of Georgia, National Preventive Mechanism: 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, 8, <<http://www.ombudsman.ge/uploads/other/2/2253.pdf>>, [20.09.2018].

<sup>24</sup> *Semikhvostov v. Russia*, [2014] ECHR, 2689/12, Council of Europe: European Court of Human Rights, Fact sheet – Persons with disabilities and the European Convention on Human Rights, 2019, 5, <[https://www.echr.coe.int/Documents/FS\\_Disabled\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf)>, [19.03.2019].

#### 4.4. Prison Regime, Treatment and Response to Emergency Situations

Prisoners with disabilities might be at risk of being subjected to ill-treatment, by other prisoners and prison staff, because of their condition. The main reason is the lack of awareness and qualification among prison personnel, nonexistence of appropriate regulations and mechanisms, and other factors, which expose them to a higher risk. However, there are minimum requirements that the prison administration needs to ensure. Prisoners with disabilities should not only be held in a safe environment, but “they also need to feel safe, so that their mental well-being is protected, like all other prisoners”.<sup>25</sup>

Fair attention should be paid to the policy of prison administrations regarding the specific treatment of prisoners with disabilities in cases of emergency. The penitentiary system needs to have the treatment and evacuation plan for prisoners with disabilities. In this regard, the post-Soviet countries, including Georgia, Kyrgyzstan, etc. can be considered as negative examples, as the legislation says nothing about the obligation to have specific evacuation or safety plans for prisoners with disabilities. “It will be necessary to make specific plans for the evacuation of disabled prisoners during an emergency ... These will need to be tailored to the particular circumstances of the individual prisoners and made known to the appropriate staff”.<sup>26</sup>

#### 4.5. The Use of Solitary Confinement and Disciplinary Measures

Frequently, the prison administration allocates the prisoners with disabilities separately, in the “solitary confinement cells”. Especially, it applies to the prisoners with mental health issues, and those with restricted mobility or any other disability, which might cause some troubles to the prison administration and staff in case they will be allocated with other prisoners. Often the administration interprets such behaviour as the necessary security measure, however, such decision poses a high risk for the PWDs. The lack of special procedures poses the high risk for the prisoners with disabilities and puts their life and health conditions under the danger of complication. The National Preventive Mechanism of the Public Defender of Georgia in its report describes this faulty practice of Georgian penitentiary system. The practice of “prolonged or indefinite solitary confinement inflicts pain and suffering of a psychological nature, which is strictly prohibited by the Convention Against Torture”.<sup>27</sup> The same interpretation can be found in various international documents, including the general comments of UN Human Rights Committee.<sup>28</sup>

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<sup>25</sup> *Atabay T.*, Handbook on Prisoners with special needs, Criminal Justice Handbook Series, United Nations Office on Drugs and Crime (UNODC), New York, 2009, 52.

<sup>26</sup> Sub-chapter 11, HM Prison Service, Prison Service Order – PSO 2855, Prisoners with Physical, Sensory and Mental Disabilities, 20/12/1999, <[https://bulger.co.uk/prison/PSO\\_2855\\_prisoners\\_with\\_disabilities.doc](https://bulger.co.uk/prison/PSO_2855_prisoners_with_disabilities.doc)>, [12.03.2019].

<sup>27</sup> *Manduric A.*, UN Human Rights Experts (Again) Push for Access to U.S. Prisons, Call for Solitary Reform, Solitary Watch, 2015, <<http://solitarywatch.com/2015/07/24/un-human-rights-experts-again-push-for-access-to-u-s-prisons-call-for-solitary-confinement-reform/>>, [18.03.2019].

<sup>28</sup> Istanbul Statement on the Use and Effects of Solitary Confinement International Psychological Trauma Symposium, 09/12/2007, <[http://solitaryconfinement.org/uploads/Istanbul\\_expert\\_statement\\_on\\_sc.pdf](http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf)>, [21.03.2019]. UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10/03/1992.

The sensitive approach requires the use of disciplinary measures on prisoners with disabilities and the decisions should be discussed carefully with the appropriate specialists. The change of the environment, especially deterioration of the living conditions, puts a negative impact on any person and possibly a disastrous impact on the person with disabilities.

#### **4.6. Care and Healthcare Service at Penitentiary Establishments**

The existence of caretakers and ancillary personnel is vital for prisoners with disabilities, but, except for few exceptions, such members of the personnel are inaccessible for the accused/convicted persons with disabilities. According to the report of the NPM, which talks about the care of persons with disabilities, prisoners with disabilities are dependent on cell-mates and their good will, in order to satisfy the basic needs related to their physiological requirements and other daily activities. “Such an attitude puts them in an undesirable subordination and generates a risk of manipulation, which may easily turn into oppression and violence”.<sup>29</sup> This kind of care is part of the medical service, and the right to health is recognized, regardless of the status or condition of a person – “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”.<sup>30</sup> However, in spite of the guaranteed rights, the relevant health services are confronted with the criticism in different reports and decisions, for example, there are instances where the European Court of Human Rights found a violation of Article 3 on the grounds that “the authorities did not ensure the applicant's safety and appropriate treatment for his health condition”.<sup>31</sup>

#### **4.7. Nutrition at Penitentiary Establishments**

Based on the analysis of the Georgian legislation, the administration of the penitentiary system is obliged to provide special/dietary meals for prisoners who need it for medical purposes. Such liability is guaranteed by the relevant legal act. However, none of the legislative acts consider cases where special nutritional needs are necessary not due to health conditions but are related to physical conditions, for example, when a person has mobility impairment. Such a person may not need special nutrition for medical purposes and does not fall under the regulation of this legal act. It is, however, noteworthy that due to the physical condition, proper feeding may be the main mechanism for preventing further complications. Inadequate nutrition can lead to deterioration of physical or mental health and/or creation of new problems.

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<sup>29</sup> Public Defender of Georgia, National Preventive Mechanism: State of Rights of Persons with Disabilities in Prisons, in Institutions for Involuntary and Forced Psychiatric Treatment – Analysis of the Fulfillment of the Recommendations, 2014, 17, <<http://www.ombudsman.ge/uploads/other/1/1726.pdf>>, [11.09.2017].

<sup>30</sup> *Atabay T.*, Handbook on Prisoners with Special Needs, Criminal Justice Handbook Series, United Nations Office on Drugs and Crime (UNODC), New York, 2009, 14.

<sup>31</sup> *Arutyunyan v. Russia*, [2012] ECHR, 48977/09, Council of Europe: European Court of Human Rights, Fact sheet – Persons with disabilities and the European Convention on Human Rights, 2019, 4, <[https://www.echr.coe.int/Documents/FS\\_Disabled\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf)>, [19.03.2019].

#### **4.8. Access to Rehabilitation Programs and the Service of a Psychologist at Penitentiary Establishments**

Participation in prison rehabilitation programs in penitentiary establishments is of particular importance for persons with disabilities, as along with the stress caused by the imprisonment, the person also has disabilities. One of the ways to overcome this stress is to participate in different programs. One of the main priorities of the 2016-2017 Government Action Plan of Georgia is the introduction of habilitation/rehabilitation programs for the needs of persons with disabilities.<sup>32</sup> If we look at the international practice, we will see that the participation of prisoners with disabilities in the rehabilitation programs and their return to the full membership of the society is the main purpose of the country's penitentiary system. For example, while reviewing the British practice, we come across documents regulating the work of the penitentiary system, which determine that reasonable adjustments must be made to the programs to allow prisoners with disabilities to participate. It is important to take account of specific communication needs in the running of these courses, "prisoners who are deaf may need a sign language interpreter present in order to take effective part in the discussions".<sup>33</sup> Also should be considered the role of physical exercises and sports, which can play a significant role in maintaining their health, so that "disabled prisoners should have access to sports and physical exercises".<sup>34</sup>

In the context of rehabilitation, educational and employment programs are significant, since on the one hand it is often possible that people with disabilities are socially vulnerable and previously did not have access to normal educational and vocational training programs. On the other hand, there are people with learning disabilities and need to be provided with appropriate training programs in order to be able to adapt to the establishment regime. The administration should assess the extent to which educational programs are accessible to the PWDs. As for employment, there are often cases when the administration unilaterally decides to refuse a person with disabilities due to their condition, where there is an expectation at an establishment that prisoners should work, disabled prisoners should have equal access to that opportunity.

#### **4.9. Preparation for Release from Penitentiary Establishments**

The early conditional release from the sentence is one of the sensitive issues and two sides should be discussed here: the convict whose main motivation is to be released early and the security of the society in which the convict is to be returned. It is noteworthy that if the prisoner returns equipped with different skills, then the possibility of integrating into society is higher. However, in most cases,

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<sup>32</sup> Task 4.6.9., activity 4.6.10.1., Human Rights Action Plan of the Government of Georgia (for 2016-2017 years), Ordinance of the Government of Georgia of the 21<sup>st</sup> July of 2016, № 338, 22.

<sup>33</sup> Sub-chapter 11, HM Prison Service, Prison Service Order – PSO 2855, Prisoners with Physical, Sensory and Mental Disabilities, 20/12/1999, <[https://bulger.co.uk/prison/PSO\\_2855\\_prisoners\\_with\\_disabilities.-doc](https://bulger.co.uk/prison/PSO_2855_prisoners_with_disabilities.-doc)>, [12.03.2019].

<sup>34</sup> Department of Health and Prison Reform Trust, Information Book for Prisoners with a Disability, Offender Health and Prison Reform Trust 2009, 18, <<http://www.prisonreformtrust.org.uk/Portals/0/Documents/-pibs/Disability%20pib%20-%20easy%20read.pdf>>, [09.09.2018].

people with disabilities are deprived of trainings for developing such skills and are also deprived of the possibility of participating in further support programs after release.

The handbook on prisoners with special needs includes information about the difficulties involved in the process of release of PWDs from serving the sentence and how to resolve this issue effectively. It points out that the key area, neglected in most prison systems, is the need to assist and facilitate prisoners' transition from prison to the outside world. This can be reached by providing comprehensive preparation for release and post-release support programmes.<sup>35</sup> These programs should be offered not by one system only, but by the penitentiary system, probation service, social service agencies and the public, in order to avoid repeated crime and other adverse consequences, especially considering the difficulties in which the persons with disabilities find themselves after release.

### **5. A Short Excursion of International Practice**

In many cases this Article recalls the successful practice of Great Britain where the rules of treatment of persons with disabilities are detailed in a special order that explains: "the Prison Service will ensure that prisoners with physical, sensory and mental disabilities are able, as far as practicable, to participate equally in prison life".<sup>36</sup> Thus, the treatment and provision of the living conditions for the prisoners with disabilities depends not on the specific decision of the prison administration, but is guaranteed through the legal act. The second chapter of the same document is based on Disability Discrimination Act<sup>37</sup> and determines the legal and policy requirements of the prison service.

However, we come across the opposite approach in the practice of some of the post-Soviet countries, such as Kyrgyzstan, for example. The legislation of Kyrgyzstan,<sup>38</sup> uses not the term "persons with disabilities", but the term "invalid". Also, when the law talks about special conditions, it refers to group I and II invalids. Analogous approach was evident while reviewing the Russian legislation,<sup>39</sup> which considers persons with disabilities in the context of ill persons. For example, the law states that ill prisoners and group I and II invalids are eligible to additional parcels in the quantity and assortment, which corresponds to the medical report (Article 90). In addition, considering that the word "invalid" means "disabled" and not someone "with a disability", the perception of PWDs is in the context of a medical and not a social model. Consequently, the legislation does not speak about equal access for persons with disabilities to the living conditions and programs, which other persons have access to.

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<sup>35</sup> *Atabay T.*, Handbook on Prisoners with Special Needs, Criminal Justice Handbook Series, United Nations Office on Drugs and Crime (UNODC), New York, 2009, 6.

<sup>36</sup> Sub-chapter 3, HM Prison Service, Prison Service Order – PSO 2855, Prisoners with Physical, Sensory and Mental Disabilities, 20/12/1999, <[https://bulger.co.uk/prison/PSO\\_2855\\_prisoners\\_with\\_disabilities.doc](https://bulger.co.uk/prison/PSO_2855_prisoners_with_disabilities.doc)>, [12.03.2019].

<sup>37</sup> UK Disability Discrimination Act, c.13, 07/04/2005.

<sup>38</sup> Criminal Executive Code of the Kyrgyz Republic, № 17, 31/01/2017.

<sup>39</sup> Criminal Executive Code of the Russian Federation, № 1-Ф3, 08/01/1997.

## **6. Conclusion**

Analysis of legislation and practice gives us a reason to assume that the needs of people with disabilities are subject of care. Persons with disabilities are not fully satisfied with all the means which would ensure their full and effective involvement in all stages of the criminal proceedings and provide adapted accessible environment in places of serving the sentence.

In the context of creating an adequate environment for serving the sentence, we encounter such hindering factors as: unadapt environment; absence of special legal procedures regulating the proceedings from the moment of admission before the release of the accused/convicted prisoner with disabilities; absence of the care/ancillary service; status determination; inadequate access to prison regime information for persons with hearing and visual impairments, and finally, prison staff who may not be able to make relevant decisions at any stage of the sentence in relation to persons with disabilities due to insufficient training in the field. Considering the fact that in any country and for different reasons, persons with disabilities are among offenders and that the criminal justice system cannot be selective, the penitentiary system should be prepared to ensure effective and adequate conditions for serving the sentence for vulnerable groups of such categories.

### **Recommendations on Ensuring the Efficient Serving of Sentence by Persons with Disabilities in Penitentiary Establishments**

1. Criminal legislation should be analysed, in the context of persons with disabilities, and the draft package of legislative amendments, taking into consideration the requirements of the Convention, shall be elaborated;

2. Specialists should conduct a study of penitentiary establishments that will examine the following issues:

2.1. Conformity of buildings and facilities for persons with disabilities;

2.2. The legal framework, which regulates the accommodation of persons with disabilities in the cells and the standards of risk and needs assessment;

2.3. Access to information for various types of persons with disabilities;

2.4. Quality of training of prison staff and quantity of professional staff, based on the needs of people with disabilities.

3. Based on a research study, new effective procedures for working with persons with disabilities in the penitentiary system should be developed as follows: procedures for admission; risk and needs assessment; placement; access to services; preparation for release and so on.

4. The penitentiary system shall elaborate an action plan for the creation of adequate conditions for the persons with disabilities to serve their sentence, in accordance with international standards and good practice examples.

5. The State shall develop the mechanisms for accelerated status determination for the persons with disabilities in penitentiary establishments to minimize the possibility of limiting access to the necessary services.



6. Besides the general statistical data, the penitentiary system shall also publish statistics of persons with disabilities according to the types of disabilities, in order to provide information to relevant organizations, structures and other stakeholders.

7. In order to create the efficient environment of serving the sentence for the persons with disabilities in penitentiary establishments, relevant non-governmental organizations and state agencies shall ensure their mobilization and involvement in all stages of execution of the sentence.

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