



**Ivane Javakhishvili Tbilisi State University**  
**Faculty of Law**

# **Journal of Law**

**№2, 2019**



**უნივერსიტეტის  
განმცემლობა**

## Escorting Prisoners with Physical Disabilities

*The present article analyses the challenges and discusses possible solutions connected with transportation (escorting) of prisoners with disabilities. It is noteworthy that, in general, very few materials are available regarding the procedure of escorting prisoners. The standards regulating the transportation of persons with disabilities (PWDs) is especially scarce. Therefore, the existing research papers do not offer any efficient solutions to the issue. The article studies those risks and problems that might be related to transferring prisoners with disabilities and specificities of their transportation; the article also discusses specific approaches set by international standards; it also analyses the practice of the European Court of Human Rights (ECtHR), according to which the violations<sup>1</sup> made during the transportation of prisoners were determined to be in violation of Article 3 of the European Convention on Human Rights (ECHR).<sup>2</sup>*

*The purpose of the article is to show the gaps in the Georgian reality and to offer specific recommendations to the penitentiary system of Georgia, which would allow the elimination of these gaps.*

**Key words:** Legislation, International Standards, Prisoner's Rights, Protection, Escorting, Escorted Persons, Persons with Disabilities, Searches.

### 1. Introduction

Working with persons with disabilities (hereinafter PDWs) is a challenge for any closed system in which these people may be placed. It is clear that PWDs placed in penitentiary establishments represent a particularly vulnerable group for many different reasons. The arguments determining the vulnerability of persons with disabilities in prisons may be derived from both subjective and objective factors. Objective factors include the unadapted prison buildings and other auxiliary buildings; lack of relevant rehabilitation and educational programs or inconsistency with the needs of persons with disabilities; lack of work opportunities; lack of medical services tailored to the needs of persons with disabilities; absence of the caregiver institute, etc. Subjective factors include the attitude of the staff and their low level of professional training. However, if we take into consideration the view of the ECtHR regarding the vulnerability of prisoners, the report of the Parliamentary Assembly of the Council of Europe (PACE) explains that prisoners are among those most vulnerable to violations of their fundamental rights. According to the same report, the ECtHR has stressed that authorities have a “duty to protect” any person in custody at all times.<sup>3</sup>

---

\* Doctoral student at the Faculty of Law, Ivane Javakhishvili Tbilisi State University.

<sup>1</sup> See the foregoing article, 10, 12, 14.

<sup>2</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5, Article 3.

<sup>3</sup> *Mr. Mallia E.*, Report, Committee on Legal Affairs and Human Rights Protecting human rights during transfers of prisoners, Parliamentary Assembly, CoE, Malta, 2019, 3, <<http://website-pace.net/documents/19838/5636250/20190122-PrisonerTransferRights-EN.pdf/470d737d-1234-4484-b9a4-5000c75f79b7>> [17.03.2020].

In regards to placement and living conditions of PWDs in prisons, there are number of international standards and guidelines, which regulate or are directly or indirectly related to treatment of persons with disabilities in penitentiary establishments, however, similar standards that set the procedures and general rules on prisoners' transportation are difficult to find. Such documents are scarce not only in regards to escorting and transportation of special categories<sup>4</sup> of prisoners, but prisoners, in general.

The Code of Imprisonment of Georgia does not discuss the standards of escorting prisoners and thus we do not find any provisions with regard to persons with disabilities either. In this case, it is hard to look for the solution in any other law, as the issue should be regulated by the Code of Imprisonment insofar as it is the law that should regulate all procedures and conditions of detention in the country. The law should set the restrictions, which shall prevent any unlawful acts towards detainees, protect their rights and legitimate interests.

Accordingly, the Georgian legislation should be amended to fully regulate the procedures of escorting the prisoners, including the procedures for transferring prisoners with disabilities, in order to allow for the protection of escorted prisoners from cruel, inhuman or degrading treatment. The Parliamentary Assembly of the Council of Europe calls on the member States of the Council of Europe: to bring their national legal frameworks and practices into line with existing international standards on transfers.<sup>5</sup>

## 2. Procedures of Escorting Prisoners Regulated by National Legislation

Escorting procedures of prisoners are not regulated by legislation but through bylaws (Order "Approving the Rule of Removal/Transfer of Accused/Convicted Persons"),<sup>6</sup> so it clearly represents a legal act of less importance, while the violation of prisoners' rights, including violence, torture and inhuman and degrading treatment towards them, often occurs during their transportation, as explained in the experts' evaluations,<sup>7</sup> namely, when the escorted individual is in the vehicle under the surveillance of some of the staff members, without control,<sup>8</sup> and does not have any opportunity to complain, call a doctor or ask for any kind of help.

---

<sup>4</sup> Special categories of prisoners include: women; juveniles; prisoners with disabilities; older prisoners; prisoners with terminal illness; foreign national prisoners; ethnic and racial minorities; lesbian, gay, bisexual, and transgender (LGBT) prisoners. These categories are discussed in the Handbook on Prisoners with Special Needs, United Nations Office on Drugs and crime, 2009, 9, 43, 57, 79, 103, 123, 143.

<sup>5</sup> *Mr Mallia E.*, Report, Committee on Legal Affairs and Human Rights. Protecting human rights during transfers of prisoners, Parliamentary Assembly, CoE, Malta, 2019, 3, <<http://website-pace.net/documents/19-838/5636250/20190122-PrisonerTransferRights-EN.pdf/470d737d-1234-4484-b9a4-5000c75f79b7>> [last accessed 17.03.2020].

<sup>6</sup> Order N149 of 19 October 2015 of the Minister of Corrections of Georgia on "Approving the Rule of Removal/Transfer of Accused/Convicted Persons", Tbilisi.

<sup>7</sup> "Unacceptable conditions during transfers of prisoners may amount to inhuman or degrading treatment or punishment, contrary to Article 3 of the European Convention on Human Rights" in *Mr Mallia E.*, Report, Committee on Legal Affairs and Human Rights Protecting human rights during transfers of prisoners, Parliamentary Assembly, CoE, Malta, 2019, 3, <<http://website-pace.net/documents/19838/5636250/20190122-PrisonerTransferRights-EN.pdf/470d737d-1234-4484-b9a4-5000c75f79b7>> [17.03.2020].

<sup>8</sup> In this case, "control" implies access to supervision of the authorities or independent control (monitoring) institutions.

The Order of the Minister of Corrections of Georgia on “the Rules of Procedure for Providing Escort” defines the general grounds for the transfer of prisoners from one place to another. The grounds are as follows: transfer of accused/convicted persons to participate in court proceedings or pleadings; transfer of accused/convicted persons to participate in investigative or other procedural activities; extradition of accused/convicted persons; temporary leave by convicted persons from prison in cases provided for in Article 26 of the Code of Imprisonment on special, personal grounds; temporary leave by accused persons from the facility in cases provided for in Article 78 of the Code of Imprisonment on special, personal grounds; in cases provided for in Article 121(2) of the Code of Imprisonment, such as: transfer of the accused/convicted persons to or between civil hospitals; transfer of accused/convicted persons from the penitentiary establishment to the Prison General Hospital, the Tuberculosis Treatment and Rehabilitation Center or forensic facility for forensic psychiatric assessment; transfer of the accused/convicted persons from one penitentiary establishment to another; removal and transfer of accused/convicted persons to conduct independent medical examination; removal/transfer of convicted persons to participate in an oral hearing of the Local Council of the Ministry; removal/transfer of the accused/convicted persons for work and other cases established by law.<sup>9</sup>

It should also be noted that in all these cases the person being transferred may be a person with a disability, especially when considering the transfers made to medical, rehabilitation and forensic examinations. Although the scope of these rules is to transport and escort other persons as well as persons with disabilities (being escorted to one or more of the above-mentioned facilities), these rules refer to the specificity of the transportation of persons with disabilities only once, among other special categories, which explains that when escorting women (including pregnant women and/or women with children under 3 years of age), juveniles, older prisoners and prisoners with disabilities, particular attention shall be paid to their necessities and physical, social and psychological needs.<sup>10</sup> This provision does not clarify what is meant by attention, even though the four categories mentioned in it shall and do have drastically different social and physical needs in practice. For example, if it is the child’s best interests and psychological state in case of the transportation of a minor, the main problem in the case of a person with disability may be the adaptation of the vehicle, etc.

Article 7 of the Rules briefly specifies the forms of providing for these special needs, such as the selection of the vehicle type, the control methods and the use of handcuffs, which are more in the interests of the escorting service and the prison system than in the interests of the escorted/transferred persons with disabilities or other special needs, since this Article is about security measures and not about the interests and needs of any given category of person.

Although the provision in Article 7 of the Rules, regarding the selection of the type of the vehicle, should be considered as a positive indicator, at the same time it is flawed since the selection of special vehicles intends to consider its technical conditions<sup>11</sup> only and does not include the provision regarding

---

<sup>9</sup> Order N149 of 19 October 2015 of the Minister of Corrections of Georgia on “Approving the Rule of Removal/Transfer of Accused/Convicted Persons”, Article 4.

<sup>10</sup> Ibid, Article 7.

<sup>11</sup> Ibid, Article 19.

adaptation of transportation vehicles to the needs of PWDs. The opponents may dispute this gap and refer to Article 4 of the Rules regarding the selection of the vehicle type, however, this cannot be considered as a comprehensive opportunity for persons with disabilities either, because they might not and, in most cases, do not require any kind of specially selected vehicles, but only the adaptation of the existing ones, so that they are not transported in isolation but together with other persons in an integrated manner.

The provision in the Order of the Minister of Corrections on the “Use of Special Means”<sup>12</sup> should be welcomed as it states that “special means shall be used as an extreme security measure in the event when another measure is ineffective. The use of the special means shall be proportionate to the danger and do less harm to the addressee of the measure in order to achieve a legitimate aim”.<sup>13</sup>

The document, which regulates the rules of transportation of prisoners shall include details related to transportation. As the Prison Incident Management Handbook<sup>14</sup> defines, it shall represent an act with enough power not to be subject to changes in spite of the security risks that could be derived from prisoners. This document should cover issues such as: the number of employees involved in escorting, the reason and direction of the transfer, the actions of the staff at the destination (hospital, court, etc.), the need for checks (searches), the use of restrictions and periodic checks, the frequency of communication and reporting, the timetable of escorting and transportation, type of the vehicle and transportation route, need for escorted persons to be accompanied with the required documents and photos, staff and prisoners’ clothing criteria, criteria for terminating the confidentiality of information regarding escorting. Such an approach will minimize the risk of violence against escorted persons and will increase the degree of security and flexibility during escorting.

### **3. Searching of Prisoners for Removal/Transfer**

The “Rules of Procedure for Providing Escort” explains the full and partial searches of persons to be escorted. Particular attention shall be given to full searches, in which case the body, clothing, shoes and prosthesis (if any) of the accused/convicted persons are checked.<sup>15</sup> However, it does not regulate what the checking procedures should be and how to inform the person about the check. It is indicated in the Rules that the searches of the plasters, gypsum and other bandages shall be performed jointly with the medical practitioner. However, the participation of a specially trained person in checking the persons with disabilities is not specified.

Another issue related to checking the person to be escorted is the requirement that the accused/convicted person is obliged to completely remove the clothes or strip the relevant parts of the body

---

<sup>12</sup> Order N145 dated 12 September 2014 of the Minister of Corrections on “the types of special means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means”.

<sup>13</sup> Ibid, Article 2.

<sup>14</sup> See, Prison Incident Management Handbook, UN, 2013, 27.

<sup>15</sup> Order N149 of 19 October 2015 of the Minister of Corrections of Georgia on “Approving the Rule of Removal/Transfer of Accused/Convicted Persons”, Article 29.

following the instructions of the authorized person.<sup>16</sup> In case if a person is physically unable to independently undress, there is no mention of who can assist and whether the honour and dignity of the person is protected. It is not specified whether the escorting staff member knows how to perform the checking procedures. Also, it should be determined how a person is informed about the actions about to be taken towards them when they have hearing or visual loss or impairments. Also, how fully informed is the person with disabilities, who is being asked to strip, about what is happening in the room (if it takes place in a room) where they should strip, in particular, who is in the room and to what extent is the place isolated from other people's eyesight, etc. The above-mentioned issues have a significant importance as they serve to protect a person from fear and other unjustified stress that may accompany such a person's searches and checks only because there are no clearly defined procedures. Obligation of the escorting staff to inform any escorted persons and especially persons with disabilities about each detail connected to their removal and transfer to the place of destination should be provided by law in order to avoid additional fear caused by uncertainty for persons with disabilities, who are already under psychological stress due to their condition, lack of appropriate information and lack of access to various facilities and services. The General Assembly of the Council of Europe has called on member states to ensure that information on the persons to be transferred is provided to the third party, which is the receiving party, if necessary, and also, to ensure that "all prisoners, subject to transfer, are informed in advance in a language they understand."<sup>17</sup>

The importance of information for escorting personnel is also high when transporting a person with a disability, because the prisoner's disability may not always be immediately obvious to staff and therefore staff may not be aware of the needs the escorted individual has. As the British Prison Service Order<sup>18</sup> explains, it is important that information regarding disability is entered on to the Person Escort Record (PER) under the "health risk" heading and the escort staff are aware of such issues in order that prisoners' needs are met. The Order explains that this information will have a direct impact of the use and provision of specialist resources both during the escort and at the final destination.

A report published by Her Majesty's Inspectorate of Prisons indicates that prisoners with disabilities were less likely to say that they were searched in a respectful way on arrival. The report emphasised the need for national (internal) instructions about searching arrangements to guide staff dealing with prisoners with disabilities.<sup>19</sup>

The same need exists in the Georgian reality as both prison and escort staff conducting searches and checks of any persons, including persons with disabilities, should be provided with guidance on the

---

<sup>16</sup> Order N149 of 19 October 2015 of the Minister of Corrections of Georgia on "Approving the Rule of Removal/Transfer of Accused/Convicted Persons", Article 29.

<sup>17</sup> Disabled prisoners: A short thematic review on the care and support of prisoners with a disability, Thematic report by HM Inspectorate of Prisons, London 2009, 4, <<https://www.justiceinspectorates.gov.uk/hmiprisoners/wpcontent/uploads/sites/4/2014/07/Disability-thematic-2008.pdf>> [17.03.2020].

<sup>18</sup> Communicating Information About Risks on Escort or Transfer, The Person Escort Record (PER), Prison Service Order, 2009, 15.

<sup>19</sup> Disabled prisoners: A short thematic review on the care and support of prisoners with a disability, Thematic report by HM Inspectorate of Prisons, London, 2009, 29, <<https://www.justiceinspectorates.gov.uk/hmiprisoners/wpcontent/uploads/sites/4/2014/07/Disability-thematic-2008.pdf>> [17.03.2020].

implementation of these procedures. There should also be special training programs for these persons to improve their professional qualifications, both upon recruitment and with a reasonable frequency during the employment.

The importance of providing information about the escorting and transferring procedures to persons with disabilities in an understandable and exhaustive manner is also apparent considering the articles of the “Rules of Procedure for Providing Escort”, which define what is implied under “escape” during escort and “crossing” of such defence lines, which do not represent any pre-defined standards and, in some cases, are discretionary lines set by the head of the escort group. Thus, the assertion that the boundaries of the defence line are known in advance to the accused/convicted persons is questionable, since these boundaries can be determined at any point in accordance with the existing risk.<sup>20</sup> Prior provision of information should be given special attention in relation to persons with disabilities; the procedures for informing persons with hearing, visual or cognitive disabilities should be clearly defined.

#### **4. Analysis of National Law and Practice in Comparison with International Standards and Practice**

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT) has issued a factsheet<sup>21</sup> following the observations during its visits, covering several key issues of escorting persons, such as: material conditions of the vehicle; safety and security measures and health issues.

Unlike the “Rules of Procedure on Providing Escort” established by Georgian legislation, which only describes the general standards, in this document CPT provides a framework for the types of transport and dimensions of compartments or cubicles intended to transport detainees. The standards set the compartment dimensions for individual cubicles and cubicles intended to transport more than one individual. According to these standards individual cubicles measuring less than 0.6 m<sup>2</sup> should not be used for transporting a person, no matter how short the distance or duration, and cubicles used for longer journeys/distances should be much larger. As for compartments or cubicles intended to transport more than one detainee for short journeys/distances should be no less than 0.4 m<sup>2</sup> of space per person and at least 0.6 m<sup>2</sup> per person for long distances. Regarding the height of the vehicle, the CPT explains that compartments or cubicles used for transporting detainees should be of reasonable height.<sup>22</sup> It should be noted that the European Court of Human Rights has discussed the violations in the process of transporting of prisoners, and established violation of Article 3 of ECHR, for example, in *Kavalerov and others v. Russia*,<sup>23</sup> when the applicant was subjected to repeated transportation in individual cubicle with an area of

---

<sup>20</sup> Order N149 of 19 October 2015 of the Minister of Corrections of Georgia on “Approving the Rule of Removal/Transfer of Accused/Convicted Persons”, Article 52.

<sup>21</sup> Factsheet, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe, 2018, <<https://rm.coe.int/16808b631d>> [17.03.2020].

<sup>22</sup> Factsheet, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe, 2018, 2 <<https://rm.coe.int/16808b631d>> [17.03.2020].

<sup>23</sup> *Kavalerov and others v. Russia*: References: 55477/10, ECHR 2017.

0.3 m<sup>2</sup>. The court also found a violation of Article 3 of ECHR in the case of *Idalov v. Russia*,<sup>24</sup> where the applicant was transported by a vehicle with an area of 11.28 m<sup>2</sup> carrying 36 persons, and on a different occasion by a vehicle with an area of 8.93 m<sup>2</sup> carrying 25 persons.

Although the specifics of the cubicles to transport a person with a disability is not indicated it should be noted that the size of the cubicles used to transport PWDs is of an utmost importance given that the person in question shall be able to sit in a fit manner. This argument is supported by CPT's explanation that transport vehicles should be equipped with suitable means of rest, such as appropriate benches or seats. CPT also explains that medicines for sick prisoners should be provided uninterruptedly during transportation, and that sanitary means should be provided as needed. It is noteworthy that this section addresses the needs of persons with disabilities, with a focus on equipping the vehicle in line with the interests of persons with disabilities, in particular that vehicles should be adapted for wheelchair users and, if necessary, with beds.<sup>25</sup>

Other issues that CPT covers in its factsheet and is of utmost importance for PWDs are:

a. Relationship with the escort staff, the issue, which is not considered by Georgian regulations. CPT explains that the transport vehicles, which transfer the detainees, should be equipped with means to enable detainees to communicate with escort staff.<sup>26</sup> This shall be given special consideration in case of PWDs as, compared to other persons, they might have a need for more frequent communication with escort staff due to their physical and physiological necessities.

b. The second issue is related to the technical equipment of transport vehicles. The doors of the cubicles/compartments should be equipped with a device that automatically and/or rapidly unlocks the doors in the event of an emergency,<sup>27</sup> which is important in case of any person, however, when it comes to a person with disabilities who may not be able to open the doors or to open them timely, this gains additional importance.

Transfer procedures of PWDs is related not only to the transportation process but also to the safety and security of the person with disabilities at the facility where he/she is transferred to (prison, medical facility, etc.), as the escort staff member is a person who has information on a person's physical, mental and/or sensory disability, or the learning disability or difficulty, which should be passed to the receiving prison,<sup>28</sup> as, according to the same report, prisoners with disabilities, about whom the prison administration was informed in advance, were seen by a member of the health service staff or had access to health service staff within 24 hours in the admission unit. Overall, they reported a worse experience in reception and within the first few days.<sup>29</sup> Thus, failure to inform the penitentiary establishment can cause irreparable harm to the person with disabilities.

---

<sup>24</sup> *Idalov v. Russia* (App no 5826/03) ECHR 22 May 2012.

<sup>25</sup> Factsheet, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe, 2018, 12.

<sup>26</sup> *Ibid.*, 3.

<sup>27</sup> *Ibid.*

<sup>28</sup> Disabled prisoners: A short thematic review on the care and support of prisoners with a disability, Thematic report by HM Inspectorate of Prisons, London 2009, 10, <<https://www.justiceinspectrates.gov.uk/-hmiprison/wpcontent/uploads/sites/4/2014/07/Disability-thematic-2008.pdf>> [17.03.2020].

<sup>29</sup> *Ibid.*, 29.



## **5. Access to Primary Services During Transportation**

In addition to the standards for transport vehicles and general transportation procedures, it is also important to consider the services and transportation conditions, because the transportation is carried out at different times and for different durations, and often the services, which can be considered insignificant in the short distance transportation, may be vital during long-distance transportation. These services include access to fresh air, lighting, heating and air conditioning, as well as periodicity of food delivery relevant by distance and time of transfer, as well as person's state of health. According to CPT standards, transport vehicles should be sufficiently lit and ventilated, and heated appropriately and equipped with safety devices. Necessary arrangements should be made to provide detainees with drinking water and food as required and at appropriate intervals, where the special needs of persons with disabilities should also be taken into account. In the case of *Kavalerov and others v. Russia*<sup>30</sup> the ECtHR found the violation of Article 3 of the Convention as the transport vehicle had no windows, the escorted persons did not have appropriate access to fresh air, natural light or ventilation; the sleeping areas were inadequate, lacked linen, and the air was heavy due to tobacco smoke. The European Prison Rules states that "the transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited."<sup>31</sup>

Special attention should be paid to the availability of toilets, as persons with disabilities may have more frequent need to have access to toilets or have difficulty accessing them independently, etc. At the same time the conditions shall offer sufficient privacy and the protection of honour and dignity.

It is also important to determine whether a person with a disability is in need of assistance. Legislative regulations should set the conditions on how to determine and provide it. It is also worth noting that for long distance transportations detainees should be able to sleep, which should take into account the special needs of persons with disabilities.<sup>32</sup>

Hence, legal regulations should determine, in detail, such important issues as provision of food and drinking water to escorted persons, especially persons with disabilities, indicating its periodicity and content. The law should also provide for access to fresh air, access to toilets and access to assistance, when needed, as well as appropriate rest conditions for persons with disabilities when being transported at a long distance, while fully respecting their honour and dignity.

## **6. Use of Special Means and Firearms**

In addition to significant aspects of escort of prisoners mentioned above, it is particularly important to pay attention to procedures for the use of force and special means during escort. The use of such

---

<sup>30</sup> *Kavalerov and others v. Russia*: References: 55477/10, ECHR 2017.

<sup>31</sup> Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules, 2006, Rule 32.2.

<sup>32</sup> Factsheet, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe, 2018, 17, <<https://rm.coe.int/16808b631d>> [17.03.2020].

measures requires great caution when transporting any prisoner, but special attention should be paid to vulnerable groups, including persons with disabilities who may not be a threat themselves, but may be affected by the use of force in the event of an emergency, if the special means are also used against them as they are in the same vehicle with other persons. First of all, it is important to determine whether people with disabilities understand and respond to the situation at the moment, or whether they can respond both physically and psychologically considering the type and degree of their disability, etc. It is also of great importance to discuss the extent to which the escort staff is aware how to deal with persons with disabilities.

The Order on the “Rules of Procedure to Provide Escort” specifies that prior to the escort, the head of the escort organizes the receipt of weapons, ammunition, and special means and uses it in an attack or attempted attack, escape or attempted escape as provided by law.<sup>33</sup> As for the Code of Imprisonment, it determines the list of persons who are entitled to use such a measure, but there is no further discussion in the law.

During the removal/transfer of detainees the law establishes certain restrictions on the use of special means that cause serious harm to the health of the accused/convicted persons, represents an unjustified risk or is prohibited by international treaties and international acts of Georgia. However, there is no mention of special categories and their specificities.

CPT explains that any restrictions to be applied during transportation of prisoners must be strictly last resort, proportionate and lawful to the purposes for which such a measure was used. CPT also recommends that the use of means of restraint and force should be limited in time and should only be resorted to when the risk assessment in an individual case clearly warrants it.<sup>34</sup> In the case of *Mouisel v. France*<sup>35</sup> the transfer of a person with handcuffs to a hospital for treatment with chemotherapy while in a weakened state did not constitute a proportionate measure to the security risk, thus the court determined the violation of Article 3. This means that any special measures and force to be used must be in line with the risk posed by the person being transferred and, first of all, that risk assessment must focus on the person’s health and physical capabilities. The Order, which sets what parameters to take into consideration when using force and special means, states that “when using special means, a person’s health condition and clearly expressed physical disability should be considered to the extent possible.”<sup>36</sup> However, it is uncertain what it means to take into account the clearly expressed physical disabilities and what does this regulation mean under the notion of “clearly expressed”.

---

<sup>33</sup> Order N149 of 19 October 2015 of the Minister of Corrections of Georgia on “Approving the Rule of Removal/Transfer of Accused/Convicted Persons”, 2015, Articles 25, 47.

<sup>34</sup> Factsheet, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe, 2018, 4.

<sup>35</sup> *Mouisel v. France*, Application No. 67263/01, 2002.

<sup>36</sup> See, Order N145 dated 12 September 2014 of the Minister of Corrections on “the types of special means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means”, Article 4.

The lawfulness, proportionality and other elements of the use of force depend on the knowledge and professional training of the escort staff, which should be of a continuous and systematic nature. As the UN Standard Minimum Rules indicates, the staff shall be provided with the training “before entering on duty” and later shall include training on “security and safety, including the concept of dynamic security, the use of force and instruments of restraint”.<sup>37</sup>

Firstly, the penitentiary system should develop risk and needs assessment practices when transporting prisoners, enabling the escort staff to properly plan and use special means towards all prisoners, but introduction of these standards is of particular importance when transferring sick prisoners and prisoners with disabilities.

A plan of working with persons with disabilities in emergency situations and special standards for the use of force and special means shall be elaborated to minimize the risk of physical and psychological harm to persons with disabilities and the violation of their legitimate interests.

## **7. Conclusion**

The research on the transportation process of PWDs and related shortcomings, identified the existing difficulties and obstacles which are the basis of violations of the rights of persons with disabilities. The shortcomings concern the legislation, technical issues and personnel. Based on the findings of this research, the author will present recommendations to relevant authorities or structures that will enable them to plan appropriate actions and take steps to make the escorting process relevant to the needs of persons with disabilities.

The basic standards for the transportation of prisoners should be developed and implemented at the legislative level. The standards shall comprehensively determine the procedures for the transportation of persons with disabilities from one place to another, regardless if the destination is a medical or other type facility. Basic standards should include issues such as the number of seats and the area available per person, which shall be accessible for any person, however, for a person with a disability, who is unable to stand or unable to stand for long periods, and needs more space than other prisoners (e.g., wheelchair users) shall be provided with such means.

Establishing comprehensive procedures within the Georgian legislation shall ensure that all prisoners are protected from any cruel, inhuman or degrading treatment during their transfer. The document that regulates the rules for the transportation of prisoners must include all the details related to transportation. This document should establish procedures such as: the number of employees involved in escorting, the reason and direction of transfer, the actions of the staff at the destination (hospital, court, etc.), the need for checks (searches), the use of restrictions and periodic checks, the frequency of communication and reporting, the timetable of escorting and transportation, the type of transport vehicle and transportation route, need for escorted persons to be accompanied with the required documents and photos, staff and prisoners' clothing criteria, criteria for terminating the confidentiality of information regarding

---

<sup>37</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015, Rules 75-76.

escorting. Such an approach will minimize the risk of violence against escorted persons and will increase the degree of security and flexibility during escorting.

Obligation of the escorting staff to inform any escorted persons and especially persons with disabilities, in a manner and language they understand, about each detail connected to their removal and transfer to the place of destination should be provided by law. In addition to informing persons with disabilities, it should be compulsory to inform the escort staff on the transport of persons with disabilities, this approach is especially of high importance when the disabilities are not clearly expressed, so that the escort team can provide for the needs of such persons.

The escort staff conducting searches and checks of any persons, including persons with disabilities, should be provided with guidance on the implementation of these procedures. There should also be special training programs for these persons to improve their professional qualifications, both upon recruitment and with a reasonable frequency during the employment.

Legal regulations should determine, in detail, such important issues as provision of food and drinking water to escorted persons, especially persons with disabilities, indicating its periodicity and content. The law should also provide for access to fresh air, access to toilets and access to assistance, when needed, as well as appropriate rest conditions for persons with disabilities when being transported at a long distance, while fully respecting their honour and dignity.

The penitentiary system should develop risk and needs assessment system when transporting prisoners, enabling the escort staff to properly plan and use special means towards all prisoners, but especially prisoners with disabilities. A plan of working with persons with disabilities in emergency situations and special standards for the use of force and special means shall be elaborated to minimize the risk of physical and psychological harm to persons with disabilities and the violation of their legitimate interests.

### **Bibliography:**

1. Imprisonment Code of Georgia.
2. Order N149 of 19 October 2015 of the Minister of Corrections of Georgia on “Approving the Rule of Removal/Transfer of Accused/Convicted Persons”, 2015.
3. Order N145 of 12 September 2014 of the Minister of Corrections on “the types of special means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means”.
4. Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5.
5. Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules, 2006.
6. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015.
7. *Mr Mallia E.*, Report, Committee on Legal Affairs and Human Rights, Protecting human rights during transfers of prisoners, Parliamentary Assembly, CoE, Malta, 2019, 3.

8. Handbook on Prisoners with Special Needs, United Nations Office on Drugs and crime, Vienna, 2009, 9, 43, 57, 79, 103, 123, 143. <[https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Prisoners\\_with\\_Special\\_Needs.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf)> [17.03.2020].
9. Communicating Information About Risks on Escort or Transfer, The Person Escort Record (PER), Prison Service Order, 2009, 15.
10. Factsheet, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe, 2018, 2-5, 12, 17, <<https://rm.coe.int/16808b631d>> [17.03.2020].
11. Disabled prisoners: A short thematic review on the care and support of prisoners with a disability, Thematic report by HM Inspectorate of Prisons, London 2009, 4, 10, 29, <https://www.justiceinspectorates.gov.uk/hmiprisoners/wpcontent/uploads/sites/4/2014/07/Disability-thematic-2008.pdf> [17.03.2020].
12. Prison Incident Management Handbook, UN, 2013, 27, <[https://www.un.org/ruleoflaw/files/Prison\\_Incident\\_Management\\_Handbook\\_OROLSI\\_Mar2013.pdf](https://www.un.org/ruleoflaw/files/Prison_Incident_Management_Handbook_OROLSI_Mar2013.pdf)> [17.03.2020].
13. Kavalero v. Russia: References:55477/10, ECHR 2017.
14. Idalov v. Russia (App no 5826/03) ECHR 22 May 2012.
15. Mouisel v. France, Application No. 67263/01, 2002.