

HUMAN RIGHTS CENTER

No way back! “All Bridges Burned”

Does the Criminal Justice System Work in
Georgia?

HRIDC

2008

The Human Rights Centre (HRIDC) is a non-governmental human rights organization, without any political or religious affiliations. The purpose of HRIDC is to increase respect for human rights and fundamental freedoms in Georgia, as well as to contribute to the democratic development of the country

HRIDC implements projects to ensure compliance with human rights laws and standards. We cooperate with international organizations and local organizations which also share our view that respect for human rights is a precondition for sustaining democracy and peace in Georgia.

Contact Details: Human Rights Centre (HRIDC)

3a Kazbegi Ave., Entrance 2, 4th Floor, Apt. 22.

Tbilisi, 0160 Georgia

Tel: (+995 32) 37 69 50, (+995 32) 45 45 33;

Fax: (+995 32) 38 46 50;

Email: hridc@hridc.org

Web-Site: www.hridc.org

On-line magazine: www.humanrights.ge

Prepared by: Simon Papuashvili

Edited by: Wieteke Daniëls

The HRIDC wants to express its special gratitude to Cordaid, the Norwegian Helsinki Committee, and the National Endowment for Democracy (NED) for their support to the Human Rights Monitoring Program.

Contents

Background.....	4
Problem of Overcrowding	5
Ill treatment of Detainees	8
Effectiveness of the Monitoring Mechanisms	9
Contact with the Outside World	12
Training of Personnel	13
Probation Service.....	14
Concussion and recommendations	15

Background

Reform of the system of the execution of penalties was set as one of the top priorities of the Georgian Government, which acknowledged the need for changes in both existing infrastructure and the methods used for the management of the system. The Strategy of the Criminal Justice System Reform¹, which was approved by both Parliament and the Government of the country, set the following ten priorities for the reform of the penal system:

- Creation of real and effective mechanisms for protection of rights of the convicts;
- Real and effective re-socialization of offenders;
- Provision of possibilities for employment, education and sporting activities of the convicts;
- Reasonable reduction of the number of prisoners on the stage of preliminary imprisonment as well as after conviction, by maximum application of alternatives to imprisonment and humanization of punishments, considered by the law;
- Permanent improvement of living conditions and the quality of service existing in penitentiary establishments;
- Classification of the convicts, placed in penitentiary establishments, effective risk assessment and allocation of inmates in relevant penitentiary establishments;
- Setting in operation semi-open and open penitentiary establishments;
- Isolation of influential criminal, and prisoners carrying high social risk, from the basic population of prisoners, and their placement in most secure penitentiary establishments;
- Increasing the professional skills of responsible personnel, providing adequate education, salaries and social guarantees;
- Strengthening the capacity of the Probation Department.

¹ Strategy of the reform of the Criminal Legislation Of Georgia(Working group established by the Presidential Decree No. 914 of 19 October 2004).

It was acknowledged that timely and gradual realization of those activities taken together was essential for the successful completion of the reform. In addition, the Government elaborated and approved the Action Plan for the Implementation of the Criminal Justice Reforms in Georgia,² a document that lists activities necessary for the achievement of the goals set by the strategy paper. A study of both abovementioned documents reveals that the major goal of the reform is to create conditions for the re-socialization of convicts, an aim which is set by article 39 of the Criminal Code of Georgia.³

Despite some positive changes, it can be said that most of the goals, set by the strategy paper remain unexecuted. This is clearly demonstrated by the continuous and steady increase of the prison population and non-existence of the rehabilitation oriented approach, which taken together can create devastating consequences for the individuals that are subject to imprisonment on and to the society as a whole.

Problem of overcrowding

The problem of overcrowding is not a new phenomenon for the Georgian prisons system; however, the years 2006-2007 have shown a record increase in the number of sentenced inmates particularly. Compared to the number in 2003 – 6274 sentenced inmates - there has been an increase in the prison population of more than 200%; the number has grown to 19244 sentenced inmates.⁴ The excessive number of inmates, combined with the devastating conditions that

² Implementation Plan for the Strategy on Criminal Justice Reforms in Georgia, 12 June 2006, as amended by the State Commission on Coordination of Legal Reforms.

³ Article 39. Purpose of Punishment (1). Punishment is aimed at the restoration of justice, prevention of new crimes and re-socialization of a criminal. (2). The purpose of punishment shall be fulfilled through pressure upon the convict and other person in order that they develop a feeling of responsibility for the protection of law and order. Such forms and instruments of pressure upon the convict are provided for by the legislation of Georgia on sentence administration.

(3). The purpose of punishment shall not be a physical suffering of a human being or humiliation of his/her dignity. Criminal Code of Georgia, Adopted on 22 July 1999.

⁴ Data is taken from the website of the Ministry of Justice: www.justice.gov.ge.

prisoners have to endure, often equal inhuman and degrading treatment, which has a destructive effect on the prisoners' physical and mental health. Moreover, the prison administration has no choice other than focus on security matters of the prison management.

Despite an officially declared policy of putting more emphasis on the use of alternatives to imprisonment, which was reflected in the Concept of Criminal Justice System Reform (also referred to as the Concept Paper), President Saakashvili declared a zero tolerance policy towards crime. Saakashvili's public statements about zero tolerance policy had immediately been reflected in the number of both pre-trial detainees and convicted prisoners. At the same time, significant investment is being made into the development of the new prison infrastructure. However, the opening of new facilities in Kutaisi and Rustavi in 2005 and in Gldani in 2007 is not a mitigating factor since opening of the new prisons is usually related to the closure of old institutions that are on the edge of collapse. The number of new places created does not correspond to the rapidly increasing figures. This trend was more or less stabilized by introducing the changes to the Criminal Procedural Code in 2005-2006, especially with respect to decreasing the time limits of the pre-trial detention. From 5063 pre-trial detainees in 2005, the number dropped down to 4163 inmates in 2007. However, a different number of the convicts showed another tendency. Whereas the number of the sentenced prisoners was 3832, it went up to 15081 sentenced inmates, causing major overcrowding in the penitentiary establishments for the convicted.

Statistics provided by the Penitentiary Department of the Ministry of Justice clearly show that most of the institutions remain overcrowded. The Decree of the Minister of Justice, dated February 28 2007, provides maximum capacity for each penitentiary institution. It is important to note that the rule used for calculating the maximum capacity is based on the Georgian Law on Imprisonment which does not correspond to international standards. In particular, article 33.2. of the Georgian Law on Imprisonment sets the minimum square meters per inmate. According to this provision of the law, the minimum square meter per detainee is 2 m² per adult male, 2.5 m² for adult women and 3.5 m² for juvenile detainees. While minimum personal space allowed per

detainee in Europe is recognized to be 7 m², the abovementioned provision of the Georgian Law on Imprisonment and the corresponding rule of calculating the maximum capacity of penitentiary establishments contradict this basic standard. Moreover, in most of the cases the Government allows the number of inmates to exceed the official capacities of the institutions. This is demonstrated by the figures provided by the Penitentiary Department. In particular by the statistics of November 2007:

Prison	Official capacity	Numbers of inmates in practice
Rustavi No 1	1846	2040
Rustavi No 6	830	1126
Ksani No7	1336	1820
Khoni No 9	600	708
Educational Establishment for Juvenile Offenders	160	182
Batumi No 3	503	1036
Zugdidi No 4	305	538
Prison No 5	1881	5266

The situation has dramatically improved after the transfer of 3500 inmates from No 5 to new Prison No 8 in Gldani.

Despite improving living conditions, the newly built prisons are far from complying with European standards, as it is frequently stated by public officials. First, the minimum space requirement is not met in any of the newly built prisons. Second, there are no arrangements for prisoner activities in new establishments. Since the building of several prisons is a major

investment for the Georgian Government, the non-inclusion of rehabilitation facilities (workshops for prisoners' employment and facilities for education) in newly built prison is a serious drawback. Moreover, it demonstrates that the only thing that the Government cares about at present is to lock up the inmates, leaving aside the aim of rehabilitation and creating a serious danger for the society in the medium or long term.

One of the main statements that Saakashvili made both before and after his inauguration, concerned a change of the policy regarding the criminal justice system and decreasing of the number of prisoners, which will solve major problems in the Georgian prison service. The Human Rights Centre is planning to monitor the changes in this respect and will respond adequately.

III-treatment of detainees

The prohibition of torture, inhuman or degrading treatment and punishment is a fundamental human right that cannot be derogated and is subject to immediate implementation (direct effect). Effective implementation of this right is especially important with respect to persons deprived of liberty. In this regard, the state has a positive obligation to create conditions of imprisonment that do not infringe the human dignity; to introduce legislation aimed at the prevention of acts leading to such an infringement both by state actors and private individuals; and to investigate alleged facts of torture. In order for the investigation to be considered effective, it has to be capable of leading to the identification and punishment of the perpetrators of such acts.

As it was repeatedly stated by the European Committee for the Prevention of Torture, acute overcrowding of the facilities combined with the hygienic conditions, lack of activities and poor quality of medical services is sufficient to declare that detainees in many Georgian prisons are subject to inhuman and degrading treatment. By failing to improve prison conditions, the Georgian Government continuously violates the absolute right to prohibition of torture.

Changes introduced to the Criminal Code in 2005 have brought the Georgian legislation, aimed at the prevention of torture, in line with international standards.⁵ However, there are big question marks as to the application of those provisions in practice. The investigation of the March 27 2006 events can serve as an example in this respect. Seven inmates were killed and at least 17 were significantly injured as a result of use of excessive force during the suppression of a prison riot. The perpetrators of this violent suppression remain unpunished.

There are allegations of ill-treatment in Prison No 8 (Gldani Prison). Lawyer of the Human Rights Centre Nino Andriashvili has visited Gldani Prison several times in January 2008. During one of her visits at 25th of January, defendant Philippe Leshkasheli, who agreed to disclose his name, informed Andriashvili that he was beaten by prison guards several times without any reason. Leshkasheli also said that other prisoners are subject to systematic beating from the side of the prison staff. One of the techniques used, as Leshkasheli described, is taking individual inmates on the roof of the prison (where a one hour walking area is located) during the night and beating them for 10-15 minutes. The Human Rights Centre will follow up on these cases in order to document them and draw the attention of responsible Government agencies and international organizations to them.

Effectiveness of the monitoring mechanisms

There have been various attempts to create effective mechanisms for monitoring the detention centres and penitentiary establishments. Some of these mechanisms are still operating on a relatively limited scope, however by ratifying the Optional Protocol to the Convention Against Torture (OPCAT), the Georgian Government undertook the obligation to create an effective monitoring mechanism that shall operate on a countrywide scale. There are three main criteria that national monitoring mechanisms should meet: independence, impartiality and professionalism.

⁵ Articles 144¹, 144² and 144³ of the Criminal Code prohibit torture, use of and threat to torture and inhuman and degrading treatment respectively.

Mechanisms that are created within the state machinery obviously cannot be utilized for such purposes. Therefore, the state has to initiate and contribute to the creation of independent monitoring mechanisms.

Article 93 of the Georgian Law on Imprisonment envisages the creation of Local Monitoring Commissions of the Penitentiary Institutions. The requirements for the Local Monitoring Commission members and the criteria for the appointment are defined by Decree No 2190 of the Minister of Justice. According to the Statute of the Commission, established by the mentioned decree, the members of the commission are selected on the basis of their desire, possibility to work intensively, qualification and reputation. Additionally, the candidate should reside within 30 kilometres from the penitentiary institution the Commission in question should monitor. The Members are approved by the Minister of Justice.

By 2007, the following 11 local prison monitoring commissions were operating within the penitentiary system of Georgia:

- Public Control Commission of Tbilisi Penitentiary Institution # 5;
- Public Control Commission of Rustavi Penitentiary Institution # 6;
- Public Control Commission of Rustavi Penitentiary Institution #1;
- Public Control Commission of Tbilisi Women and Juvenile Penitentiary Institution #5;
- Public Control Commission of Civil Control Batumi Penitentiary Institution # 3;
- Public Control Commission of Zugdidi Penitentiary Institution # 4;
- Public Control Commission of Ksani Penitentiary Institution # 7;
- Public Control Commission of Geguti Penitentiary Institution # 8;
- Public Control Commission of Kutaisi Penitentiary Institution # 2;

- Public Control Commission of Ksani Tubercular Condemned Prison Hospital Institution;
- Public Control Commission of Prison Central Hospital.

As for the composition of the commissions, there are 35 representatives of NGOs, 11 representatives of local municipalities, 2 students, and 11 priests. The Ministry of Justice launched a new call for applications for further recruitment of the commission members for the remaining of the penitentiary institutions.

Several Georgian NGOs, including the Human Rights Centre, have been deprived of the possibility to have their representatives in commissions. Moreover, the abovementioned commissions cannot be regarded as an independent monitoring mechanism for the purposes of OPCAT for the following reason: members of the commissions are recruited and appointed by the Ministry of Justice, expressly contradicting the principle of independence which is the essential for the effectiveness of the commissions. Since the main purpose of the commissions is the identification of problems in penitentiary institutions, including ill-treatment and lack of adequate living conditions, individuals who are selected and appointed by the Ministry of Justice cannot carry out their major function of supervision of the prisons. Furthermore, the Concept Paper envisages the creation of a two-layer monitoring mechanism. In particular, the Concept Paper states the following: In order to achieve maximum results of inspecting activities, the existence of a two-level public monitoring mechanism, which would be independent from institutional structures, is necessary:

- I. Supervisory commissions at penitentiary institutions that will be staffed with representatives of local society;
- II. Central coordinating commission, which will be staffed with representatives from society who enjoy high prestige and have experience in the field of human rights. The Central Commission will have the following major functions: general monitoring of the prisons,

recruitment of the local commission members, coordination of the work of the local commissions and lobbying the changes. This kind of monitoring system is envisaged by the Draft Code on Imprisonment.

Contact with the outside world

Rule 61 of the Standard Minimum Rules for the Treatment of Prisoners (SMR) draws particular attention to the maintenance of the prisoner's contact with society. In particular, the article states that: "the treatment of the prisoner should emphasize not their exclusion from the community, but their continuing part in it." The quantity and quality of family and other contacts need to be enhanced in order to fulfil whatever the limited crime prevention role the prison may have. To unduly restrict family contact is to undermine the alleged function of the prison.⁶ Rule 92 of the SMR contains a more detailed statement in this respect: "an untried prisoner shall be allowed to inform immediately his family of his detention and shall be given reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of the justice and of security and good order of the institution."

The policy of the current administration of the Penitentiary Department is far different from the propositions made in the abovementioned provisions of the SMR. One of the major tasks that was given to Bacho Akhalaia upon his appointment as the chairman of the Penitentiary Department was the elimination of the influence of "thieves in law", which unquestionably was an essential step towards the successful accomplishment of the reform. However, finding a balance between eliminating the illegal influence of the "thieves in law" and establishing order by reasonable means proved to be a mission impossible for the new administration of the Penitentiary Department. The fight against unlawful practices in prisons coincided with measures related to the minimization of the contact of prisoners with the outside world. Examples in this respect include: decreasing the occasions and time of meeting family members, relatives and

⁶ Making Standards Work, an international handbook on good prison practice, Penal Reform International, 2001, pp. 101-102.

friends; elimination of the import of parcels and preventing the information flow from prisons. Clearly these are easy solutions to the problem of criminality within the penitentiary system and implementation of these measures will have a negative influence on prisoners in many ways.

Article 48 of the Georgian Law on Imprisonment regulates prisoners' meetings with family members and close relatives. Paragraph 1 of the mentioned article eliminates the possibility for friends of prisoners to visit them during their incarceration. This is clearly a wrong approach considering that many prisoners are unmarried, divorced or separated from their families. Therefore, for those who have no family or close relatives, the law leaves no possibility of maintaining contact with the outside world. Also, it deprives friends of the possibility to provide support to the prisoners from the outside.

One innovation that was introduced in September 2007 is the right of the prison directors to allow additional meeting(s) to a prisoner stemming from his/her law-obeying behaviour. The prison director can exercise this right on his/her own discretion or based on an appeal of the prison's social division or local monitoring commission. While recognizing the positive intentions of the authors of this amendment, it is also necessary to note that outside contact for prisoners must be seen as an entitlement rather than as a privilege. They should, therefore, not be used as either rewards or punishments. To deprive prisoners of such contacts as a disciplinary sanction is unacceptable, except where a specific abuse of the exact contact was an offence. With respect of family contacts, any such deprivation should be avoided.⁷

Training of Personnel

Every prison requires staff of a high calibre, "since it is," as Rule 46 (1) of the SMR states, "their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends." The staff deals with prisoners on a daily basis, caters

⁷ Ibid.

to their needs, is responsible for the smooth running of the prison as well as for security and safety, and identifies and tackles problems. The prison's inhabitants are in a perpetual state of interdependence, a situation in no way diminished by inequalities in the balance of power. Prisoners have very little say, being dependent on fellow prisoners and on staff for their requirements; their food, the general atmosphere, work and the minutiae of everyday life.⁸ Rule 47 (2) of the SMR goes into more detail by stating that: "before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests."

The establishment of the Prison and Probation Training Centre in 2006 was a big step forward towards improvement of the quality of the personnel for both the prison and probation services. By September 2007 the Centre has already trained 57% of the Penitentiary Department and 100% of the Probation Service staff. The Centre has a newly refurbished and well-equipped office which has been operating since December 2007. The Centre plans to train 1000 more staff members of the Penitentiary Department in 2008. For this purpose and for the proper functioning it is essential that the Centre receives adequate funding from the state budget annually.

Probation Service

One of the issues that the Concept Paper paid particular attention to as a key component of the humanization of the system of penalties was the application of alternative punishments. Moreover, the Concept recognized the necessity of the creation of not only legislative, but also practical and material guarantees for application of alternative punishments, which first of all meant the strengthening of the capacity of the probation service. The basic problems that still remain unsolved are the number, the quality and working conditions of the personnel.

⁸ Ibid.

At present there are over 250 probationers per probation officer, which is five times more than the reasonable maximum of 40 probationers per probation officer. This practice limits the supervisory function of the probation service to the formal registration procedure. In addition, the poor working conditions make proper functioning of the probation bureaus a mission impossible. All this taken together once again proves the inability or at least the lack of will of the Georgian Government to carry out a comprehensive reform of the criminal justice system.

Conclusion and recommendations

People have the right to live in a secure society and humane treatment is the only road to creating a safer society. Individuals who have been convicted, taken into custody or otherwise came into contact with the prison and probation service, should be met with respect and honesty. The criminal justice policy implemented by the Georgian Government fails to meet this basic principle. Individuals who become subject to detention in Georgian prisons do not have a chance for reintegrating themselves into society. Their dignity is infringed on a daily basis by the living conditions they have to endure. The quality of treatment, food, medical services and the absence of activities make prisoners feel excluded rather than integrated. The negative cumulative effect of bad treatment and living conditions makes offenders dangerous for the society in the long term. There is a high probability of re-offending after release and usually the crimes committed by individuals released from prisons are more severe. Moreover, keeping people locked up is expensive for society.

Recommendations

- **Give more emphasis to alternatives to imprisonment in both the pre-trial and post-conviction stage, thereby contributing to the decrease of the number of prisoners and solving the problem of overcrowding;**

- **Revise its criminal justice policy and make it more humane and oriented to the re-integration of offenders;**
- **Replace the administration of the Penitentiary Department and appoint individuals capable of implementing a policy aiming for re-integration;**
- **Investigate any cases of death or claims of ill-treatment of people in custody, including the March 27 incident;**
- **Create an effective mechanism for the monitoring of detention centres;**
- **Create conditions for the employment and education of prisoners;**
- **Set into operation semi-open and open penitentiary establishments in accordance with the Concept of Criminal Justice System Reform and the Action Plan for its implementation.**