

**CRIMINAL JUSTICE
RIGHT TO FAIR TRIAL
PROSECUTOR'S OFFICE
PROTECTION OF
HUMAN RIGHTS
IN PENITENTIARY
SYSTEM
FIGHT AGAINST
TORTURE AND OTHER
FORMS OF INHUMAN
AND DEGRADING
TREATMENT.**



Results of Monitoring
of Human Rights-related
Strategies and Action Plans
(2016-2017)



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in Georgia (PROLoG)*





Criminal justice

Right to fair trial

Prosecutor's office

Protection of human rights in penitentiary system

Fight against torture and other forms of inhuman and degrading treatment.

Results of Monitoring of Human Rights-related Strategies and Action Plans

(2016-2017)

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This document contains final findings of monitoring the implementation of 2016-2017 human rights strategies and action plans regarding criminal justice, right to fair trial, prosecutor's office, protection of human rights in penitentiary system, fight against torture and other forms of inhuman and degrading treatment. This report is part of major research that is being carried out by several organizations to monitor human rights strategies and action plans. A unified report will also include monitoring of the issues such as, freedom of expression, freedom of assembly, freedom of religion, LGBTI rights, rights of children, gender equality and women's rights, rights of people with disabilities.

The monitoring of human rights-related strategies and action plans is supported by the USAID-funded East-West Management Institute's (EWMI) program "Promoting Rule of Law in Georgia" (PROLoG) and the Open Society Georgia – Foundation. Within the project a unified monitoring methodology was also developed, which will serve as an important tool for others interested in monitoring similar action plans in the future.

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Methodology

1. Assessment of relevance, efficiency and priority of the objectives for achieving the aims envisaged by the certain chapters of the Action Plan

The main part of the monitoring included the assessment of relevance, efficiency and priority of the objectives for achieving the aims envisaged by the certain chapters of the Action Plan. It should be noted that for the first five chapters, GDI and IDSD performed not only the narrative qualitative assessment, but also the quantitative one. In particular, within the framework of the monitoring, special working groups were set up for each of the chapters gathering the persons with the relevant theoretical knowledge and practical experience with the academic background, from non-governmental organizations as well as from the responsible governmental agencies. The groups discussed the relevance and efficiency of each activity and objective and assessed the level of their contribution towards the implementation of the respective aim.

At the first stage, each activity envisaged for the implementation of one objective was granted the equal share (for example, if the objective contained 5 activities, the share of each of them was 20) out of the conditional total (100). Although, the group of experts concluded that in some cases it was better to grant unequal share to some of the activities. In particular, there were cases when out of the several activities (for example 5), one of them was considered to be more important than others and all the remaining - equally important (or again with different weight). Therefore, in such case, the important activity was given 40 points out of 100 and all others 15 each. The same methodology was used for the assessment of the objectives with respect to the aims and the aims with respect to the goal.

2. Indicators

In number of cases the Action Plan has not envisaged qualitative, relevant and adequate indicators aimed at assessing the impact on the certain social target groups and human rights situation and which would make possible to assess the progress in achieving the aim. This problem is mostly connected with the fact that the Action Plan indicators were related not to the objectives, but to the activities. That is why, within the framework of the monitoring, it was decided to assess the implementation of the Action Plan not only by means of existing but also by additional indicators. Thus, while assessing the implementation progress, the organizations working on the report used additional indicators, which were defined based on the certain criteria envisaged by the methodology. At the same time, it should be noted that with regards to the first five chapters of the Action Plan, GDI and IDSD defined the additional indicators within the framework of the above-mentioned working groups (with the participation of the donor organizations, non-governmental organizations, representatives of the responsible agencies and the experts in the respective fields).

3. Activity implementation status

It should be noted that GDI and IDSD prepared not only the narrative qualitative assessment of the first five chapters but granted the scores (out of 100) and the respective implementation status.

The following status were used with the help of indicators in order to assess the activities:

1. The activity envisaged by the Action Plan is fully completed – the given status could be granted to the activity in case when the activity has been fully or almost fully implemented. Out of 100, such activities could be assessed by the scores from 91 to 100.

2. The activity envisaged by the Action Plan is mostly completed and only the small part remains to be completed – the given status could be granted to the activity in case when the main part of the activity has been implemented, but it has not been fully completed. Out of 100, such activity could be assessed by the scores from 51 to 90.
3. The activity envisaged by the Action Plan is mostly uncompleted and the most part remains to be completed – the given status could be granted to the activity in case when the small part of the activity has been implemented and the most part remains to be completed. Out of 100, such activity could be assessed by the scores from 0 to 51.
4. The activity envisaged by the Action Plan is not implemented – the given status could be granted to the activity in case when the activity has not been implemented at all or only the insignificant small part has been completed. Out of 100, such activities could be assessed by the score 0.

Using the above-mentioned assessment system (taking into consideration the weight and share of each of the activities and the objectives) in each case, the implementation progress not only of activities but also of the respective objectives and aims.

4. Creation of web-page

A special web-page www.hrm.org.ge has been created within the framework of the monitoring, which reflects the report on the implementation of the first five chapters performed by GDI and IDSD, although, it is also possible to use it for the other chapters as well as for the future action plans. The web-page shows in graphics the qualitative as well as quantitative¹ assessment of the implementation progress of each activity, objective and the aim. The information and the materials uploaded on the web-page could also be generated in PDF format. Moreover, the web-page has the function of saving the updates which gives the user possibility to follow in time the implementation progress of the Action Plan.

5. The implementation time-frame status

Within the framework of monitoring, special attention was paid to the time-frame of the implementation of each activity by the relevant agencies. The web-resource specially created to track the results of the monitoring, also offers the additional chart for the time-frames:

- If the time-frame envisaged by the Action Plan is ongoing – the chart is of green color;
- If the ¾ of the envisaged time-frame has already passed – the chart is of yellow color;
- If the deadline for the implementation of the activity has passed – the chart is of red color.

6. Instruments of the monitoring

For the purposes of monitoring the implementation of the Human Rights Action Plan and other related action plans, the following instruments were used:

Analysis of legislation and policy papers

One of the most important sources for monitoring was the existing legislative framework and practice based on this framework. Therefore, human rights strategies, action plans, normative acts and other official documents were processed and used. This information created a normative context for each activity and enabled the evaluation of their adequacy and effectiveness on one hand, and the scope of

¹ Comment: the qualitative indicators seen on the web-page are only the visualisation of the narrative part. The web-resource made it possible the technical “translation” of the monitoring results. Thus, it is not based on the quantitative sociological research, which is performed by means of certain methodology and then is processed by the special program (Stata, SPSS).

their implementation on the other hand. This is especially important in relation to the activities that envisage legislative amendments in one direction or another.

Study of international standards and practice

In addition to the domestic legislative normative framework, international standards (international agreements and treaties, as well as systems of case laws, recommendations and comments) and relevant practice. This is especially important in relation to the objectives and aims that envisage amendments to the Georgian legislation in order to ensure its convergence with international standards. The use of international standards also made it possible to assess the adequacy and effectiveness of aims and relevant objectives and activities.

Definition of the importance of international standards in specific chapters of the governmental action plan

Research of international standards and practices is essential in relation to the specific chapters of the action plan that envisage convergence of domestic legislation and practice to “international standards” as one of their objectives or aims. Before evaluating the activities envisaged by the responsible authority to achieve a specific aim or the progress in terms of achieving that aim, the specific meaning behind “international standards” was defined.

Firstly, in each case, the study focused on the specific right that the mentioned aim/objective was related to. Accordingly, the European Convention on Human Rights and the practice of the European Court of Human Rights, or the UN Convention and approached elaborated by relevant treaty bodies were considered as international standards.

In the exceptional cases when the above-mentioned bodies had no international practice related to the case in question, best practices of other states with relevant models for Georgia were regarded as the international standard

Freedom of Information requests from responsible state bodies

The primary sources of information in the monitoring process were the responsible state bodies envisaged by the action plan. Therefore, during the monitoring process, information related to the fulfillment of each activity was regularly requested from these bodies.

Analysis of secondary sources

Additionally, the reports, research studies, and evaluations/assessments published by local and international organizations, as well as the Public Defender of Georgia, represented an important source for monitoring. The reports of the Public Defender are often among the indicators envisaged by the action plan. Hence, such information created the possibility of a more comprehensive evaluation of the progress in terms of achieving a specific aim or objective, as well as the scope of fulfillment of different activities.

Individual interviews and workshops

In addition to requesting documents, the monitoring process also envisaged meetings with state bodies and other actors. These interviews made it possible to obtain additional information about the fulfillment of activities, as well as the definition of ambiguous terms in the action plan, etc. Workshops and individual interviews were also conducted with specialists of relevant issues, representatives of academic circles, etc.

7. The process of preparing the report

It is noteworthy that preliminary findings prepared based on the above-mentioned methodology and instruments have been presented to the responsible agencies (in a working environment) in March (at the Administration of the Government). It was also presented in the Parliament, at the Human rights committee in May and June. Based on the information obtained during this meeting the report has been updated. It should be mentioned that before preparing final report it has been sent to the responsible agencies. They had 15 days for sharing their remarks, part of which has been taken into consideration and the report has been updated according to it. Remarks of the responsible agencies are attached to this report in ANNEXES.

Criminal Justice

Executive Summary

Refinement of criminal legislation is the first objective stated by Georgia's National Strategy of Human Rights Protection (for 2014 – 2020). Correspondingly, the first chapter of Georgia's Governmental Action Plan of Human Rights Protection (for 2016 – 2017) is titled Criminal Justice. The chapter envisages two goals, which are as follows: 1) to review criminal justice legislation for its approximation with international human rights standards; and 2) to prevent offenses within the law-enforcement system to the maximum extent and provide an effective response to any deviation.

While certain attempts were made by Georgian agencies to fulfil the actions envisaged by the Action Plan of Human Rights Protection (HRAP) chapter, unfortunately, no concrete or effective steps have been made. This concerns substantive and procedural criminal codes as well as the obligation to conduct a systematic review of the Code of Administrative Offenses. Moreover, reform processes that had been initiated have been suspended until the end of 2017 due to obscure reasons (according to the information provided by the Ministry of Justice, the Secretariat of the Interagency Council working on the Criminal Code resumed its work on the draft substantive Criminal Code at the end of 2017). The mere inclusion of certain missions and actions in the HRAP is not sufficient for creating a just criminal justice system oriented towards the protection of human rights. The implementation of specific, more effective and result oriented (timely) actions by the government would be highly appreciated. It is also of great importance that the law-enforcement agencies should strive to train and retrain their employees in a systematic manner. The schedule of training/programs envisaged by the HRAP should be planned and the application of the acquired knowledge should be thoroughly monitored.

By the time of preparing the report on the implementation of the government's HRAP, none of the 13 actions envisaged by the HRAP had been fully completed; 5 actions were mostly completed and 8 were mostly incomplete. To reiterate, the overall progress of implementing Chapter I of the government HRAP amounts to 57%.

1. Overall Assessment of Chapter I of the Action Plan on Human Rights

1.1. Structural Problems of Chapter I of the HRAP Such as the Relevance, Effectiveness and Priorities of the Objectives and Actions. Chapter I of the government's HRAP aims at reviewing criminal justice legislation for fulfilling international human rights standards satisfactorily.

The aim of Chapter I is to evaluate the relevance, effectiveness and priorities of the objectives and corresponding actions envisaged by the HRAP with reference to its goal and whether it would be achieved if the responsible agencies carried out all the actions thoroughly.

With regards to the structure of the HRAP, it is important to emphasise several issues which are as follows:

❖ Irrelevance of the Actions and Objectives with the Goal

The first goal envisaged by the HRAP is to review criminal justice legislation for its approximation with international human rights standards. The drafters of the HRAP set out objective 1.1.4. (improvement of the protection of human rights in the criminal justice system through the enhancement of the role of the judge) under the goal of reviewing the legislation as the means of achieving it. Without doubt, the objective itself is of utmost importance, however, enhancement of the role of judges cannot be considered as an adequate and sufficient means for achieving the goal of approximating the legislation with international standards. Moreover, the HRAP envisages training for judges to enhance their performance, which is also very important, though irrelevant to the goal. Unfortunately, it is impossible to evaluate within the framework of our monitoring the degree of enhancement that would be achieved through such training. This issue, as well as the enhancement of judicial sensitivity through such training, is discussed in a more detailed manner below, in the section dedicated to the objective evaluation. Setting out an obligation to safeguard presumption of innocence as an action (1.2.3.1.2.) under the objective (1.2.3.1.) related to the development of human resources of the Ministry of Internal Affairs of Georgia (MIA) is obscure as well.

❖ **Timeframes for the Implementation of the Actions**

In terms of the timeframes provided by the HRAP, there is a visible tendency of indicating 2016 as the deadline for the implementation of the processes initiated years ago. This is logical concerning the Criminal Code and the Code of Administrative Offences. However, indicating 2016 as the deadline for the implementation of certain actions that are continuous in nature and cannot be fulfilled by 2016 is confusing (for example, action 1.2.1.1.1. – improve standards of crime prevention and effective investigation within the police system).

❖ **The Relevance of the Agencies in Charge**

In some instances, the approach for determining the agencies in charge is rather unclear. This mainly concerns instances where the Government of Georgia is indicated as the agency in charge. It should be emphasised that, within the framework of the monitoring at stake, there had been instances when the Government of Georgia (which was indicated as the agency in charge) was redirecting our letters to the Ministry of Justice (*inter alia*, about activities 1.1.1.2 and 1.1.2.2). However, parts of those letters have remained unanswered. Therefore, indicating the Government of Georgia as the agency in charge creates confusion as to who is responsible for the implementation of an action. For this exact reason, it is important to specify which agency oversees certain actions to avoid such confusions and ambiguity while implementing the HRAP.

1.2. Remarks on the Content of HRAP Chapter I – Compliance with the Existing Challenges and Recommendations

Even though the actions envisaged by the 2014-2015 Action Plan had not been fully completed, unfortunately, the present HRAP does not provide for actions related to the principles of either equality of arms or adversarial proceedings or the jury trial system's reform. The opinion of the foreign expert, Sabrina Buchler, is noteworthy regarding these issues. She gave recommendations – back in 2016-2017 when the HRAP was being drafted – that the issues concerning the legislative amendments should have been maintained and evaluated from the viewpoint of their execution. Because, the mere act of initiating legislative

amendments could not be considered as a sufficient means for achieving the goal behind them without proper implementation.²

The inclusion of all the activities related to the improvement of criminal justice in the HRAP should be assessed positively. However, it should be noted that the HRAP does not fully reflect and correspond to all the challenges existing in the criminal justice system today.

Based on the GDI assessment, recommendations of foreign organisations and the report of the Public Defender of Georgia, the list of actions that should have been included under objective 1.1.1. (initiation of necessary amendments for the improvement of criminal procedure legislation) of the 2016-2017 HRAP, due to their importance for overcoming the challenges existing in the criminal justice system, are as follows:

❖ Reform of the Jury Trial System

It is important that the Government of Georgia takes into consideration the Public Defender's recommendations and takes measures to remedy the shortcomings that were revealed while analysing cases tried by jurors.³ The legislative amendments made to the Criminal Procedure Code in 2016 should also be analysed and recommendations by foreign organisations should be taken into consideration.⁴ The problematic nature of the jury trial system⁵ is also mentioned in the report submitted by Maggie Nicholson, an expert.⁶

❖ To ensure the protection of the principle of adversarial proceedings and equality of arms of the parties:

- Analyse and monitor practical use of the legislative amendments, enacted in February 2016, concerning rules of witness questioning; and if necessary, initiate additional amendments;⁷
- Initiate legislative amendments to ensure the abolishment of the right of the prosecution to conduct an initial examination of the evidence provided by a defence party;⁸ and
- Initiate legislative amendments for creating the obligation to notify legal adversaries about witnesses (the problem had been discussed by the OSCE's Office for Democratic Institutions and Human Rights [ODIHR] 2014 Report

² Buchler S., Expert on Government Human Rights Action Plan Development, Promoting Rule of Law in Georgia (PROLoG), December 2015, 7.

³ The Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2016, pp. 247-251, see also pp. 517-519.

⁴ Also mentioned in the 2015 and 2016 reports by GDI, available at: <http://gdi.ge/uploads/other/0/368.pdf>; <http://gdi.ge/uploads/other/0/252.pdf>.

⁵ For example, problems related to the jurisdiction and territorial jurisdiction of a jury, as well as the obligatory character of the jurors' court recommendations on a number of issues, etc. Also, see GDI's 2015 evaluation report, pp. 23-27, available at: <http://gdi.ge/uploads/other/0/368.pdf>.

⁶ Report on Progress in the Implementation of the National Strategy for the Protection of Human Rights in Georgia 2014-2020, and Recommendations as to Future Approaches, Maggie Nicholson, 2017, pp. 11-13.

⁷ See GDI on the Implementation of Chapter I on the Human Rights Action Plan, pp. 13-14 and the 2015 Report of the Public Defender of Georgia, p.456.

⁸ See GDI's Report on the Implementation of Chapter I on the Human Rights Action Plan, pp. 20-22 and Ensuring the Principles of Adversarial Proceeding and Equality of Arms of Parties in Criminal Proceedings, research and recommendations, Association of Law Firms of Georgia (ALFG), 2016, available at: http://alfg.ge/wp-content/uploads/2015/07/sisxlis-temaze-kvleva_opt.pdf.

on Trial Monitoring in Georgia.⁹ According to the assessment provided by the report, the problem breaches the principle of equality of arms of the parties and limits the ability of the defendant to prepare for a cross-examination.¹⁰

1.3. Assessment of Other Relevant Action Plans and Strategies Related to Chapter I of the HRAP

The 2016 and 2017 criminal justice system reform strategies and action plans (APs), developed and revised by the Criminal Justice Reform Inter-Agency Coordination Council, are in force in parallel with the government's HRAP.

As in the case of the present HRAP, the 2016 and 2017 criminal justice reform AP envisages the developing and submitting to the parliament the legislative amendments to the Criminal Code and the Code of Administrative Offences. Moreover, for improving the Criminal Procedure Code, those documents provide for the refinement – on the legislative level – of provisions governing admissibility of evidence and initiation of relevant amendments aimed at creating an independent investigation mechanism. The deadline for the completion of the given actions is 2017 just as in the case of the APs and strategies for 2016 and 2017.

In contrast to the timeframes envisaged by those APs and strategies, the given HRAP provides 2016 as the deadline for the refinement of the criminal legislation and the Code of the Administrative Offences. The deadline for the initiation of legislative amendments regarding indirect evidence is determined to be 2016-2017.

To conclude, 2016-2017 HRAP and 2016 and 2017 APs and strategies for the criminal justice system reform are quite similar in terms of the reform of the substantive and procedural criminal codes and that of the Code of Administrative Offences. However, sections dedicated to criminal justice in 2016-2017, criminal justice system strategies and AP do not take into consideration important activities envisaged by the HRAP, such as the analysis of the amendments made to the criminal procedure legislation concerning strengthening victims' rights; refinement of relevant provisions if necessary; and indicating grounds of discrimination referred to in the Law of Georgia on Elimination of All Forms of Discrimination as an aggravating circumstance in the disposition part of relevant provisions of the Criminal Code of Georgia. Therefore, since 2016 and 2017 strategies and APS for criminal justice reform only deal with important issues in criminal justice reform in general, it would be more appropriate to include all the relevant activities and objectives in the document in a more detailed manner.

⁹ OSCE (ODIHR) Trial Monitoring Report, Georgia, para. 171, available at: <http://www.osce.org/ka/odihr/130686?download=true>.

¹⁰ OSCE (ODIHR) Trial Monitoring Report, Georgia, p. 100, available at: <http://www.osce.org/ka/odihr/130686?download=true>.

2. Assessment of the Goals, Objectives and Actions Provided by Chapter I of the HRAP

Objective 1.1. Review of the Criminal Justice Legislation for its Approximation with International Standards for Human Rights

The given chapter provides for the review and approximation with international standards of general as well as specific parts of the Criminal Code of Georgia. In the given chapter of the 2016-2017 HRAP, the drafters included issues related to the admissibility of indirect evidence and the obligation to refine existing normative framework for strengthening victims' rights. The actions directed towards initiating a new Code of Administrative Offences and amendments to the Criminal Code for liberalisation have also been maintained. Retraining of judges and representatives of law-enforcement agencies aimed at improving the protection of human rights in the criminal justice system became one of the most important and core issues in the document.

To sum up, unfortunately, the first goal of Chapter I of the HRAP is not achieved. As already mentioned above, the objectives provided for the achievement of the given goal were not sufficient (the same is even truer regarding the related actions) and, in fact, many challenges were not dealt with in the HRAP. Moreover, objectives envisaged by Chapter I have not been fulfilled during the reporting period. Even to date, the draft amendments to the Criminal Procedure Code, the Criminal Code and the Code of Administrative Offences have not been deliberated upon and adopted by the Parliament of Georgia. The actions related to the aforementioned objective remain at the initial stage. Accordingly, it is impossible to evaluate the practical effectiveness of the draft laws since none of the draft legislations provided by the given objective of the 2016-2017 HRAP have been initiated in the parliament.

Objective 1.1.1. Initiation of necessary amendments for the improvement of criminal procedural legislation.

The given objective is provided by the HRNS as well. It is considered as one of the main parts of the criminal justice system reform and, therefore, represents one of the pivotal issues. In the 2016-2017 HRAP, two actions were united under this objective. Those actions are related to the initiation of legislative amendments related to the admissibility of indirect evidence and further strengthening of victims' rights. Unfortunately, the issues such as the principle of adversarial proceedings, strengthening defendants' rights and reform of the jury trial have not been included under the objective as opposed to the 2014-2015 HRAP.

As already mentioned, in our opinion, the actions provided under the objective are not sufficient for achieving the goal (or for fulfilling the objective). Moreover, the given actions have been mostly incomplete. Bearing that in mind, the objectives should also be considered as mostly incomplete.

Action 1.1.1.1.

Implementation timeframe: 2016-2017.

Status: Mostly incomplete.

Additional/Modified indicators:

1. A research and analysis of the legislation/other countries' best practices concerning the issue of the admissibility of indirect evidence is prepared.
2. Legislative amendments are prepared based on the research and analysis.
3. Legislative initiative is approved and submitted to the parliament.
4. The approved initiative complies with international standards on the protection of Human rights, more specifically:
 - a. ODIHR monitoring report/recommendations regarding criminal proceedings; ((ODIHR) opinion on the Criminal Procedure Code of Georgia (2014)); and
 - b. The ECtHR case-law;
5. The approved initiative complies with the practice of the Constitutional Court of Georgia (more specifically, with the judgment adopted in the case of *Citizen of Georgia – Zurab Mikadze v. Parliament of Georgia*, delivered on 22 January 2015).

Assessment of the Draft Law

Numerous analyses have been carried out and related recommendations have been submitted by local¹¹ and international organisations¹² regarding the necessity to reform the legislation governing the issue of indirect testimonies adduced by witnesses. By the time of preparing the given final report, the initial draft amendments to the Criminal Procedure Code, concerning indirect testimonies, had already been developed by the Criminal Justice Reform Inter-Agency Coordination Council. However, they have not been either approved or initiated in the parliament.

Taking into consideration the Constitutional Court's ruling to "ensure effective investigations and clearly formulated and foreseeable legal mechanisms that would avert the danger of making mistakes and allowing arbitrariness during criminal prosecution", the drafters of the initiative incorporated the notion of "hearsay" instead of indirect testimony in the amendments. Essentially, the suggested notion of "hearsay" only covers the information spread by another person (Criminal Procedure Code, Article 76, effective edition) and has a wider meaning than the notion of an indirect testimony. However, in contrast with the US federal rules,¹³ the suggested notion does not envisage a list of circumstances, the existence of which render an information inadmissible as evidence.

The draft legislation is based on the general principle according to which hearsay is admissible evidence, which complies with the ECtHR case-law¹⁴ and the US federal rules regarding admissibility of evidence. However, the draft legislation incorporates a list of exceptions in the proposed wording of Article 76 – cases wherein hearsay becomes

¹¹ Evidence in Criminal Proceedings, Open Society Georgia Foundation (2016); Indirect Testimony as Evidence in Criminal Proceedings – research on Common Courts, Irine Urushadze – Open Society Georgia Foundation (2015); Terms of Use of Indirect Testimonies - Comparative-Legal Analysis, Guram Imnadze – Open Society Georgia Foundation (2015) etc.

¹² OSCE/ODIHR, Trial Monitoring Report on Georgia (2014).

¹³ Article 801. Also see "Advanced Criminal Procedure Manual"; American Bar Association – Rule of Law Initiative"; 2012 edition; pp. 45; (d)(1); Also see "Evidence in Criminal Proceedings", (2016), pp.48-50.

¹⁴ *Al-Khawaja and Tahery v. United Kingdom*, ECtHR (2011). Also see Terms of Use of Indirect Testimonies+-* (comparative-legal study), Guram Imnadze; Open Society Foundation; p. 18.

admissible. The draft considers the recommendations suggested by ODIHR¹⁵ and formulates admissibility criteria concerning hearsay. More specifically, Article 76¹.1.d) determines a list of circumstances when a person giving a hearsay testimony during investigation is unable to stand before a court and testify. This ensures compliance of the article with the ECtHR standard, under which it is necessary to establish whether the failure to appear before the court was due to objective reasons,¹⁶ and the ruling of the Constitutional Court of Georgia.¹⁷ The suggested draft law does not allow for the admission of double indirect testimony¹⁸ and creates obligations (and related rules) to examine an identified source of information thoroughly.¹⁹

The draft law stipulates three criteria for the evaluation of evidence, and their definitions (proposed wording of Article 82). The criteria are cumulative – all three criteria must be met to convict an accused. These criteria are: authenticity, relevance and admissibility.²⁰ The draft law is in conformity with the constitutional standard of authenticity.²¹ It also complies with the recommendation made by the American Bar Association in the Commentaries to the Criminal Procedure Code of Georgia²² and takes into consideration the recommendations reflected in the ODIHR Report²³ and the Constitutional Court’s ruling²⁴ regarding the admissibility of evidence. The draft law also reflects the comments made by ODIHR regarding instances of admitting indirect evidence²⁵ and complies with the US Federal Rules of Evidence.²⁶

While making a qualitative evaluation of the aforementioned action, an important factor is whether the draft law takes account of the remarks made by the Constitutional Court of

¹⁵ The trial Monitoring Report (ODIRH), a brief overview.

¹⁶ *Al-Khawaja and Tahery v. United Kingdom*, ECtHR (2011); para. 119. Also see Terms of Use of Indirect Testimonies (comparative-legal study), p. 18.

¹⁷ Judgment no. 1/1/548 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Zurab Mikadze v. Parliament of Georgia*, 22 January 2015, para. 36.

¹⁸ *Ibid.* para. 34.

¹⁹ *Ibid.* para. 29. The aforementioned is also in compliance with the US Federal Rules, Article 804. Also see “Evidence in Criminal Proceedings” (2016), p. 49

²⁰ “Commentary on the Criminal Procedure Code of Georgia; American Bar Association – Rule of Law Initiative” (ABA ROLI); 2015 edition; p. 291. Also, see “Evidence in Criminal Proceedings”, OSGF (2016), pp. 41

²¹ Judgment no. 1/1/548 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Zurab Mikadze v. Parliament of Georgia*, 22 January 2015, paras. 7, 1. Also, indirect evidence, see Commentaries on the Criminal Procedure Code of Georgia; American Bar Association – Rule of Law Initiative” (ABA ROLI); 2015 edition; pp. 289. Also, indirect evidence, see “Evidence in Criminal Proceedings”, OSGF (2016), p. 41.

²² “Commentaries on the Criminal Procedure Code of Georgia; American Bar Association – Rule of Law Initiative” (ABA ROLI); 2015 edition; pp. 293. Also, about indirect evidence, see “Evidence in Criminal Proceedings”, OSGF (2016), pp. 41

²³ ODIHR Court Monitoring Report; recommendations for the legislative body, pp. 12; para. 15.

²⁴ Judgment no. 1/1/548 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Zurab Mikadze v. Parliament of Georgia*, 22 January 2015, paras. 23 and 33.

²⁵ Trial Monitoring Report (ODIHR), pp. 11, 14, 53-54, 55

²⁶ US Federal Rules of Evidence (1975), rules 404, 405, 608, 609.

Georgia²⁷ and whether it provides such guiding principles that would help courts to decide on the admissibility of indirect testimony or to convict a person based on such evidence.²⁸

We welcome the fact that the draft law envisages new guarantees for protecting procedural rights, more specifically the right to a fair trial. These guarantees provide the opportunity to examine hearsay thoroughly during a trial. The suggested amendments reflect upon the ruling of the Constitutional Court of Georgia concerning the minimum guarantees necessary for eliminating the possibility of using potentially incorrect and suspicious evidence against an accused.²⁹ In our opinion, the suggested normative framework, as opposed to the current edition, gives a more detailed definition of the evidence admissibility criteria.

To reiterate, the action envisaged by the HRAP is completed by 50% for the following reasons:

- The draft law is prepared;
- It complies with international standards and practice of the Constitutional Court of Georgia; and
- The initiative has not been approved by the government and sent to the parliament for consideration.

Action 1.1.1.2.

Implementation timeframe: 2017

Status: Mostly incomplete

Additional/Modified indicators

1. Analysis of the amendments in force regarding the strengthening of victims' rights is prepared, more specifically:
 - a. To what extent do the amendments in force conform with international standards and more specifically:
 - i. Recommendation No. R (85) 11 of the Committee of Ministers to the Member States on the Position of the Victim in the Framework of Criminal Law and Procedure, adopted on 28 June 1985;
 - ii. Recommendation No. R (85) 11 of the Committee of Ministers to the Member States concerning the Simplification of Criminal Justice, adopted on 17 September 1987;
 - iii. The United Nations General Assembly (UNGA) Declaration, adopted on 29 November 1985, regarding Basic Principles of Justice for Victims of Crime and Abuse of Power; and

²⁷ Judgment no. 1/1/548 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Zurab Mikadze v. Parliament of Georgia*, 22 January 2015, para. 25.

²⁸ Judgment no. 1/1/548 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Zurab Mikadze v. Parliament of Georgia*, 22 January 2015, para. 25.

²⁹ Judgment no. 1/1/548 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Zurab Mikadze v. Parliament of Georgia*, 22 January 2015, para. 8.

- iv. Directive 2012/29/EU of the European Parliament and the Council of establishing minimum standards on the rights, support, and protection of victims of crime.
 - b. The existing legislative shortcomings are revealed.
2. A package of amendments is prepared based on the analysis of the legislation and its practical implementation for refining relevant provisions if necessary.

Initiation of legislative amendments regarding the strengthening of victims' rights was one of the main actions in the 2014-2015 HRAP. Main aspects of the legislative amendments made in 2014 are discussed in GDI's 2015 report.³⁰ After conducting a qualitative study of those aspects, they were positively evaluated in both 2015 and 2016 reports.

Based on the information provided by the Office of the Chief Prosecutor of Georgia, it becomes clear that an analysis of criminal cases and the ECtHR case-law regarding victims' rights has been conducted and relevant recommendations have been prepared for the prosecutor's office. The recommendations are intended to encourage maximum protection of victims' rights under the Criminal Procedure Code and establish a uniform practice.³¹ However, no legislative initiatives have been prepared in that regard.

Concurrently, according to the information provided by the prosecutor's office, neither the analysis nor the recommendations are available to the public. Due to this, we were not able to conduct the content-related evaluations of these documents.

The final report on the assessment of the HRAP approved by the government, in its chapter on the implementation of the present activity, mentions the draft legislative amendments to the Criminal Procedure Code prepared in 2017 and initiated in the Parliament of Georgia in February 2018. These legislative amendments define the rules pertaining to the presence of only a coordinator of the witnesses and victim, in cases of domestic violence, during investigative and procedural actions with the participation of a victim. The draft law was initiated in the parliament in February 2018. It is not clear which study or analysis served as a basis for the initiation of these changes and whether there was a need at all for the changes. It cannot be considered as an efficient step by the respective agency for strengthening victim's rights and, therefore, could not be assessed as an action on the way of implementation of the present activity.

However, bearing in mind that, after conducting the analysis, no legislative initiatives have been prepared, we can assume that the prosecutor's office did not find it necessary to make any amendments. In contrast, we are of the view that the existing practice reveals the necessity of initiating legislative amendments in several directions regarding victims' rights.

- One of the main acute problems is the issue of granting victim status to those affected by a crime. Granting victim status in a timely manner is of crucial importance, since

³⁰ GDI's Report on Implementation Process of the First and Second Chapters of the Human Rights Action Plan, 2015, pp. 20-21.

³¹ The document is not available to the public.

the possibility of victims to use their procedural rights entirely depends on their status. It is also important to monitor the usage of procedural rights after granting the status;³² more specifically the right to appeal a certain decision made by a prosecutor.³³

The recommendation of the Committee of Ministers of the Council of Europe³⁴ and comments made in the UNGA Declaration concerning the protection of victims' rights³⁵ are of great importance in this regard. Member states of the European Union (EU) received recommendations regarding the right of a victim to appeal prosecutors' decisions in the 2012 directive.³⁶ The Constitutional Court of Georgia in its decision also recognises the right of victims to appeal (including the court) decisions made in any criminal cases. These decisions might concern refusal to grant a victim's status or to start criminal prosecution; or a prosecutor's decision to discontinue an investigation or prosecution.³⁷ Unfortunately, according to the current code, only the victims of particularly serious crimes have such possibilities.

- The right of victims to be free from a secondary or repeat victimisation.³⁸

Under the rule established by the 2012/29/EU directive of 2012, 14 Member States of the EU ensure that victims are placed in separate waiting rooms in court buildings.³⁹ The Constitutional Court of Georgia also highlights the importance of taking account of victims' legal interests and requests this to be accomplished to the greatest extent possible.⁴⁰

The action envisaged by the HRAP is only completed by 50% for the following reasons:

- Agencies in charge had only conducted the analysis of criminal cases and, as a result, prepared recommendations for prosecutors;
- The draft law on legislative changes to the Criminal Procedure Code was initiated, which defined the rules pertaining to the presence of only a coordinator of the

³² Judgment no. 1/8/594 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Khatuna Shubitidze v. Parliament of Georgia*, reference to the UNGA 2005 declaration, para. 49.

³³ For analysis of the existing practice and statistical data regarding the right to appeal, see GYLA, *Rights of a Victim in Criminal Proceedings*, pp. 8-12 and the Special Report of the Public Defender on Practice of Investigation of Alleged Crimes Committed by Law-Enforcement Officials, Regulations and International Standards on Effective Investigation; (2014), pp. 43-45.

³⁴ Judgment no. 1/8/594 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Khatuna Shubitidze v. Parliament of Georgia*, para. 47. A reference is made to recommendation No. R(85)11 of the Committee of Ministers of the Council of Europe of 28 June 1985.

³⁵ Judgment no. 1/8/594 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Khatuna Shubitidze v. Parliament of Georgia*, para. 50. A reference made to the UNGA Declaration adopted on 29 November 1985.

³⁶ Directive 2012/29/EU of the EU Parliament and of EU Council of 25 October 2012, 2001/220/JHA, paras. 40-41. Also see GYLA, *Rights of a Victim in Criminal Proceedings*, p. 20.

³⁷ at the 28th of June 1985, para. 52. Remarks about the necessity of having such guarantees are also made in the Role of Public Prosecution in the Criminal Justice System, Recommendation Rec (2000)19, para. 34 and Recommendation R 85 (11) of the Committee of Ministers of the Council of Europe, (1985), para. B (7).

³⁸ GYLA, *Rights of a Victim in Criminal Proceedings*, p. 15

³⁹ EU Agency for Fundamental Rights, *Victims of Crime in the EU: The Extent and Nature of Support of Victims*, 2014, 47. Also see GYLA, *Rights of a Victim in Criminal Proceedings*, pp. 21-22; Resolution 2011/C187/01 of 10 June 2011 of the Council of European Union.

⁴⁰ Judgment no. 1/8/594 of the Constitutional Court of Georgia in the case of *Citizen of Georgia – Khatuna Shubitidze v. Parliament of Georgia*, paras. 46, 61, reference made to judgment no. 1/1/403/427 of the Constitutional Court of Georgia of 19 December 2008 in the case of *Citizen of Canada – Husein Ali and Citizen of Georgia – Elene Kirakosiani v. Parliament of Georgia*; II-9.

witnesses and victim, in cases of domestic violence, during investigative and procedural actions with the participation of a victim; and

- The refinement of the respective provisions was not conducted based on the needs assessment.

Objective 1.1.2. Develop Drafts of Legislative Changes for the Liberalisation of the Georgian Criminal Code, Extending the Discretion of Judges and Formulating Clear and Foreseeable Norms of Criminal Law.

The objective refers to a systematic review of both general as well as specific parts of the Georgian Criminal Code. However, the 2016-2017 AP also provided for an additional action under this objective. The action concerned direct incorporation of prohibited grounds of discrimination in the disposition parts of the respective criminal code provisions as an aggravating circumstance. It is noteworthy that the given objective was also included in the 2014-2015 the AP of the government. However, it was not completed. What is more unfortunate is that the given objective cannot be considered as completed even under the framework of the 2016-2017 AP, since most of the activities envisaged under the objective have not been implemented even to date.

Activity 1.1.2.1.

Implementation timeframe: 2016.

Status: Mostly incomplete.

Additional/Modified indicators:

1. Legislative amendments (draft amendments to substantive and procedural criminal codes) are prepared, approved and submitted to the parliament.
2. The draft law widens the discretion of judges while imposing a penalty (the gap between the minimum and maximum penalties in the Criminal Code is increased and judges make decisions regarding appropriate penalties after taking into consideration all the relevant circumstances provided by the legislation);
3. Stakeholders (especially representatives of the Venice Commission and other international organisations) had been involved in the process of drafting amendments and their recommendations have been taken into consideration; and
4. The prepared draft law is in conformity with international standards.

The process of Producing the Draft Law

The reform of the criminal legislation for its liberalisation, modernisation and approximation with international standards started in 2013. The process takes place under the auspices of the Criminal Justice Reform Inter-Agency Coordination Council (the Council). Its aim is to fully review and refine the Criminal Code. In the 2015 and 2016 reports of GDI, the actions carried out by the agencies in charge of fully reviewing the Criminal Code and planned amendments

were assessed positively. However, after the conference held in October 2015, no actions have been implemented regarding the reform of the Criminal Code. The process is suspended indefinitely for unknown reasons until the end of 2017.

According to the information provided by the Ministry of Justice, the secretariat of the interagency council working on the Criminal Code resumed its work on the draft substantive Criminal Code in the end of 2017. However, there is no information on the specific work that has been done. Meanwhile, as mentioned in the final report approved by the government administration, the initiation of the draft law has been postponed for the end of 2018 (according to the information provided by the Ministry of Justice, the initiation of the draft law in the parliament was planned for the spring session of 2018).

According to the 2016⁴¹ and 2017⁴² criminal justice reform strategies, an expert group working on the draft law preparation consisted of representatives of the Georgian government, the parliament, the judicial system, the prosecutor's office, international organisations and academia. The representatives of the civil society and NGOs also had an opportunity to make remarks and comments on the Council meetings as well as through the official website of the Legislative Herald of Georgia.

The Content of the Draft Law

The amendments to the general part of the Criminal Code is aimed at widening the discretion of judges and provides the opportunity to use a wider range of sanctions and their individualisation.⁴³ A judge gets discretionary authority to impose a more lenient sentence than stipulated by the legislation.⁴⁴ Stringent sentences, especially imprisonment, should only be used as a last resort.⁴⁵ At the same time, bearing in mind the recommendation of the Council of Europe's experts, we believe it is important to draft the specific part of the Criminal Code so as to bring it in compliance with the aims stipulated in the general part to support the use of non-custodial sentences.⁴⁶ The opinion of the experts within the framework of the EU project – Support to the Criminal Justice System Reform in Georgia – is also important in this regard. According to the experts' opinion, while widening the judicial discretion, plea agreement measures should not take the form of blanket permission to automatically use more lenient measures than stipulated by the legislation.⁴⁷

Clear and foreseeable provisions mean a well-formulated legal framework that gives courts the opportunity to carry out their functions without biased or unforeseen interference from the

⁴¹ Criminal Justice Reform Strategy 2016, p. 10.

⁴² Criminal Justice Reform Strategy 2017, p. 10.

⁴³ Recommendation Rec (2000)22 of the Committee of Ministers to member states on improving the implementation of the European rules on community sanctions and measures; appx, para. 7.

⁴⁴ Committee of Ministers recommendation concerning consistency in sentencing No. R 992) 17, appx. para. b1 and 2015 Council of Europe conclusion, para. 66.

⁴⁵ European Prison Rules, B 5, section A. Also see recommendation CM/Rec (92) 17, appx. C.

⁴⁶ The Council of Europe: Experts Opinion, document # GDI (2015)-06, Strasbourg, France. 25 March 2015, para. 9.

⁴⁷ EU funded project "Support to the Criminal Justice System Reform in Georgia", recommendations and "Comments, with consideration of the European Council opinions, regarding draft general part of the Criminal Code", June 2015.

government. The Criminal Code provisions are required to be “compatible with the rule of law, a concept inherent in all the articles of the European Convention on Human Rights”.⁴⁸ The amendments that aim to qualify the degree of guilt or ensure its quantitative determination more thoroughly and carefully can be used as good examples of clear and foreseeable provisions.⁴⁹

Liberalisation of the Criminal Code from the viewpoint of expanding judicial authority implies heightening the degree of their involvement in the process of deciding upon the legal issues concerning the guilt of an accused and in ensuring the balance between flexibility and proportionality through sentence individualisation.⁵⁰ The amendments also provide for the opportunity to use non-custodial measures. This innovation is very important and complies with the “European tendency of liberalising substantive criminal legislation.”⁵¹

Therefore, regarding the content of the action implementation, it can be said that the draft Criminal Code is compatible with the criteria stipulated in the HRAP concerning liberalisation, widening of judicial discretion and creating clear and foreseeable provisions. Overall, the draft law should be seen as a step forward. However, some shortcomings unfortunately still exist in it. GDI submitted relevant comments and recommendations to the Ministry of Justice at the initial stages of its production.

It should also be noted that the indicator for assessing the given action (which is provided by the HRAP itself) envisaged not only the preparation of the draft code, but also its approval and initiation in the parliament. The timeframe of its implementation is indicated as 2016. Therefore, the deadlines for the given, as well as 2016 and 2017 strategies and AP for criminal justice reform (deadline being 2017) are not met. Moreover, at this stage, according to the available information, its initiation was postponed for the end of 2018.

The information received from the agency in charge does not make it clear when the draft law will be sent to the parliament.

The actions have only been completed by 30% in the timeframe stipulated in the HRAP, due to the following reasons:

- The draft law widens judicial discretion and liberalises the relevant provisions;
- Stakeholders were involved in the process of its production;
- It complies with international standards;
- The legislative amendments were ready back in 2015. No further steps have been taken in this regard in the timeframe provided by the 2016-2017 HRAP; and
- The draft law has not been initiated in the parliament.

[Action 1.1.2.2.](#)

Implementation timeframe: 2017.

⁴⁸ *Amuur v. France*, application no. 19776/92, 25 June 1996; para. 50; *Kokkinakis v. Greece*, application no. 14307/88; 25 May 1993; A 260-A; para. 52. Also see the Council of Europe Opinion (2015) para. 5.

⁴⁹ Council of Europe Opinion (2015); para. 5.

⁵⁰ Council of Europe Opinion (2015); para. 6.

⁵¹ Council of Europe Opinion (2015); para. 6.

Status: Mostly incomplete.

Additional/Modified indicators:

1. The legislative amendments are made. They envisage direct incorporation of the prohibited grounds of discrimination provided by the Law of Georgia on Elimination of All Forms of Discrimination as an aggravating circumstance in the disposition part of the relevant provisions of the Criminal Code of Georgia.
2. The legislative amendments strictly define that a hate motive is an aggravating circumstance and, when relevant, investigative agencies should always refer to it while categorising a crime.
3. The legislative amendments comply with Georgia's international obligations. More specifically, recommendations and opinions of the European Commission against Racism and Intolerance (ECRI) (ECRI General Policy Recommendation No. 7; ECRI Report on Georgia).

From the viewpoint of the protection of human rights in Georgia, the inclusion of the action in the HRAP should be assessed as a step forward. However, unfortunately, the fact remains that 2016-2017 strategies and APS for criminal justice reform do not envisage amendments necessary for the effective implementation of the Law of Georgia on Elimination of All Forms of Discrimination.

ECRI Recommendation No. 7 gives states general instructions for refining legislative frameworks for combating discrimination nationwide. It also states that criminal legislation should provide that racist motivation constitutes an aggravating circumstance.⁵² Concurrently, in the 2010 Report on Georgia,⁵³ and more extensively in the 2016 report,⁵⁴ the commission gives direct recommendations to competent bodies to ensure initiation of legislative amendments that would incorporate grounds for discrimination as an aggravating circumstance in compositions of related crimes.

According to the information received from agencies in charge, the main aim of the amendments that were made on 4 March 2017 was specifically the one mentioned above: to incorporate grounds for discrimination stipulated in the Law of Georgia on Elimination of All Forms of Discrimination as an aggravating circumstance in the Criminal Code. However, it is irrefutable that the legislative package, which was produced for the purposes of making changes to the Criminal Code and was adopted by the parliament on 4 May 2017 (entered into force on 1 June of the same year), was aimed at fulfilling the obligation taken up by Georgia as the result of ratifying the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the so-called Istanbul Convention).⁵⁵ It was also intended to bring the national legislation in compliance with the

⁵² ECRI General Policy Recommendation No. 7 (2003); point 21.

⁵³ ECRI Report on Georgia, 2010; para. 11.

⁵⁴ ECRI Report on Georgia, 2016; para. 7.

⁵⁵ Council of Europe; Convention on Preventing and Combating Violence Against Women and Domestic Violence" (2011) Georgia signed it on 19 June 2014.

aforementioned convention (this is emphasised in the explanatory note itself). Amendments were made to paragraph 3¹ of Article 53 in this context. More specifically, the provision (which refers to certain prohibited grounds of discrimination) that stipulates a hate motive to be an aggravating circumstance was separated from Article 53 to form an additional 53¹ Article. The main alteration is that gender intolerance is added to the prohibited grounds of discrimination. Therefore, in fact, grounds of discrimination have not been directly incorporated as an aggravating circumstance in the entirety of the Criminal Code.

According to the explanatory note, the legislature strives to bring the Criminal Code in compliance with Article 46 of the Istanbul Convention. The article obliges member states to take any necessary measures to incorporate hate motive as an aggravating circumstance in disposition parts of relevant provisions of the Criminal Code. Unlike the explanatory note, both old and new editions of the norm only state explicitly that commission of the crime with stipulated discriminatory motives constitutes an aggravating circumstance. In contrast, it is also explicitly mentioned in the HRAP that amendments were supposed to be made to disposition parts of all the provisions penalising acts that could have hate motives so that the latter became aggravating circumstances and re-categorised a criminal act.

However, the fact that the part of the action which envisaged direct incorporation of prohibited grounds of discrimination in the disposition parts of the relevant provisions of the Criminal Code have not been implemented. Certain actions that had been conducted in that regard should still be assessed positively. More specifically, a recommendation was prepared for prosecutors in 2016 regarding the practical application of para. 3¹ of Article 53 as an aggravating circumstance and the elaboration of a special questionnaire in 2017, which includes the questioning/interrogation instruction for the alleged victims, accused persons and witnesses.

It is also noteworthy that a human rights department is being established within the MIA. The department, along with other important issues, will be working on crimes committed with hate motives or grounds of discrimination. Unfortunately, these actions are not enough to eliminate crimes committed with hate motives in the country. On the one hand, it is important that agencies in charge have proactive and strict responses to such incidents, and on the other, it is desirable to adopt legislative amendments in the form that was provided by the HRAP.

The action is completed by 40% for the following reasons:

- Grounds of discrimination have not been directly incorporated as an aggravating circumstance in the dispositions of the relevant provisions of the Criminal Code.
- Only recommendations for prosecutors have been produced and a special department has been set up in the MIA.

Objective 1.1.3.

The society is unanimous about the obsolete and inappropriate nature of the provisions of the Code of Administrative Offences currently in force. Accordingly, it is highly important to produce and adopt a new code that would take systemically new approaches based on international standards into consideration. The main task under this objective is to reform the Code of Administrative Offences. Concurrently, revocation of administrative detention and setting up a unified system of monetary fees forms a separate action under this objective. It should be noted that the given objective was included in the 2014-2015 HRAP as well. However, it was not completed. Unfortunately, the aforementioned action had not been completed (in the given timeframe) in the framework of 2016-2017 HRAP either. It should also be noted that the draft law prepared by the Government of Georgia is in conformity with international standards, takes account of the Public Defender's recommendations and local and international organisations had been involved in the process of its preparation. However, as in the cases of the other codes, the amendments to the Code of Administrative Offences have not been adopted by the parliament. Since Draft Law on Administrative Offences has not even been initiated in the parliament, it is impossible to conduct its practical evaluation.

Action 1.1.3.1.

Implementation timeframe: 2016.

Status: Mostly incomplete.

Additional/Modified indicators:

1. The Code of Administrative Offences of Georgia is initiated in the parliament;
2. The proposed draft law complies with international standards (including Article 6 of the ECHR);
3. Evaluation by the Public Defender of Georgia regarding rationales behind decisions made in administrative offenses cases;
4. The ratio between proposed recommendations and the ones that had been considered; and
5. Interested individuals (as well as local and international organisations) were involved in the process of drafting and had an opportunity to submit recommendations.

The Necessity of Changing the Code

The current Code of Administrative Offences does not meet the fair trial criteria. The code provides lesser procedural guarantees than the Criminal Code. Therefore, persons accused of an administrative offense and persons accused of a crime have unequal rights. The main differences are that the Code of Administrative Offences does not provide for the "beyond a reasonable ground" standard; protection of presumption of innocence; range of other procedural rights, etc. Moreover, it envisages such a harsh penalty as administrative detention for certain administrative offenses.

The obligation to review the Code of Administrative Offences systematically was envisaged by the 2016-2017 HRAP and criminal justice reform strategies and APs for 2016 and 2017. In the 2013,⁵⁶ 2014⁵⁷ and 2015⁵⁸ and 2017 parliamentary reports, the Public Defender emphasised and mentioned as highly important the necessity to change the current Code of Administrative Offences and adopt a new one. The flawed nature of the current code and the necessity to revoke administrative detention has been explicitly mentioned in the 2012 Human Rights Watch report as well.⁵⁹ It is explicitly noted in the GDI 2014-2015 Report on the Implementation of Chapter I of the Human Rights Action Plan⁶⁰ that it is vitally important to adopt a new Code of Administrative Offences based on international standards. A new code should take systemically new approaches that are based on European standards into consideration. It should also ensure compliance with the regulations that were produced bearing in mind the Public Defender's and the international organisations' recommendations and international human rights standards (the issue is discussed below).

The Drafting Process

Bearing in mind all the aforementioned, the Governmental Commission for Facilitating Reforms of the Administrative Offences System,⁶¹ – set up to carry out a reform of the system, prepared a new package of amendments to the Code of Administrative Offences and draft laws amending substantive criminal code and criminal procedure code. This is definitely a step forward since the current norms of the code are clearly obsolete. Conclusions and assessments regarding the draft law of the Code of Administrative Offences have been submitted by foreign experts⁶² and the group for criminal justice reform of the Coalition for Independent and Transparent Judiciary.⁶³

According to the information received from the Administration of the Government of Georgia, work on the final version of the draft code has not been completed and it is planned to submit the initiative to the parliament during the spring session 2018. Under the HRAP, the legislative amendments had to be made in 2016, therefore the deadline for the action implementation is already breached. As mentioned in 2016 and 2017 criminal justice reform strategies, interested NGOs and international organisations, the Public Defender of Georgia,⁶⁴ representatives of the judiciary and other relevant agencies actively participated in the process of reviewing the Code of Administrative Offences. Even though, according to the information received from agencies in charge, it is unclear whether the

⁵⁶ The Public Defender's report; 2013; p. 146.

⁵⁷ The Public Defender's report; 2014; p. 246.

⁵⁸ The Public Defender report; 2015; pp. 377-383.

⁵⁹ Human Rights Watch, Georgia's Flawed System for Administrative Detention, 2012.

⁶⁰ GDI's Report on the Implementation of Chapter I of the Human Rights Action Plan; p. 34.

⁶¹ The Commission was established on 3 November 2014 by the government's no. 1981 decree. The public Defender of Georgia welcomed the creation of the commission in his 2015 Report. See p. 377.

⁶² Authors: Professor Lorena Bachmaier Winter, Universidad Complutense, Madrid, Spain; and Peter Pavlin; Ministry of Justice of the Republic of Slovenia.

⁶³ See the Coalition's Conclusion at: www.transparency.ge/node/5915.

⁶⁴ The Public Defender also submitted recommendations regarding the draft law to the Coalition; see the 2015 report of the Public Defender, p. 3.

recommendations/comments made by stakeholders has been taken into consideration, their involvement in the drafting process should be assessed positively.

The Content of the Draft Law

Under the draft Code of Administrative Offences, certain administrative offenses will be recategorised as criminal acts. Those are going to be moved to the Criminal Code to form a new category of crimes – misdemeanour. Placing administrative offenses under the scope of so-called “criminal charges” and introducing strict judicial review serves the purpose of ensuring a higher degree of protection of offenders’ rights.⁶⁵ To reiterate a new category of crimes – misdemeanour – is being introduced with the draft law, which is going to include five current administrative violations.⁶⁶ The amendments to the Criminal Code do not provide for criminal record. However, they envisage imprisonment up to 3 months as a penalty. According to the Public Defender, this is an unjustified extension of the 15-day term of administrative imprisonment envisaged by the law in force.⁶⁷ The necessity to discuss the ambiguity surrounding the issue of administrative detention was emphasised in the GDI 2016 report on the implementation of the HRAP as well.⁶⁸

The proposed amendments are a step forward from the viewpoint of approximating the code with international standards. However, it is important to pay attention to the issues such as introduction of additional regulations concerning presumption of innocence, intent and negligence; clearer formulation of procedural rights; refinement of the provisions prohibiting double jeopardy;⁶⁹ and use of differentiation approach (gradation) regarding the terms of deprivation of liberty under which, the length of terms should be determined after evaluating the nature of an individual action.⁷⁰

As in the evaluation report of 2016, we assess negatively the attempt to criminalise the breach of certain provisions of the Law of Georgia on Assembly and Demonstrations.⁷¹ We believe that the actions, due to the low danger they pose to society, should not be governed by criminal legislation. Their criminalisation would allow the government to unreasonably interfere with the freedom of expression.⁷²

⁶⁵ See Conclusions and Assessments on the Project of the Administrative Code of Offences of Georgia (2016); Professor Lorena Bachmaier Winter, Madrid, Spain; and Peter Pavlin; Ministry of Justice of the Republic of Slovenia; para. 10.

⁶⁶ See the Coalition conclusion www.transparency.ge/node/5915.

⁶⁷ Annual Report of the Public Defender of Georgia, 2015, p. 378.

⁶⁸ GDI’s Report on Implementation Process of the First and Second Chapters of the Human Rights Action Plan, 2016, p. 35.

⁶⁹ See Conclusions and Assessments on the Project of the Administrative Code of Offences of Georgia (2016); Professor Lorena Bachmaier Winter, Madrid, Spain; and Peter Pavlin; Ministry of Justice of the Republic of Slovenia; the concluding part.

⁷⁰ See the Coalition’s Conclusion www.transparency.ge/node/5915; also, see Chapter XI of expert’s opinion, the concluding part.

⁷¹ See the conclusions of the coalition www.transparency.ge/node/5915.

⁷² For additional information see *Cholakov v. Bulgaria*, application no. 20147/06, 1 October 2013, paras. 27-36 and *Shvydka v. Ukraine*, application no. 17888/12, 30 October 2014; paras. 36-42. Also see GYLA, *The Protest Categorised as an Administrative Offence*, (2017), p. 17 and the coalition’s conclusion, available at: www.transparency.ge/node/5915.

In general, we welcome the reform and the amendments prepared by the government. Even though we consider the scale of the process, the fact remains the same that the reform has been suspended for unknown reasons since 2016 and cases of administrative offences are examined in accordance with the obsolete and ineffective Code of Administrative Offences currently in force.

The action is completed by 30% for the following reasons:

- The legislative amendments are prepared by the government;
- Stakeholders participated in the production process; and
- The stipulated timeframe is 2016; however, the action has not been completed back in 2017.

Action 1.1.3.2.

Implementation timeframe: 2016

Status: Mostly incomplete.

Additional/Modified indicators:

1. Administrative detention is revoked; and
2. The unified system for monetary fees is established.

The given action that envisaged the revocation of administrative detention and establishment of a unified system for monetary fees is an integral part of the process of reviewing the Code of Administrative Offences. It is unclear why this activity was formulated as a separate action while drafting the HRAP. As already mentioned in the assessment part of the action 1.1.3.1., the project of the new Code of Administrative Offences revokes administrative detention as a sanction.

Multiple recommendations of stakeholders (more specifically, the Council of Europe; Georgian Young Lawyers' Association; Human Rights Watch⁷³ and others) that participated in the discussions and consultations on the matter are taken into consideration in the draft code. The discussions and consultations concerned revocation of administrative detention and transfer of judicial review to common courts.⁷⁴ The aforementioned amendment envisages criminalisation of administrative offenses of criminal nature and introduction of procedural guarantees necessary for the realisation of the right to a fair trial.⁷⁵ At the same time, the recommendations and comments of the Public Defender of Georgia regarding the unjustified extension of terms of imprisonment for misdemeanours in the draft Criminal Code should also be taken into consideration.⁷⁶

⁷³ Human Rights Watch, Georgia's Flawed System for Administrative Detention, (2012).

⁷⁴ Conclusions and Assessments on the Project of the Administrative Code of Offences (2016); Professor Lorena Bachmaier Winter, Madrid, Spain; and Peter Pavlin; Ministry of Justice of the Republic of Slovenia, pp. 5-6.

⁷⁵ Recommendations regarding reduction and revocation of administrative detention was also included in the 2014 Report by the Public Defender, p. 68 and 2015 Report, pp. 66-68.

⁷⁶ The Public Defender's 2015 Report, p. 378.

It is unclear what is meant by the establishment of a unified system for monetary fees for achieving the goal of the activity. No information has been received from the agency in charge in that regard. Neither is this issue mentioned in the interim evaluation report on the implementation of the HRAP approved by the Administration of the Government of Georgia in April 2017 by decree no. 683. Accordingly, we are deprived of the possibility to conduct a qualitative assessment of the project for the creation of a unified system for monetary fees prepared by the Administration of the Georgian Government. We assume that the activity will be completed in 2018 along with the submission of the draft Code of Administrative Offences to the parliament. Therefore, the action is implemented by 30% for the same reasons as mentioned while determining the implementation progress indicator of the previous activity.

Objective 1.1.4.

The objective envisages the improvement of the protection of human rights within the criminal justice system through enhancing the role of judges. Under the HRAP, this can be achieved through retraining. It should be noted that the decision of the government to prioritise the enhancement of the role of judges is commendable. However, actions envisaged by the objective are irrelevant to the given objective of the HRAP, since training of judges on the issues of hate crimes and domestic violence might not ensure unequivocal enhancement of their roles as well as their effectiveness during case hearings or the strengthening of justice in general.

The information received by the agency in charge of the action of training judges and representatives of the law-enforcement agencies only concerns training conducted within the framework of the retraining process. Even though training sessions are important for the professional development of judges and representatives of law-enforcement agencies and raising their awareness in general, no analysis has been conducted after training sessions to assess whether their roles had been enhanced, their effectiveness improved or the standards of justice heightened. Accordingly, the aforementioned actions are not sufficient to achieve the first goal of the HRAP, which is to review the criminal justice legislation for its approximation with international human rights standards. Moreover, the HRAP does not provide for a mechanism of evaluating the effect of achieving the objective and creates ambiguity bearing in mind its mediation role between the goal and the action.

In the timeframe stipulated by the HRAP, judges had been partially retrained regarding the issues of hate crimes. Judges and representatives of law-enforcement agencies were retrained to a satisfactory degree regarding issues of domestic violence.

Action 1.1.4.1.

Implementation timeframe: 2016-2017.

Status: Mostly incomplete.

Additional/Modified indicators:

1. The schedule for conducting training and the module is prepared;
2. The length and amount of thematic training is sufficient for covering separate subjects;
3. Total percentage of judges that have been retrained (at least 51% is retrained); and
4. Percentage of supreme, appellate and city/district court judges that have been retrained equals at least 51%.

According to the information received from the High School of Justice regarding the implementation of the given activity, not a single training was conducted in 2016 and 1 training (duration: 15 hours) was held in 2017. 13 judges from different courts operating nationwide participated in the training. The subject of the aforementioned training⁷⁷ more or less ensures raising awareness regarding hate crimes. However, the duration of the training (approximately 1:30 hours for each module) would only be sufficient for a general overview of the training subjects and providing only a surface knowledge. No mandatory training modules had been prepared by the agency in charge. The attempt at covering all the regions should also be assessed as insufficient.⁷⁸

To conclude, a single training session for 13 judges, lasting 15 hours, allocated for covering the issues envisaged by the curriculum cannot be considered as an effective action aimed at improving the effectiveness of judges while hearing cases of hate crimes or strengthening justice in general.

The action is completed by 50% for the following reasons:

1. Not a single training had been conducted in 2016. Only one training was held in 2017;
2. A module for training is not prepared; and
3. Only 13 judges have been retrained.

Action 1.1.4.2.

Implementation timeframe: 2016-2017.

Status: Mostly completed.

Additional/Modified indicators:

1. The schedule for conducting training and the module is prepared;
2. The length and amount of thematic training is sufficient for covering separate subjects;
3. Total percentage of judges that have been retrained (at least 51% is retrained);

⁷⁷ Definition of crimes; statistical data; international standards; Georgian legislation; categories of protected persons; definition of terminology, indicators of bias; overview of crimes committed against LGBTI community; the ECtHR practice; practical effect of imposing a penalty.

⁷⁸ 2 judges from Tbilisi Court of Appeal; 5 judges from Tbilisi City Court; 1 Judge from Rustavi City Court; 2 judges from Telavi District Court; 1 judge from Akhaltsikhe District Court; 1 judge from Zestaponi District Court; and 1 judge from Gurjaani District Court.

4. Percentage of supreme, appellate and city/district court judges that have been retrained.
5. Total percentage of prosecutors that have been retrained;
6. Total percentage of prosecutors working in the territorial units operating outside Tbilisi (prosecutors from all territorial units have been retrained);
7. Total percentage of investigators that have been retrained; and
8. Percentage of employees of MIA working in territorial units operating outside Tbilisi.

According to the information received from the High School of Justice regarding the implementation of the given activity, 2 training modules regarding issues of domestic violence were not conducted in 2016. The first was attended by 13 civil officials (2 days) and the second by 9 judges (2 days).

The monitoring revealed that only the judges of Batumi City Court, Zugdidi District Court, Zestaponi District Court and Khelvachauri District Court had been trained. The topic of the training was domestic violence, although the separate training module on this topic was not elaborated in 2016.

Moreover, the retraining of 9 judges and 13 civil servants in 2016 (which, according to the information at our hands equals to 3% of the total number of judges) through a two-day training session, the curriculum of which only covers 6 general modules,⁷⁹ cannot be considered as sufficient for gaining extensive knowledge on the subject.

In 2017, the High School of Justice with the support of the Council of Europe and the UN Women Organisation elaborated a training module on the topics of violence against women and domestic violence. The latter more or less covers the necessary list of topics for improving general knowledge. Based on the mentioned module, a training of trainers was conducted and afterwards two pilot training sessions with the participation of 13 judges and 9 court staff members⁸⁰ took place.

Slight improvements could be seen in terms of the approach towards raising knowledge among judges on domestic violence (in terms of covering the regions and elaboration of a training module), although one should note that along with gaining general information on the topic, the following steps should be focused on solving the existing problems in practice to achieve effective response to crimes involving domestic violence.

As for law-enforcement agencies, according to the information received from the MIA, 357 employees of the MIA were trained nationwide on the issues of domestic violence with the support of various international and local organisations, the Human Rights Academy of the Public Defender and the project Capacity Building of the Ministry of Internal Affairs in Fight Against Domestic Violence (it should be born in mind that, according to the existing

⁷⁹ An essence of a problem and classification of necessities/requirements; characteristics of violence, theories; legal mechanisms of regulation; courts' practice; restraining and protective orders; and modules and factors of domestic violence.

⁸⁰ The judges from Tbilisi appellate and city courts as well as from Rustavi City Court, Signaghi District Court, Bolnisi District Court, and the District Courts of Sokhumi and Gagra-Gudauta and Tetrtskaro participated in training sessions.

information, to date 6,583 persons are working in the police department and 3,765 in the patrol department nationwide). 407 staff members have been trained on domestic violence issues at the MIA Academy whereas in 2017, with the support of the EU project as well as other organisations, 851 police personnel in different regions of Georgia were trained including district inspectors and patrol-inspectors.

Multiple training sessions were conducted on the subject in 2017 as well (however, the number of participants is unknown at the moment). The subject of domestic violence is covered in various educational programs and courses within the Academy of the MIA. For example, 120 attendees were trained between 1 January and August 2017 in the Academy of the MIA and 407 attendees in 2016. 425 employees were trained in different regions with the financial support of the EU, the UN, the Estonian Embassy and the Bureau of International Narcotics and Law- Enforcement Affairs (INL).

The length of training varied depending on the subjects (one day; a day and a half; three days; five days). Based on general observation, training sessions were attended by approximately 20-25 persons. The number is quite low even for certain regions, especially Tbilisi.⁸¹

The information provided by the MIA does not specify the numbers of employees from Tbilisi and other regions that attended the training sessions held in 2016 and 2017. This makes it impossible to calculate the part of the trained employees out of the total employees working in structural subdivisions of the MIA operating outside Tbilisi, even though the number of persons employed in those structural subdivisions is known. To sum up, in general, only a small portion of police officers were trained on the issues of domestic violence (considering the total number of police officers).

Given the total number of the MIA staff members, more time and recourses are needed to cover all of them.

In this respect, the Public Defender of Georgia issued a recommendation to the MIA to ensure training for its personnel of territorial offices on the topics of violence against women, early marriage and domestic violence. Moreover, the follow-up assessment questionnaires should be elaborated to measure the progress of the trained employees.⁸²

As for the Prosecutor's Office of Georgia, according to the interim report approved by the Administration of the Government of Georgia, 130 employees of the office were trained regarding the issues of domestic violence. In 2017, 11 activities and 2 study visits took place on the topics of fight against domestic violence and violence against women. 183 staff members of the Prosecutors office including prosecutors, office managers, coordinators of witnesses and victims as well as interns underwent professional training. The training

⁸¹ Bearing in mind that number of employees working in police divisions varies between 194-698 (excluding Tbilisi and police division of the Autonomous Republic of Abkhazia where in total 1,853 and 72 police officers are employed respectively).

⁸² The report of the Public Defender of Georgia for 2017, p. 97

sessions were conducted by foreign experts. The main subject discussed was the legal and psychological aspects of domestic violence.⁸³

2017 criminal justice reform strategy (the Objective 3.1.) envisaged specialisation of prosecutors on issues of domestic violence to ensure effective responses to instances of violence against women/domestic violence and its prevention. It also provides for the training/retraining and organisation of joint educational activities with the participation of relevant divisions and organisations for the same purposes.

According to the information received within the framework of the given monitoring, the portion of prosecutors that attended the training out of the total number of prosecutors working in the regions varies between 20%-35%. This should be assessed positively considering the coverage of regions and the substantial number of employees.

To sum up, one should note that the Public Defender's recommendation on the elaboration of follow-up assessment questionnaire for training to assess the progress achieved by the trained employees, which we consider to be of utmost necessity for assessing the efficiency of the training, is relevant not only for the MIA but also in case of judges and prosecutors. The present activity has been implemented by 80% due to the following reasons:

- Only a small part of policemen underwent training on the topic of domestic violence, although one could take into consideration their total number and the time needed;
- A small number of judges have been retrained;
- The number of prosecutors that have attended the training meets the requirement of fulfilling the action bearing in mind the regional coverage;
- In the case of MIA, as opposed to the courts, the subject of the training was adequate for learning the issues and compatible with the time allocated.

Goal: 1.2.

The given goal envisages the reform of the mechanism of internal control over the employees of the MIA for ensuring their effectiveness and systematic independence. The given goal of criminal justice reform also sets an objective to build the capacity of the staff of the Central Crime Police Department through providing relevant training and study visits. It aims at developing human resources policy in a manner that corresponds to international standards.

To summarise, it can be said that the second goal of Chapter I of the HRAP is unfortunately not fully completed. Out of the 3 objectives provided for achieving this goal, one focuses on the reform of the existing internal control mechanism over the performance of duties by the staff of the MIA (investigative and preventive) to ensure effectiveness and systemic independence of the aforementioned mechanism. The second and the third objectives aim at

⁸³ International and regional legal frameworks; tendencies in domestic violence; gender discrimination and revelation of a motive; sexual violence; early marriage; rights of detained women and victims of trafficking in human beings; analysis of domestic crimes; violence against children; procedural issues, etc.

retraining representatives of law-enforcement agencies, which, if fully completed, would be relevant and sufficient for achieving the second goal of Chapter I of the HRAP. The objective of developing human resources policy in a manner that corresponds to international standards has only been completed by 60% in the timeframe stipulated in the HRAP. As for the objectives, such as reform of the existing internal control mechanisms over the performance of duties by the staff of the MIA and building the capacity of the Central Crime Police Department's employees, they have been completed by 60% and 80% respectively.

Objective 1.2.1

The objective concerns reform of existing internal control mechanisms within the MIA, which in turn would support the prevention of wrongdoings within the system. The objective envisages two actions. The first one concerns the improvement of standards of crime prevention and effective investigation within the police system. The second objective envisages gradual installation of CCTVs in all police division buildings.

The objective is not fully implemented in the timeframe provided by the HRAP. The important issues such as gradual installation of CCTVs in all police division buildings have not been completed by 100% (only completed by 80%). However, important steps were made with regards to the improvement of standards of crime prevention and effective investigation (completed by 60%). Therefore, as already noted in the evaluation part of Goal 2 of Chapter I, we can qualify the activities (which mostly completed) as relevant for the achievement of the aim of the action.

Action: 1.2.1.1

Implementation timeframe: 2016.

Status: Mostly completed.

Additional indicators:

1. Percentage of reviewed complaints in relation to the total number of complaints;
2. Types and quantity of responses to the reviewed complaints; and
3. Recommendations of the Public Defender of Georgia and international organisations (the ECtHR case-law concerning Georgia, the Public Defender's recommendations).

The improvement of standards of crime prevention and effective investigation within the police system is of vital importance for creating a democratic police system. It is important to have a proper mechanism for prevention and control within the system in instances of abuse of power by police. This ensures the strengthening of the legitimacy of the police and achieving more public trust.⁸⁴ The objective of ensuring transparency of police work and

⁸⁴ UNODC, Handbook on Police Accountability, Oversight and Integrity, p.8. Also see Crime Prevention (Risks of Police Control, European Code of Police Ethics, Recommendation Rec (2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum, para. 61 (available at: <https://polis.osce.org/node/4711>); also see Human Rights Education and Monitoring Centre (EMC) (2017), p. 61.

approximating it to international standards was also envisaged by the 2017 criminal justice system reform strategy, albeit as a general principle.⁸⁵

Needs assessment has been conducted by the agency in charge in the timeframe prescribed by the HRAP. The research covers an assessment of disciplinary procedures and preparation of recommendations, mechanisms of appeal, etc., for their refinement. At the same time, practices of other countries were studied, relevant visits were made, employees were trained, etc. The General Inspectorate reviewed all the applications/notifications and properly responded to them.⁸⁶

In this context it is noteworthy that under the AP, along with the MIA, the Chief Prosecutor's Office has also been designated as a responsible agency for the present activity. The final report approved by the Administration of the Government shows that, in 2017, a recommendation was issued for the employees of the prosecutor's office on the investigation of ill-treatment cases committed by public officials or persons granted with similar duties. The recommendation, in general, has been positively assessed by the Council of Europe's expert; recommendations had also been taken into consideration.

Doubtless, the implementation of the aforementioned actions is commendable. However, this is not an answer to the question whether and how they prevented crimes within the police system or improved standards of effective investigation (and what was the nature of the changes). Neither the MIA nor the Prosecutor's Office responded on that matter. At the same time, no amendments have been made to the statute of the General Inspectorate for the past two years. This raises questions regarding the adequacy and sufficiency of the actions in relation to the objective and the goal. As the existing studies show, the work of the General Inspectorate is flawed in many ways. This concerns normative frameworks as well as established practice.⁸⁷

It is also noteworthy that both the MIA and the Chief Prosecutor's Office of Georgia are designated as responsible agencies in the HRAP. However, according to the information received from the Prosecutor's Office, the issue falls under the MIA's authority (even though, based on the formulation of the action and the objective, logically, the MIA is the main

⁸⁵ 2017 strategy for the reform of the criminal justice system; reform of the police system (point 1.3); p. 5.

⁸⁶ According to the information received by the MIA, 8,757 applications have been received by the General Inspectorate and inspections were conducted in all the cases. In total, the General Inspectorate carried out 11,196 inspections according to which, 2,294 disciplinary measures were imposed. Concurrently, adequate responses were made regarding the alleged facts of human rights violations. According to the statement of the MIA regarding the training sessions, in 2016, 5 employees undertook educational courses in France and Germany. In 2017, one employee of the General Inspectorate was retrained in Hungary on the issues of development of the representatives of law-enforcement agencies and two are being involved in the same course at the moment of composing this report. As for the analysis of the statistical data of the General Inspectorate, according to the provided information, in 2016, the only achievement was to reveal the necessity of refining monitoring mechanisms (however, we have not received the results of the analysis, which makes it impossible to carry out its assessment). Additionally, structures and legal grounds of police supervisory agencies of 4 Member States of the EU were studied along with the recommendations of the European Anti-Corruption Union. The same information is reflected in the 2016 Public Defender's report, pp.189-190.

⁸⁷ Disciplinary Responsibility System in Law-Enforcement Agencies, Overview of General Inspectorate's Activities, Human Rights Education and Monitoring Centre, 2017.

agency in charge). However, the MIA has not provided any information concerning the action.

At this point, the actions are implemented by 60% for the following reason:

- Certain steps were made in the direction of strengthening the General Inspectorate. However, it remains unclear whether the standards of crime prevention in the police system and effective investigation have been improved. Moreover, existing studies confirm the flawed nature of the system even to date.

Action 1.2.1.1.2.

Implementation timeframe: 2016-2017.

Status: Mostly Incomplete.

Regarding the implementation of the given action, according to the information received from the MIA, 1,583 CCTV cameras were installed in inner and outer perimeter of police offices of the MIA throughout Georgia in 2016-2017. CCTVs have been installed in all the MIA administrative buildings nationwide. However, according to the Public Defender's reports, a wide range of problems still exists.

The 2016 report of the Public Defender of Georgia on The Situation of Human Rights and Freedoms in Georgia states that monitoring has been conducted in 58 police divisions and 27 temporary detention isolators.⁸⁸ According to the report, a video surveillance data is automatically recorded in the MIA subordinated divisions. The recorded data is stored in a central control room for at least 24 hours. When the capacity of a recorder is full, new information automatically overwrites the old data. The Public Defender of Georgia is of the view that storing information for only 24 hours is not sufficient for fulfilling the objective. Therefore, all the necessary measures should be taken to store information for a reasonable time.⁸⁹

In general, the Public Defender evaluates this determination of the minimum term for storing recorded information positively. However, according to the report, it was still a problem in 2016 to have adequate coverage of external and internal premises of police divisions by video cameras.⁹⁰ In some regional divisions, cameras were installed neither in the external nor internal premises. Moreover, it should be noted that, in most of the divisions where video surveillance is carried out in inner premises, cameras are typically installed near entrances, in front of the space allocated for an on-duty operator, which does not ensure full video surveillance of inner premises.⁹¹

⁸⁸ The Report of the Public Defender of Georgia on The Situation of Human Rights and Freedoms in Georgia, 2016, p. 148.

⁸⁹ The Report of the Public Defender of Georgia, 2016, p. 150.

⁹⁰ The Report of the Public Defender of Georgia, 2016, p. 9.

⁹¹ The Report of the Public Defender of Georgia, 2016, p. 179.

Based on the Public Defenders reports,⁹² the recommendation on installation of CCTV cameras in all the structural units of the MIA has not been taken into consideration.⁹³

We would like to welcome the fact that, in February 2018, changes were made to Order no. 423 of the Minister of Internal Affairs on the functioning of the Temporary Detention Isolators. According to these changes, the timeframe necessary for keeping CCTV camera recordings was increased from 24 hours to 120 hours and fully encompassed the maximum period of detention. This fact has also been positively assessed in the 2017 report of the Public Defender of Georgia. Although, at the same time, it should be emphasised that in the isolators used for administrative detention, records should be kept for longer periods, not less than for 20 days.⁹⁴

The activity has been implemented by 80% as far as the process of installing CCTV cameras in police division offices is concerned, although the installation process has not been finalised in all the divisions as planned within the framework of the HRAP.

Objective 1.2.2.1.

The objective envisages only one action. The action provides for the organisation of specialised training for Central Crime Police Department's employees to improve their relevant skills. Unfortunately, the incorporation of training and study visits in the objective narrows down and restricts its framework; hence, it only covers the aforementioned activities. It is desirable to have a more general formulation of the objective; more specifically, "requalifying employees of the Central Crime Police", that would provide the possibility for planning and carrying out other actions. In the timeframe stipulated by the HRAP, 80% of the objective and relevant action is implemented.

Action 1.2.2.1.1.

Implementation timeframe: 2016-2017.

Status: Mostly completed.

Additional indicators:

1. The schedule for conducting training and the module is prepared; and
2. The length and amount of thematic training is sufficient for covering the separate subjects.

Action 2.1.3 of the 2017 HRAP envisages the development of professional study programs for the MIA's employees. Action 2.2 of the same HRAP provides for the development of

⁹² The Report of the Public Defender of Georgia, 2016, p. 165.

⁹³ The report of the Public Defender of Georgia for 2016, pp. 164,180; and the Report of the Public Defender of Georgia for 2017, p. 65.

⁹⁴ The report of the Public Defender of Georgia for 2017, p. 45; also, the recommendation on installing video surveillance in all places in police departments, divisions and units, where arrested persons, witnesses or other persons summoned for interview have to be present voluntarily; pp. 47, 60.

functional and analytical skills of the Crime Police's employees in the section dedicated to strengthening the fight against crimes. It also covers the development of standards of more effective work of the Crime Police in the Crime Police reform section (action 2.2.1). However, it does not provide for the organisation of specialised training.

According to the information provided by the Ministry of Internal Affairs, 123 staff members⁹⁵ of the Crime police department have been trained in 2016, which is 29%⁹⁶ of the total number of employees of the Crime Police Department; and more than 50 have been trained in 2017, which is about 14% of the employees of the Crime Police Department.

Moreover, the MIA conducts needs assessment through specially designed questionnaires within the ministry (including Crime Police Department). The results are used to plan training sessions and different courses with the help of donor organisations and partner states. The curriculum covers wide range of topics and the study is organised within as well as outside the country.

Therefore, we could conclude that, at this stage, the present activity has been implemented by 80%; the number of trained employees of the Crime Police Department and the covered topics are satisfactory.

Objective 1.2.3.1.

The objective covers two activities: 1. To build capacity of the police by means of training/retraining on international human rights standards; and 2. To ensure in the absence of solid incriminating evidence presumption of innocence is upheld for any individual/individuals in the process of criminal investigation, prosecution and making public statements on arrests.

The development of institutional and human resources is also envisaged by the 2017 criminal justice system reform strategy (project 2.1.). Action 2.1.2 provided by the same strategy is also important. It concerns the development of international cooperation and planning/execution of international projects in the sphere of police education.

Additionally, as already mentioned in the general evaluation part of the chapter while discussing structural problems of the HRAP, it is ambiguous why action 1.2.3.1.2. (obligation to uphold presumption of innocence) was incorporated under the objective.

⁹⁵ The topics of the training sessions included improvement of investigation skills, trafficking, illegal migration, cybercrime, fight against drug offences and protection of witnesses.

⁹⁶ In 2016, the employees of the Crime Police Department, with the aim of exchanging the best practices, participated in 28 study visits abroad and 12 training sessions/conferences in Georgia. 123 employees of the Crime Police Department were involved in the above-mentioned activities. In 2017, with the support of the MIA Academy and foreign donors, more than 50 employees of the Crime Police Department participated in more than 25 training sessions on improvement of investigation skills, human trafficking, illegal migration, cybercrime, fight against drug offences and protection of witnesses and other topics.

It should be noted that, due to lack of information, it was impossible to carry out a full qualitative analysis regarding the training aimed at developing the capacity of police force. The same can be said about activities conducted regarding upholding presumption of innocence. In general, 57% of the objective is completed within the timeframe stipulated in the HRAP. Unfortunately, in the HRAP timeframe, only less than half of both the activities were completed.

Action 1.2.3.1.1

Implementation timeframe: 2016-2017.

Status: Mostly completed.

Additional indicators:

1. The schedule for conducting training and the module is prepared;
2. The length and amount of thematic training is sufficient for covering separate subjects;
3. The percentage of retrained police officers from the total number of police officers;
4. The percentage of retrained police officers in relation to the number of police officers working in territorial units operating outside Tbilisi; and
5. The training covers tests before and after training or other means of establishing one's level of knowledge.

8,553 police officers are currently working in police departments, district and city divisions, police units and offices of the patrol police of the MIA (7,667 men and 886 women).⁹⁷ According to the information provided by the MIA Academy regarding the implementation of the action, 1,385 persons have been trained/retrained in 2016, which constitutes about 17% of the total number employed at the MIA. The number of hours spent on educational programs⁹⁸ was 2,848 hours.⁹⁹

In 2017, 813 employees were trained, which constituted 10% of the total number of employed persons at the MIA. The number of hours spent on educational programs was 5,107 hours.¹⁰⁰

While involvement of many more employees of the MIA in the educational programs would be welcomed, it should be mentioned that the duration of the training sessions is in line with the timeframes necessary for covering the relevant topic and probably enough for gaining general knowledge.

⁹⁷ The Report of the Public Defender of Georgia, 2016, p. 192.

⁹⁸ The topics included the following: right to life, prohibition of torture, right to liberty and security, right to fair trial, right to respect for private life, freedom of thought, conscience and religion, freedom of expression, non-discrimination, freedom of assembly and demonstration, freedom of movement and right to property.

⁹⁹ The following regions have been covered: Tbilisi, Ajara, Guria, Samegrelo-Zemo Svaneti, Imereti, Racha-Lechkhumi, Mtskheta-Mtianeti, Shida Kartli, Samtskhe-Javakheti, Kvemo Kartli, Kakheti and Abkhazeti.

¹⁰⁰ The topics and scale of covering the regions are the same as of 2016.

Unfortunately, within the framework of the given monitoring, we were not informed about the exact number of police officers that were retrained on human rights issues in separate territorial units across the country. The MIA did not provide any information regarding future training and related modules. It was also impossible to assess whether the length and amount of training were sufficient for covering separate subjects.

The Public Defender in his 2016 report welcomed the educational programs within the law-enforcement agencies. He, however, considers that a single training on important human rights issues and the duration allocated for human rights topics in the curriculum cannot ensure theoretical and practical comprehension of key human rights problems within the special education program of law-enforcement officers.¹⁰¹

The results of the monitoring conducted by the Public Defender's Special Preventive Group members in 2016 show that the majority of the persons employed in law-enforcement bodies are not aware of topics, understanding of which is necessary for discharging their professional functions effectively and properly.¹⁰² In addition, in some instances, district inspectors are not required to undergo any special study courses, which, according to the Public Defender, is unacceptable.¹⁰³ The recommendation of the Public Defender with regard to retraining persons employed in law-enforcement agencies and improvement of the content for human rights courses should be taken into consideration.¹⁰⁴

Based on the information acquired within the framework of the given monitoring, we can assume that participants of the training/retraining do not have to undertake tests, or establish certain level of their knowledge through other means, to determine the effectiveness of those programs and assess the quality of using the knowledge in practice by the MIA's employees. The Public Defender also emphasises the aforementioned issue and considers it important to ensure that every educational program and training methodology envisages assessment of the practical use of knowledge acquired by the participants. He also recommends conducting imitations of practical situations for the assessment of the employees.¹⁰⁵

At this stage, the activity has been implemented by 60% as of 2016-2017; only 15% of the total number of the MIA's employees have been trained at the MIA Academy.

Action: 1.2.3.1.2.

Implementation timeframe: 2016-2017.

Status: Mostly incomplete.

The indicator provided by the HRAP:

¹⁰¹ The Report of the Public Defender of Georgia, 2016, p. 193.

¹⁰² The Report of the Public Defender of Georgia, 2016, see the list of the issues, p. 193.

¹⁰³ The Report of the Public Defender of Georgia, 2016, p. 194.

¹⁰⁴ The Report of the Public Defender of Georgia, 2016, pp. 194-195.

¹⁰⁵ The Report of the Public Defender of Georgia, 2016, pp. 193-194.

1. The indicator for taking the recommendations and assessments of the Public defender into consideration (the indicator is modified).

Presumption of innocence constitutes an integral part of the right to a fair trial. It is guaranteed by the Constitution of Georgia¹⁰⁶ and numerous international legal instruments.¹⁰⁷ The obligation to protect this principle rests primarily with governmental agencies, especially the MIA, which is the main law-enforcement body of the country. The given issue is envisaged by this action as well. However, according to the MIA's statements, it implies dissemination of such information that would not include any evidence of guilt or would make it impossible to identify an accused.

According to the information provided by the MIA, the Public Relations Department does not identify persons detained during the dissemination of operative material and they follow the instructions developed by the Ministry's Personal Data Protection Supervision Group to ensure the protection of human rights and personal data. Respectively, in the photos taken during arrests, faces of arrested persons, especially of minors, are hidden and only initials of their names and surnames are indicated in the operative materials to be disseminated. The same information is reflected in the final report by the Administration of the Government of Georgia regarding the implementation of the HRAP. It is claimed that presumption of innocence is upheld while making public statements regarding criminal case investigations.

According to the information received by the MIA, the General Inspectorate is responsible to respond to instances of breaching presumption of innocence. However, no work inspections regarding facts of breaching presumption of innocence by the MIA's employees have been carried out between 2016 -2017. We do not possess information whether any activities had been carried out to implement this action. Neither do we have the information regarding the means of monitoring and proper response to instances of breaching presumption of innocence by the MIA's employees.

It is noteworthy that the Public Defender in his report, *The Situation of Human Rights and Freedoms in Georgia (2016)*,¹⁰⁸ assesses positively the way the MIA disseminates public information (meaning, excluding the identity of an accused). However, there have still been several incidents when statements published on the MIA official website included remarks about the guilt of those accused as well as their full names and surnames.¹⁰⁹

To conclude, covering faces of accused persons in videos is only an indirect means of protecting presumption of innocence (it has more importance for the protection of personal data and the right to private life). The general information received from the agency in charge

¹⁰⁶ The Constitution of Georgia, Article 40.

¹⁰⁷ The UN Universal Declaration of Human Rights (1948), Article 11.2; ECHR (1950), Article 6.2; the International Covenant on Civil and Political Rights (UN) 1966, Article 14.1.

¹⁰⁸ Report of the Public Defender of Georgia, p. 246.

¹⁰⁹ The Public Defender refers to two incidents of breaching presumption of innocence by the MIA: the MIA and State Security Service of Georgia arrested two persons for bribery in large amounts, the MIA, 14.09.2016, available at: <http://police.ge/ge/shss-m-didi-odenobit-qrtamis-gamodzalvis-faqtze-ori-piri-daakava/10003>. The statement by the MIA, 19.08.2016, available at: <http://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/9945>.

regarding the protection of innocence while disseminating public information by the MIA is not sufficient to consider the action as implemented.

At this point, the action is completed by 50% for the following reasons:

- During the reporting period, we have not received concrete information regarding specific activities carried out for implementing the given action. The information at hand only concerns general approaches, viz., covering faces of accused persons in videos and using initials while disseminating public information.

3. Recommendations:

The following measures must be taken for further improvement of human rights situation in the criminal justice system. Recommendations:

To the Government of Georgia/the MIA/the Criminal Justice Reform Inter-Agency Coordination Council:

1. Refinement of the criminal procedural legislation (for improving the protection of the rights of the accused and victims) and the incorporation of these issues in the 2018-2020 Government AP;
2. Timely initiation of the new project of amendments to the Code of Administrative Offences in the parliament;
3. Timely initiation of the package of amendments developed for the liberalisation of the Criminal Code and its approximation with international standards.

To the High School of the Ministry of Justice:

1. To increase the number of judges retrained on the issues of hate crimes across the country (regional coverage) and the development of special modules; and
2. To increase the number of judges retrained on the issues of domestic violence across the country (regional coverage) and the development of special modules.

To the Prosecutor's Office:

1. To increase the number of prosecutors retrained on the issues of domestic violence across the country (regional coverage) and development of special modules.

To the MIA:

1. To increase the number of MIA's employees retrained on the issues of domestic violence across the country (regional coverage) and development of special modules;
2. To continue the reform of the internal control mechanisms within the MIA and establish new standards for ensuring institutional independence of those mechanisms (refinement of the normative framework and establishment of relevant practice);
3. To develop plans and modules for specialised training necessary to retrain employees of the MIA's Central Crime Police Department;

4. To continue retraining of the MIA's employees on the issues of protection of human rights for fully covering the subject and to establish means of assessing the effectiveness of training; and
5. To introduce special regulations for ensuring the protection of presumption of innocence in the MIA system (with the involvement of the General Inspectorate and the MIA Public Relations Department).

Right to a Fair Trial

Executive Summary

The second direction of the National Strategy of Human Rights Protection (for 2014-2020) is the right to a fair trial, which aims at creating an effective justice system. Chapter II of the Governmental Action Plan of Human Rights Protection (for 2016-2017) implementing the national strategy is also referred to as the Right to a Fair Trial. This chapter consists of 3 goals, 5 objectives and 18 activities (actions).

Within the present report, it was attempted to study the National Strategy of Human Rights Protection (for 2014-2020) and the Governmental Action Plan (for 2016-2017) implementing it, as well as closely related Court System Strategy (for 2017-2024), and the Strategy Implementation Action Plan (for 2017-2018).

The Court System Strategy is divided into five strategic directions and covers fully the issues envisaged by the Governmental Action Plan of Human Rights Protection (for 2016-2017). The Court System Strategy is so extensive that it covers all the issues required for further reform of the justice system.

For receiving information on responsible agencies' progress in conducting the activities envisaged by the Action Plan, written communication was maintained with the High Council of Justice of Georgia, the Supreme Court of Georgia, High School of Justice of Georgia and the LEPL Department of Common Courts. The Annual Report of the President of the Supreme Court of Georgia and the Report on the Activities of the High Council of Justice (2013-2017) were also used in the process of assessing the Action Plan.

By the time the report on the fulfilment of the Action Plan was developed, out of the 18 activities envisaged by the plan, 4 activities are fully carried out; 5 activities are carried out by more than fifty percent; 7 activities are carried out by less than fifty percent; 2 activities are not carried out (however, the process is pending). In total, the progress of the accomplishment of Chapter II is 68%.

Regarding the quality aspect of the accomplishment, despite the fact that the activities envisaged by the Action Plan are more or less carried out (such as: Preparation of strategy and action plan for the reform of judicial system, implementation of an electronic random distribution of cases system in courts, etc.), the important activities that are to this date the subject of acute criticism from both local civil society and international organisations (such as introduction of transparent and objective criteria of selection of judges in practice; development of criteria for promotion of judges; improvement of the system of periodic assessment of judges' activities and improvement of the grounds of disciplinary responsibility of judges) have not been accomplished. Based on the measures taken by the responsible agencies for conducting the abovementioned activities, it can be concluded that making these changes are not seen as priorities for them at this stage.

It is also noteworthy that the activities, for which the High Council of Justice was responsible, are in most cases not carried out. It is unfortunate that the High Council of Justice would provide information on the accomplished work in violation of the terms determined for issuing public information; in most cases, the answers did not impart comprehensive information to the questions asked.

1. General Assessment of Chapter II of the Action Plan

1.1. Structural Problems in Chapter II of the Action Plan and Compatibility with Existing Challenges

Chapter II of the Human Rights Action Plan (HRAP) addresses the challenges existing in the court system and covers a number of those issues that have been criticised by local and international organisations for years. However, unlike the Justice Action Plan, it does not cover important issues such as: (1) reform of the High School of Justice (HSoJ), which implies ensuring organisational and functional independence of the school from the High Council of Justice (HCoJ); and (2) the issues related to the improvement of performance of the HCoJ.

The HRAP itself is not refined structurally. Goals are so broad that the relevant objectives and activities fail to ensure their achievement. Regarding the activities, they mostly comply with the set objectives and constitute effective means for the implementation of the latter. However, there are examples where several activities are joined into one action out of which each, due to its importance, merits to be singled out as an independent activity.

▪ Relevance of Responsible Agencies

The following are the responsible agencies for the implementation of chapter II of the HRAP – The Right to a Fair Trial – the HCoJ, the Supreme Court of Georgia and common courts. Under the Organic Law on Common Courts, one of the major functions of the HCoJ is to elaborate proposals for court reforms and therefore elaboration of the Justice Action Plan is its prerogative. However, it causes certain confusion that the executive would delegate responsibility to the bodies of the judiciary, among others the HCoJ, to implement its own action plan because the judiciary is an independent branch of the government and it is unclear based on which legal ground it could become accountable before the executive.

▪ Incompatibility of Activities and Objectives with Goals

The HRAP is drafted so that it often allows various interpretations and in some cases, it is so unclear that it is difficult to determine what activities are supposed to be implemented by a responsible agency. Furthermore, some goals (2.2 – further reform of the justice sector; 2.3 – improving the quality of independence, effectiveness, impartiality and professionalism of the judiciary, etc.) are so broadly worded that respective activities and objectives often might be relevant; however, they might never be able to ensure that the goals are achieved.

▪ Time Frames for the Implementation of Activities

Despite the fact the HRAP was approved on 21 July 2016 and virtually only the second half of the year was left for implementing its activities, the time frames for all the activities covered by chapter II are set for 2016-2017. This makes us think that, at the stage of

developing the HRAP, the responsible agencies did not have the vision about realistic time frames needed for the implementation of the activities. This is confirmed by the fact that a certain number of the activities, despite a year and a half term, has not been implemented or has been partially implemented.

1.2. Assessment of Other Relevant Action Plans Linked with Chapter II

The Action Plan of Implementing the Strategy of the Judiciary (for 2017-2018) consists of 21 objectives, 68 programmes and 282 activities. The action plan is systematised and covers the issues of all five strategic directions (independence and impartiality, ensuring accountable justice, ensuring quality justice and professionalism, ensuring effectiveness of the judiciary and ensuring accessibility of justice). It covers the activities envisaged by the HRAP fully, although it is far better structured.

The time frames for the common activities determined in both action plans are different as well. While the time frames for all the activities in the HRAP are set for 2016-2017, the time frames for similar activities in the Justice Action Plan are set for 2017-2018. This makes it unclear which action plan's time frames should be the priority for a responsible agency and demonstrates again the irrationality of existence of two independent action plans. In most cases, the activities in the Justice Action Plan are supposed to be completed in 2017-2018. However, out of the activities that were supposed to be implemented by the action plan in 2017 (in total, 67 activities), which are mostly technical in nature, are virtually completed. These activities are the following: setting up working groups; study of case-law in different fields; training of court staff; enhancing capacity of the Human Rights Centre of the Supreme Court and analytical departments in common courts; increasing accessibility to the case-law of the European Court of Human Rights through Georgianisation of the HUDOC database, developing and disseminating practical handbooks, etc.

It causes certain confusion that there are two independent action plans for the judiciary. The same agencies are responsible for their implementation and there are some identical activities that need to be performed, albeit within different time frames. We believe that there should be a single action plan for the judiciary, developed and implemented by a responsible agency and the government's Action Plan should cover the part of the right to a fair trial, implementation of which is the responsibility of the executive. For the uniformity of the action plan, the Justice Action Plan could be entirely moved into the HRAP. However, in this case, the agencies responsible for the implementation of the Justice Action Plan should not be accountable before the executive.

2. Assessment of the Goals, Objectives, and Activities in Chapter II of the HRAP

Goal - 2.1 Develop a Strategy and an Action Plan for Court Reform with Clearly Outlined Goals and Priorities.

The goal envisages the development and approval of a uniform long-term strategy and an action plan of the court system that would fully cover the challenges existing in the judiciary and determine the priorities correctly.

The goal has only one objective, namely, the development and approval of a long-term justice strategy, an action plan for its implementation, and ensuring the participation of judges and other stakeholders in the process. Since the goal implies only the elaboration of a specific strategy and an action plan, one objective is sufficient for its achievement.

Objective - 2.1.1. Develop and Approve the Strategy for Judicial Reform and a Respective Action Plan; Ensure the Participation of Judges and Other Stakeholders in the Development of the Strategy and Action Plan.

The objective has only one activity (action), which envisages the development and approval of the uniform long-term strategy and action plan of the judiciary with the active participation of judges and other stakeholders.

On 29 May 2017, the HCoJ approved the Uniform Long-Term Strategy of the Judiciary and the Action Plan of its Implementation (for 2017-2018). However, we believe that the insufficient number of the judges from Tbilisi City Court, Tbilisi Appeal Court and the Supreme Court that participated in the development of the document would not ensure adequate involvement of the judiciary in the process. We believe that the fact that only those judges who work in Tbilisi are involved in decision-making processes related to important issues of the judiciary results in the rest of the judges being distanced from the process and somewhat isolating them. Therefore, this factor influences the quality of the implementation of the activities under the objective at stake and the quality of the implementation of the very objective too.

Activity - 2.1.1.1. A Long-Term and Holistic Strategy and Action Plan for the Reform of Judicial System.

Indicators:

a) Development Process:

1. The portion of involvement of judges in the work of the strategic committee (1/3);
2. The portion of involvement of regional judges in the work of the strategic committee (1/3 of the involved judges);
3. The portion of involvement of stakeholders (state agencies, local and international organisations) in the work of the strategic committee (1/2 of the entire composition ensuring equal participation of state agencies, and local and international organisations);
4. Preparatory work/activities (questionnaires, documents and communication) being carried out for developing the Justice Strategy and Action Plan; and
5. The decision-making procedure is determined by the statute of the strategic committee.

b) Developed Document

1. The document is adopted/approved; and
2. Recommendations of both the Justice Coalition and the Public Defender are taken into consideration in the developed strategy and action plan.

Assessment:

The Process of Developing the Uniform Long-Term Strategy of the Judiciary and the Action Plan

Under the Association Agenda between the European Union and Georgia (EU-Georgia Association Agenda), for the first time in independent Georgia's history, the judiciary developed a 5-year strategy and a 2-year action plan for the court system, which was preceded by preparatory activities and workshops carried out by responsible agencies. The development of the long-term strategy is important to see the full picture as to what is considered by responsible agencies to be the main challenges in the judiciary and what are the issues they plan to work upon in future.

Under the decision of the HCoJ of 23 May 2016,¹¹⁰ a committee was set up to elaborate the Justice Strategy and Action Plan. The decision determined the committee's composition, its powers and arrangements for carrying out its activities. The document also determined the number of votes necessary for adopting a decision by the committee/working group (consent of 2/3 of those members who are present). Under the said decision, from the NGO sector, there was only one representative from the presiding organisation of the Coalition for an Independent and Transparent Judiciary in the committee.

On 14 July 2016, the HCoJ adopted a new decision,¹¹¹ which declared the decision of 23 May 2016 null and void; increased the number of persons representing NGOs; invited international expert observers to the committee and changed the number of votes required for adopting a decision (consent of all the members present).

The decision of 14 July 2016 set the composition of the committee at 52 members and 8 international expert observers invited to participate in the committee's work. There were **11 judges** (21%) out of which 9 are judicial members of the HCoJ and none represented a district court; representatives of 12 state agencies (23%); and 12 NGO representatives (23%). However, apart from the committee members, other stakeholders from NGOs and international organisations were also involved in the elaboration of the strategy.

For developing the Justice Strategy and the Action Plan, the following activities have been carried out:

- 2 field meetings were held;
- Up to 50 interviews have been taken from representatives of the judiciary and other stakeholders;
- A survey was conducted among judges, court clerks and HCoJ staff members, based on which a brief analysis was made;
- International and regional documents and best practices, as well as domestic strategies, action plans, reports and NGO recommendations were analysed; and

¹¹⁰See decision no. 1/136 of the HCoJ of 2016, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/136-2016.pdf>, (accessed 21 January 2018).

¹¹¹Decision no. 1/192 of the HCoJ of 2016, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/192-2016.pdf>, (accessed 21 January 2018).

- Meetings of the strategic committee's working groups were held (6-8 meetings within each working group).
- Developed draft documents of the Strategy and Action Plan was shared with judges through judicial internal network "Intranet", which enabled them to express and discuss their opinion on the content of the documents.

Assessment of the Uniform Long-Term Strategy and Action Plan for the Judiciary

On 29 May 2017, the HCoJ approved the Uniform Long-Term Strategy of the Judiciary for 2017-2021 and its Implementation Action Plan for 2017-2018. The judiciary strategy consists of 5 major strategic directions: (1) independence and impartiality; (2) ensuring accountable justice; (3) ensuring quality justice and professionalism; (4) ensuring effectiveness of the judiciary; and (5) ensuring accessibility of justice.

The judiciary strategy covers the issues envisaged by the HRAP, although it is far broader. Furthermore, it covers almost every issue that is considered to be problematic by the Coalition for an Independent and Transparent Judiciary¹¹² and a number of issues reflected in the report of the Public Defender of Georgia.¹¹³

Conclusion: At this stage, the activity is implemented by **91%**, as:

- Judges were involved in the work of the strategic committee. However, the percentage of their involvement was not adequate, and there were no judges at all from district (city) courts participating in the process of developing the documents;
- Stakeholders, such as state agencies, local and international organisations were adequately involved in the work of the strategic committee;
- Appropriate preparatory work/activities were carried out for developing the Justice Strategy and the Action Plan;
- The rules of the strategic committee determined the decision-making procedure;
- The documents of the Justice Strategy and Action Plan have been adopted/approved; and
- The developed strategy and action plan take into account the Judiciary Coalition's and the Public Defender's recommendations.

Goal - 2.2. Take Measures to Further Reform the Justice Sector.

The goal covers further reform of the justice sector and consists of one objective and 7 activities (actions). The set objective implies, within the implementation of the third wave justice reform, adopting amendments to the Organic Law on Common Courts, the Law on Disciplinary Responsibility and Disciplinary Proceedings against Judges, as well as changes to the acts of the HCoJ. Even though the objective is a means to achieve the goal, the goal is worded in such broad terms – further reform of the justice sector – that it is impossible to be

¹¹² Research of the Coalition for an Independent and Transparent Judiciary, the Judiciary: Reforms and Perspectives, Tbilisi, 2017, available at: <http://www.coalition.ge/files/pdf>, (accessed 21 January 2018).

¹¹³ Report of the Public Defender of Georgia on the Situation on Human Rights and Freedoms in Georgia - 2016, pp. 389 – 403, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed 21 January 2018).

achieved only through this one objective and it might necessitate legislative amendments and changes to regulations as well as other efforts (e.g. institutional reform).

Reflection of the legislative changes as an activity in the HRAP is a significant fact indicating that the judiciary itself acknowledges the shortcomings existing in the legislation, which causes the important problems in practice, such as problems related to existing rules of selection of judges, existing system of judges' periodical evaluation, the absence of judges' promotion system, disciplinary proceedings against judges, etc. These problems have been criticised by the civil society and international organisations. However, despite the fact that the authorities are aware of the problems, unfortunately, no effective steps were made to redeem them within the time frames set by the action plan.

Objective - 2.2.1. Ensure the implementation of third wave justice reform legal changes. More specifically, amendments stipulated by the organic law on common courts, the law on disciplinary responsibility and disciplinary proceedings of judges or common courts, changes to the acts by the high council on justice.

The objective comprises seven actions. Within the third wave of justice reform, they should ensure making legislative amendments and incorporating these changes in the acts and practice of the HCoJ. The activities are implemented by approximately 66% within the time frames set by the HRAP. Within the time frames determined by the HRAP, the following important activities were not implemented: improvement of criteria for selection of judges, system of periodical assessment of judges' performance, elaboration of criteria for promotion of judges, improvement of disciplinary mechanisms under the Law on Disciplinary Proceedings against Judges, elaboration of proposals regarding the Code of Judicial Ethics, etc. This fact certainly influences the quality of the implementation of the objective and, overall, the objective should be considered as partially implemented.

It should also be noted in this regard that the activities determined under objective at stake are sufficient and relevant for its implementation as the objective itself sets out which legislative acts or regulations should be changed.

Activity - 2.2.1.1. Implementation of an Electronic Random Distribution System of in Courts.

Indicators:

1. Decision of the HCoJ (about introduction of the electronic case management system in common courts) and technical assessment do not allow the possibility of distribution of cases averting bypassing the software;
2. Equal work load for judges with various specialisations is ensured;
3. The number of notifications on the faulty system communicated to the HCoJ; and
4. Number of the courts where the software is operational (all courts since 31 December 2017).

Assessment

Legislative Regulation

For ensuring independence of judges, their equal work load and diminishing the role of a court's president in case distribution, within the third wave justice reform, the Organic Law of Georgia on Common Courts was amended.¹¹⁴ Based on the amendment, since 31 December 201, cases among judges have been distributed automatically in common courts through the electronic case management system, based on the principle of random distribution.

This reform is clearly a step forward towards timely and effective administration of justice and equal work load of judges. However, the legislative framework governing the functioning of the software is not comprehensive. This is further confirmed by the fact that, within a short period after the legislation was enforced, it was necessary to make many changes to it. Under the organic law, the authority to elaborate the electronic case management protocol is entirely within the competence of the HCoJ. It is noteworthy that the Venice Commission assessed the introduction of the electronic case management positively. However, it also mentioned that the law should be drafted in a very concise manner and provide for detailed rules on case distribution when the electronic system is out of order.¹¹⁵

The HCoJ, by its decision no. 1/56 of 1 May 017, approved the procedure for automatic distribution of cases in the common courts of Georgia through the electronic case management system¹¹⁶ that governs assignment of cases to judges. The system is based on the principle of random distribution with the application of a number-generating algorithm. Court cases are distributed among judges according to their specialisation. According to a general rule, the software ensures equal distribution of cases among judges. The system identifies an average indicator of distributed cases and the number of cases assigned to each judge, then generates a number based on random selection and logs all these parameters.

One of the aims sought by the introduction of the system was to decrease to a maximum extent the role of a court's president in the distribution of cases as practiced before the computerised system was introduced. The exclusive power of case distribution used to rest with court presidents. This used to give rise to misgivings that a specific case, towards which there was a vested interest, would be assigned to a loyal judge selected in advance to secure a desirable outcome.

Current electronic case distribution rule still leaves for the chairmen the following important leverages of intervening in and influencing the case distribution process.

1. Setting Up and Making Changes Based on Their Personal Attitude in the Composition of Judges in Narrow Specialisations

¹¹⁴ Organic Law of Georgia on Common Court, Article 58¹, available at: <https://matsne.gov.ge/ka/document/view/90676>, (accessed 21 January 2018).

¹¹⁵ Venice Commission, CLD-AD 2014, para. 78, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e), (accessed 21 January 2018).

¹¹⁶ Decision no. 1/56 of the HCoJ of 2017, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/56-2017.pdf>, (accessed 21 January 2018).

The Organic Law on Common Courts states that in district (city) courts with high intensity of case management, where more than two judges are employed, the narrow specialisation¹¹⁷ of judges or the establishment of special court boards¹¹⁸ could be arranged by the decision of the HCoJ, whereas in case of court of appeal, the legislation allows only the narrow specialisation by the decision of HCoJ. Until 30 April 2018, the narrow specialisation existed only in Tbilisi City Court but since 30 April the narrow specialisations were established by the decision of HCoJ¹¹⁹ at the Tbilisi Court of Appeals.

In spite of the fact that the law does not grant the Chairman of the Court with the power to define the composition of the judges with narrow specialisation, the Chairman of the Tbilisi City Court, using the already established practice, defines the composition unilaterally by his/her order.¹²⁰ It means that the electronic program distributes the cases according to the specific specialisations and among the judges of narrow specialisation, although which judges will be included in the program and in which boards totally depends on the decision of the Chairman of the Court. According to 30 April decision of the HCoJ, the Chairman of the Appellate Court was granted with the same authorisation. The existence of such power creates risks that the chairman of a court could intervene in the case distribution process and have an influence on it.¹²¹

2. Setting Up the Composition of Boards

There are interesting cases when a case is considered in the court not only by one judge but by a board of judges (consisting of three judges). In district (city) courts during the consideration of case by a board of judges, the composition of board has been decided not by the program, but by the chairman with the mandatory participation of the first judge who started case consideration. It should be noted that these changes were made to the rule on case electronic distribution on 24 July 2018,¹²² whereas, before the changes, the selection of relevant number of judges for the case consideration in district (city) courts had been ensured by the electronic system.

The rule of composing the boards/chambers in court of appeal and court of cassation is especially problematic. The electronic case distribution rule established only the rule of distribution of the cases for the chief/speaker judge and says nothing about the composition¹²³

¹¹⁷ In Administrative, civil and criminal cases the narrow specialisations will be arranged within the boards, which will be functioning only in Tbilisi City Court.

¹¹⁸ Organic Law on General Courts, Article 30 (2).

¹¹⁹ Decision no. 1/176 of the HCoJ, 2018; available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/176-2018.pdf>, [accessed 24 May 2018).

¹²⁰ Order no. 02-s, §01 of the Chairman of Tbilisi City Court of 18 January 2018 “on defining the composition of judges in Tbilisi City Courts’ boards according to the narrow specialisation” (webpage is not available).

¹²¹ The Coalition of Independent and Transparent Judiciary – public statement, available in Georgian at: <http://gdi.ge/ge/news/koalicia-mixeil-chinchaladzisatvis-uflebamosilebis-gazrdas-saqmeta-shemtxveviti-ganawilebis-principis-safrtxed-afasebs.page>, (accessed 24 May 2018).

¹²² Decision no. 1/243 of the HCoJ, 2017, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/243-2017.pdf>, (accessed 24 May 2018).

¹²³ Decision no. 1/56 of the HCoJ, 2017, Article 4(9).

of board/chamber. Some changes were made to this rule on 18 December 2017.¹²⁴ Initial edition did not specify the courts but was focused only on the cases of consideration by board, meanwhile the electronic system additionally ensured the selection of the necessary number of judges (except for the HCoJ member judge) out of the relevant board/chamber. In the situation when the chairman of a court has the possibility to easily change places of judges in narrow specialisations without any reasoning, the high risk of intervention in the setup of composition of board emerges.

3. Establishment the List of Shifts for Judges

The chairman of a court defines the list of shifts for judges by his/her order and both cases, during and out of working hours, without taking into consideration the specialisation and random distribution principle, the criminal and administrative cases for which the consideration deadlines do not exceed 72 hours, are distributed to certain judges according to the shift. The above-mentioned discretion leaves a substantial leverage for the chairman of a court to assign a case to a preferable judge and, therefore, influence the results.

4. Defining the Percentage Indicator (Workload) of Case Distribution Among Judges

According to the case distribution rule, the chairman of a court is granted with the authority to increase the workload by 20% for the following positions: a judge who is a member of the HCoJ, Deputy Chairman of the Court, chairman of the board/chamber and others. Moreover, to avoid the obstacles to the implementation of justice, due to the healthcare problems, family related or other objective reasons, the chairman has the right to decrease the workload of a judge by no more than 50%.

Despite the abovementioned, under decision no 1/243 of 24 July 2017¹²⁵ and decision no. 1/329 of 27 December 2017,¹²⁶ a vice president and a president of a section/chamber as well can view the number of cases already distributed to judges and, whenever a system is temporarily disrupted, circumvent it by assigning cases according to the sequential order of judges. The HCoJ explains this change by relieving presidents from administrative duties. However, the draft amendment that was submitted mentioned nothing as to under what circumstances this power was discharged by a vice president or presidents of sections and chambers. This could cause a real risk of duplication.

Another change was made to the above-mentioned procedure later, on 8 January 2018,¹²⁷ under which a respective competent official in the court registry was entrusted to distribute

¹²⁴ Decision no. 1/326 of the HCoJ, 2017, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/326..pdf>, (accessed 24 May 2018).

¹²⁵ Decision no. 1/243 of the HCoJ of 2017, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/243-2017.pdf>, (accessed 21 January 2018).

¹²⁶ Decision no. 1/329 of the HCoJ of 2017, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/329.pdf>, (accessed 21 January 2018).

¹²⁷ Decision no. 1/1 of the HCoJ of 2018, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/1-2018.pdf>, (accessed 21 January 2018).

cases according to judges' sequential order whenever the computer system failed temporarily, whereas the court presidents, vice presidents and presidents of sections/chambers only retained the power to view the distributed cases. It was maintained by the HCoJ at its session, when the change was initiated, that it aims at ensuring that presidents are not involved in case distribution. However, in our view, this is more about averting formal responsibility on the part of the presidents, rather than preventing their involvement in the process. We believe that the existing practice is less likely to ensure that presidents distance themselves from the distribution of cases.

It should be taken into consideration that after launching the pilot run of the electronic case distribution system, we have repeatedly requested the information on technical assignment of the electronic program from the HCoJ, Supreme Court of Georgia as well as from the Ministry of Justice of Georgia but we have received neither the requested information nor the answer whether such document existed at all. If there is no pre-written program in the case distribution system which defines in detail the type of product it is aimed for, what kind of functions the program has, types of users and their authorities, then how could one define whether the algorithm of the program is in line with the case distribution rule or in which cases the issue of responsibility for the group of program designers could be raised if in the view of outsiders there is an error in the program?

The main innovation of the electronic program is the existence of the module of random distribution of cases (randomiser), which ensures the distribution of cases to randomly selected judges by the system. The program uses standard random function of Microsoft, which is not professional and less protected. Gambling businesses (for example casinos), which consider the above-mentioned function to be very important, use special paid randomiser services which are more professional and reliable.

The main challenge to the case distribution program is the lack of protection for its main module, in particular, the lack of so-called hard lock which could seal the system and protect it by means of several keys in a way which implies the consent of all the key owners for making any type of program changes (changes in the algorithm of the program, increasing/decreasing the functions of users, adding the new user, etc. The unprotected program leaves a space allowing the technical assistance group to make changes to the program any time, thus allowing control over the case distribution system and assignment of a case to a preferred judge.

Running the Software in Beta Mode

On 1 July 2017, the electronic case-management system became operational in beta mode in Rustavi City Court. According to the public information requested from Rustavi City Court, from 1 July 2017 until 31 December 2017, the following different categories of cases were distributed: 1,325 criminal cases (905 out of them by random distribution principle); 1,987 civil cases (1,804 out of them by random distribution principle); 178 administrative cases

(158 out of them by random distribution principle) and 327 administrative offences (183 out of them by random distribution principle).

Under Article 5.3 of the Procedure for Automatic Distribution of Cases through Electronic System in Common Courts, the difference in the number of cases distributed through the electronic system among judges of relevant specialisation should not be more than 3. However, as the results show, the cases that entered the court are not equally distributed according to specialisation and in all cases the difference is more than 3 (the difference between civil and criminal cases – 1,987 civil cases are distributed in the following way: 703, 699 and 585; whereas the distribution of criminal cases was the following: 474, 347, 398 and 106). The court explains that the imbalance is due to different dates of leave and differences in case flow. As for 106 cases, they are assigned to the chairman of a court, which according to the case electronic distribution rule has a smaller percentage indicator¹²⁸ compared to other judges.

Regarding the number of the cases distributed outside the electronic case-management system, there were 17 cases in the reporting period. These cases were distributed by a court president according to the approved sequential order (on one occasion, a case was assigned to a judge of Gardabani municipality).

Conclusion: At this stage, the activity is implemented by **75%**, as:

- The electronic case-management system that is based on random distribution of cases is introduced in every court;
- The electronic case distribution rule allows the chairman of a court to retain the substantial leverages of intervening in the case distribution process and the relevant result;
- The main module of the case distribution program is unprotected and leaves a space for making undesirable changes in it; and
- The pilot program failed to ensure equal workload among the judges.

Activity - 2.2.1.2. Effectively implement the criteria for the selection of judges, further improve the system of periodical performance evaluation of judges, elaborate and implement criteria for the promotion of judges. Review recommendations developed by the public defender to initiate disciplinary proceedings.

Indicators:

1. Practical implementation of criteria for selection of judges

1.1. Percentage of point system used during selection of judges; and

1.2. Percentage of reasoned decisions about selection/appointment of judges.

¹²⁸ According to Article 5(6) of the electronic case distribution rule, the case distribution indicator for the chairman, deputy chairman and chairman of board/chamber of those courts where the number of judges exceed 7, is 20%.

2. Improvement of the system of periodic assessment of performance

2.1. A document on the system of periodic assessment of performances is developed.

3. Development and Implementation of Criteria for Promotion of Judges

3.1. Criteria for promotion of judges are developed;

3.2. Percentage of judges promoted with the use of the criteria developed; and

3.3. Percentage of reasoned decisions about promotion.

The action (activity) brings together practical implementation of criteria for selection of judges, improvement of the system of periodic assessment of performance, and development and implementation of criteria for promotion of judges. All three are so important in their essence that we do not find it advisable to have them united under one activity (action). Furthermore, it is unclear what is implied under practical implementation of criteria for selection of judges and improvement of the system of periodic assessment of performance. It is unclear whether the latter implies streamlining the procedure for assessing effectiveness of judges' performance as approved by a decision of the HCoJ of 27 December 2011.¹²⁹

Practical Implementation of Criteria for Selecting Judges

All international documents that are related to a judicial status attach crucial importance to selection of judges and their future career. "Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity."¹³⁰

Under the amendment made to the Organic Law of Georgia on Common Courts on 8 February 2017,¹³¹ judges are selected based on two major criteria – good faith and competence – and the indicators to assess these criteria are determined. However, the selection criteria laid down by the said amendment as well as the procedure for assessing judicial candidates still cannot meet the requirements of impartiality and transparency and enables members of the HCoJ to adopt biased decisions.¹³²

Candidates are assessed by competence criterion with the use of point system, whereas the good faith criterion is not assessed with points and accordingly gives the council broad discretion and possibility to make biased assessment since the statutory assessment

¹²⁹ Decision no. 1/226 of the HCoJ of 2011, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202011/226-2011.pdf>, (accessed 21 January 2018).

¹³⁰ Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities (17 November 2010) paras. 44-45, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec\(2010\)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2010)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true), (accessed 2018 January 21).

¹³¹ Organic Law of Georgia on Amending the Organic Law of Georgia on Common Courts, 08.02.2017, 255-IIs, available at: <https://matsne.gov.ge/ka/document/view/3536739#DOCUMENT:1>; (accessed 21 January 2018).

¹³² Research of the Coalition for an Independent and Transparent Judiciary, the Judiciary: Reforms and Perspectives, Tbilisi, 2017, available at: <http://www.coalition.ge/files/pdf>, (accessed 21 January 2018).

specifications do not identify the basis on which this criterion is examined and how it should be reasoned. This raised a serious problem also in that regard that under Article 35.12 of the Organic Law of Georgia on Common Courts, “for filling a vacant judicial position votes should be cast only for the judicial candidate with regard to whom more than half of the entire composition of the High Council of Justice considers that he or she meets or fully meets the good faith criterion, whereas, when assessing based on the competence criterion, the total number of points acquired by the judicial candidate is no less than 70% of the maximum number of points.” Accordingly, the candidate who cannot meet the good faith criterion cannot reach the voting stage and is dismissed from the competition without the right to appeal. Only those decisions of the HCoJ which concern the refusal to appoint to judicial office for a three-year term or life-time can be appealed before the Qualification Chamber of the Supreme Court. The council does not adopt any decision regarding those candidates who cannot reach the voting stage.

Refining the System of Periodic Assessment of Performance

The above-mentioned wording of the HRAP causes certain ambiguity. It is unclear what is implied under improvement of the system of periodic assessment of performance; whether the mechanism of assessing performance of only those judges who are appointed for the so-called probation period of a three-year term or all incumbent judges?

The law determines assessment of performance of judges appointed for the so-called probation period of a three-year term. However, it mentions nothing about the periodic assessment of effectiveness of performance of common court judges. Since 2011, the HCoJ has been assessing effectiveness of judges’ performance based on its own decisions. The outcomes of these assessments are used in the process of promotion of judges. However, as already mentioned, there is no legislative basis for this activity, which is problematic. The existing procedure does not meet the internationally recognised standards of assessment of judges and contains the risks of infringement of individual independence of a judge, since it is directed not at assessing an individual judge but at the entire court system and is based on quantitative instead of qualitative criteria.¹³³

However, even if the said activity implies only the system of assessment of judges appointed for the so-called probation period of a three-year term, the relevant provisions stipulated in the Organic Law do not contain sufficient safeguards for objective and transparent assessment of a judge. On the other hand, the HCoJ conducts this process without any sub-legislative act regulating the assessment procedure in detail.

The explanation given by the Consultative Council of European Judges (CCJE) is noteworthy in this regard. According to the CCJE, any assessment of judges appointed for a certain period should be aimed at improving the judiciary and the fundamental rule for any individual evaluation of judges must be that it maintains total respect for judicial independence. When an individual evaluation has consequences for a judge’s promotion, salary and pension, or may even lead to his or her removal from office, there is a risk that the

¹³³ Research of the Coalition for an Independent and Transparent Judiciary, the Judiciary: Reforms and Perspectives, Tbilisi, 2017, available at: <http://www.coalition.ge/files/pdf>, (accessed 21 January 2018).

evaluated judge will not decide cases according to his or her objective interpretation of the facts and the law, but, in a way, that may be thought to please the evaluators.¹³⁴

At the workgroup meeting held on 14-15 December 2017, the representatives of the HCoJ, the Supreme Court of Georgia, the Parliament of Georgia, Council of Europe, OSCE Office for Democratic Institutions and Human Rights (ODIHR) and international experts discussed the issue of adding the qualitative performance indicator together with the quantitative system of performance assessment of judges. With the support of the Rule of law Project (PROLoG), the recommendations have been elaborated on the performance assessment system for judges and the working group meeting was held for the court representatives with the participation of the international expert Mr Alesh Zalar.

Developing and Implementing Criteria for Promotion of Judges

The Organic Law of Georgia on Common Courts provides for the possibility of appointing (promoting) a judge of a district (city) court to a court of appeal. However, the law entrusts the HCoJ to develop the promotion criteria. The Venice Commission maintains that, considering the importance of the issue, the criteria for promotion of judges should be clearly determined by law.¹³⁵ The failure of the legislature to determine promotion criteria in clear and objective terms gives additional leverage to the HCoJ.

The HCoJ does not actually use the promotion mechanism in its decision when transferring individual judges to the higher instance court. This, in its essence, amounts to promotion. The HCoJ in such cases invokes Article 37 of the Organic Law of Georgia on Common Courts (the procedure for appointing a judge to another court without competition) which is further elaborated in Article 13¹, para. 11 of the Rules of the HCoJ¹³⁶ determining the following criteria: “A judge can be appointed to the office of a court of appeal if he/she has competence, experience, professional and moral reputation required for appointment to high judicial office of a court of appeal and has at least 5 years of experience of working for a district (city) court.” Paragraph 14 determines the mechanism of verifying these criteria.

These criteria were introduced into the Rules of the HCoJ through the changes made on 19 October 2015. Earlier, judges used to be promoted without criteria and procedure. Even though such criteria exist today, the promotion procedure remains to be inadequate as there is no proper assessment system of judges’ performance and decisions of the council are not reasoned.

With the support of East-West Management Institute (EWMI), PROLoG and USAID, in January 2017, Slovenian expert Alesh Zalar drafted a report on promotion of judges in Georgia. The report contains the overview and analysis of best international and European

¹³⁴ Consultative Council of European Judges (CCJE), Opinion no. 17 on the evaluation of judges’ work, the quality of justice and respect for judicial independence, CCJE(2014)2 – 2014, para. 6.

¹³⁵ Venice Commission, CLD –AD 2014, para. 53, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)031-geo](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-geo) (accessed 21 January 2018).

¹³⁶ Rules of the High Council of Justice, 1/208 – 2007, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202007/208-2007.pdf>, (accessed 21 January 2018).

practices on promotion of judges and the assessment of the existing system and legislative framework for promotion of judges in Georgia. The report also contains recommendations on elaborating the promotion system based on merits and honesty of judges.

The annual report presented by the President of the Supreme Court of Georgia¹³⁷ emphasised the importance of improving the mechanism of judges' promotion and assessment, and bringing it in compliance with international standards. According to the report, on 14-15 November 2017, with the support of the Council of Europe and OSCE Office for Democratic Institutions and Human Rights, a working meeting was held, within which recommendations were discussed. According to these recommendations, apart from a quantitative system of assessment, there should also be a qualitative assessment of judges' performance. It was also observed that the HCoJ continues to work on this issue to this date.

Conclusion: At this stage, the activity is implemented by 50%, as:

- The amendment to the Organic Law of Georgia on Common Courts determined two main criteria for selection of judges and specifications to examine these criteria. However, the aforementioned selection criteria and procedure of selection of judicial candidates still fail to meet the requirements of impartiality and transparency;
- The specifications determined to check assessment of good faith cannot establish the specific criterion and it is impossible to identify how the specific criterion is reasoned;
- The recommendations have been provided to improve the periodic performance assessment system for judges and to add qualitative assessment to the quantitative one; and
- The criteria for the promotion of judges has not been developed and established at this stage.

Activity - 2.2.1.3 Improve disciplinary mechanism stipulated by the law on disciplinary responsibility and disciplinary proceedings of judges and organic law on common courts.

Indicators:

1. The relevant research is carried out and the document is accessible for all stakeholders;
2. For improving the mechanism of disciplinary responsibility, the minimum number of recommendations given by the Public Defender, as well as by the judiciary coalition and international organisations, have been considered to ensure that proceedings are conducted objectively and impartially; and
3. The percentage of disciplinary proceedings instituted based on the applications filed by the Public Defender (51%).

Assessment

¹³⁷ Annual Report of President of the Supreme Court of Georgia and the High Council of Justice of Georgia, Nino Gvenetadze at XXII Conference of Judges of Georgia, 20.01.2018, available at: <http://www.supremecourt.ge/files/upload-file/pdf/samushao-angarishi2018.pdf>, (accessed 21 January 2018).

As it is shown by the strategy of the judiciary, the goals of the above-mentioned activities are: express formulation of types and grounds of judges' responsibility; determination of the grounds for civil, criminal, administrative and disciplinary responsibility in laws and/or regulations in a manner that avoids subjecting judicial independence and freedom to undue influence; revision of the wording of abuse of power and official negligence; streamlining those provisions of the Criminal Code that concern judges' responsibility when discharging official powers to determine clearly those instances where a judge's conduct goes beyond disciplinary boundaries; developing grounds for balanced and fair disciplinary responsibility that would not allow holding a judge accountable for administration of justice, content of his/her decision or legal error; and adequate follow-up on the incidents of grave breaches.

It was planned within the said activity to have relevant research conducted by the second working group of the strategic direction – accountable justice – to ensure improvement of disciplinary proceedings. Within this research, best international practices were supposed to be studied and analysed, based on which corresponding proposals would be developed.

As the annual report of the President of the Supreme Court shows,¹³⁸ the problem of streamlining disciplinary proceedings and its adjustment within the format of the Organic Law, in accordance with the Constitutional Court, remains one of the pressing challenges.

In the reporting period, representatives of the Parliament of Georgia, Ministry of Justice, HCoJ and common courts held 5 working meetings concerning this issue. Further refinement of the grounds of disciplinary responsibility and elaboration of corresponding legislative changes were discussed at these meetings. However, there is no document accessible at this stage.

Setting up the institution of an independent inspector by the legislative amendment of 8 February 2017¹³⁹ should be positively assessed. The independent Inspector should ensure, on the one hand, effectiveness of disciplinary proceedings, adequate respect for prestige and authority of the judiciary and, on the other hand, compatibility of disciplinary proceedings with the principles of independence of the judiciary and impermissibility to interfere in a judge's work. Based on the legislative amendment, on 20 November 2017, the HCoJ appointed the first inspector for a 5-year term.¹⁴⁰ Even though the change is unambiguously positive, there are certain shortcomings regarding the legal regulation of the institution, which generally implies inadequate legal safeguards of the Independent Inspector and challenges the effectiveness of her work. To strengthen the independence and impartiality of the Independent Inspector, it is necessary to increase the guarantee of its institutional independence at the legislative level.

¹³⁸ Annual Report of President of the Supreme Court of Georgia and the High Council of Justice of Georgia, Nino Gvenetadze at XXII Conference of Judges of Georgia, 20.01.2018, available at: <http://www.supremecourt.ge/files/upload-file/pdf/samushao-angarishi2018.pdf>, (accessed 21 January 2018).

¹³⁹ The Organic Law of Georgia on Amending the Organic Law of Georgia on Common Courts of Georgia, 255-IIs, 08.02.2017, available at: <https://matsne.gov.ge/ka/document/view/3536739#DOCUMENT:1>, (accessed 21 January 2018).

¹⁴⁰ Decision no. 1/312 of the HCoJ of 2017, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/312.pdf>, (accessed 21 January 2018).

Regarding the institution of disciplinary proceedings based on a recommendation of the Public Defender, according to the information submitted by the HCoJ,¹⁴¹ there was no complaint filed by the Public defender with the council in 2016. Regarding the 2 complaints lodged in 2017, proceedings were discontinued in one case, and another set of proceedings was pending by the time the HCoJ communicated its response.

Conclusion: At this stage, the activity is implemented by **50%**, as:

- The institution of the Independent Inspector was set up; and
- Within the time frames envisaged by the HRAP, there were no effective steps made towards improving the disciplinary mechanism under the Law on Disciplinary Proceedings against Judges and the Organic Law of Georgia on Common Courts.

Activity - 2.2.1.4. Develop proposals in relation to the code of ethics for judges.

Indicators:

1. The relevant research is conducted and the document is accessible for all stakeholders;
2. In accordance with developed proposals, the Code of Judicial Ethics has been streamlined and legal outcomes for breaching it are determined in express terms; and
3. Those NGOs are involved in the working group of streamlining the Code of Judicial Ethics that have conducted considerable work in this regard (research, recommendations).

Assessment

As the strategy for the judiciary shows, the activities are aimed at refining the rules of judicial ethics so that the authorities in charge of administration of justice apply the clearly defined rules of professional ethics in a consistent and transparent manner, with due respect for the right to a fair and effective trial; development of guiding principles of professional ethics; and adjustment of the interrelation between the Law on Disciplinary Responsibility and Disciplinary Proceedings against Judges of Common Courts with the rules of professional ethics.

It was planned within the said activity to have relevant research conducted by the second working group of the strategic direction, namely, accountable justice. Within this research, best international practices were supposed to be studied and analysed, based on which corresponding proposals would be developed. According to the public information¹⁴² received from the HCoJ, certain activities have been conducted to improve disciplinary legislation, including the regulations of judges' code of ethics. The representatives of court, legislative as well as executive bodies and an international expert were involved in the process. The working group elaborated the working document, which has not been finalised yet, therefore, it is not available.

¹⁴¹ Response of the HCoJ to GDI, Letter no. 1181/2333-03-o, dated 13.10.2017.

¹⁴² Response from the HCoJ to the letter of GDI; Letter no. 771/639-03-o, 05.04.2018.

Conclusion: At this stage, the activity has been completed by 50% for the following reasons:

- A working group has been set up to improve judges' code of ethics and regulations and certain activities have already been implemented; and
- The recommendations and suggestions elaborated by the working group has not been available till now.

Activity - 2.2.1.5 Study and extrapolate international best practices in the Chamber's activities to improve its effectiveness.

Indicators:

1. A report on best practices of other countries is prepared and made accessible for all stakeholders;
2. After studying international experience, the terms of references of the Qualification Chamber are determined additionally in the Rules of the Supreme Court (substance of the changes);
3. The number of complaints examined by the Qualification Chamber;
4. The number of reasoned decisions adopted by the Qualification Chamber; and
5. Percentage of the decisions adopted by the Qualification Chamber on repealing the decisions of the council and returning cases for fresh adjudication.

Assessment

According to the public information received from the Supreme Court of Georgia¹⁴³ concerning the implementation of the said activity (action), within the reporting period, 3 working meetings were held, with the participation of international experts, to increase effectiveness of the performance of the Qualification Chamber of the Supreme Court, through studying international experience and its implementation in the chamber's work.¹⁴⁴ At the working meetings, international experience was shared and, among others, the recommendations adopted on the basis of jurisprudence of the Federal Constitutional Court of Germany were discussed.

The activity of the Qualification Chamber of the Supreme Court is governed by the Organic Law of Georgia on Common Courts. Within the action at stake, as a result of study of international experience, it was planned to determine further the chamber's terms of reference in the Rules of the Supreme Court.

Under Order no.3/pl-2018 of 18 January 2018 of the Supreme Court Plenum, the new edition of the Rules of the Supreme Court¹⁴⁵ came into force on 1 January 2018, which defined the functions of the Qualifications Chamber of the Supreme Court.

¹⁴³ Response of the Supreme Court of Georgia to GDI, Letter no. p-239-17, dated 02.10.2017.

¹⁴⁴ On 22 June 2016; 8 November 2016; and 23 September 2017.

¹⁴⁵ The Rules of the Supreme Court of Georgia, available at: <http://www.supremecourt.ge/files/upload-file/pdf/reg444.pdf>, (accessed 24 May 2018).

Regarding the cases examined by the Qualification Chamber, in 2016, not a single complaint was filed with the chamber, whereas there were 2 complaints in 2017. In one case, the chamber relinquished its jurisdiction in favour of a competent court; the other complaint was not admitted for the consideration of merits. Both decisions met the standards of reasoning of court judgments.

Conclusion: At this stage, the activity is implemented by 100%, as:

- Working meetings were held to share the best practices of other countries;
- The Qualification Chamber examined all filed complaints and the adopted decisions meet the standards of reasoning of court judgments; and
- The new edition of the Rules of the Supreme Court started functioning.

Activity - 2.2.1.6. Provide relevant training for a group responsible for developing tests and case studies for qualification exams of judges and improve the standards of the qualification exam.

Indicators:

1. Training curriculum as well as methodology is prepared in advance;
2. The duration of training sessions is adequate in terms of the time required to cover each topic;
3. Percentage of participants of the training sessions that are members of the group drafting legal tests and case studies (70%); and
4. Percentage of tests for assessing analytical thinking developed as a result of training sessions and comparison with previous tests.

Assessment

Under the Organic Law on Common Courts, the HCoJ announces and conducts judicial qualification examination. The procedure for conducting judicial qualification examination is determined by the Decision of the HCoJ of 25 September 2007 on Approving the Procedure of Conducting Judicial Qualification Examination and Qualification Examination Programme.¹⁴⁶ The decision was streamlined by the amendment of 30 October 2017¹⁴⁷ in terms of creating the Qualification Examination Commission and determining its authority. The following was determined as the commissions' goal: determining methodology for developing topics of an examination test and the level of difficulty; determining management of the database of topics; the criteria of formulating an examination test and assessing written text; assessing professional level of participants of a qualification examination; and outcomes of qualification examination. The number of the members of the qualification examination commission increased from 15 to 20. The decision also determined the duty of the HCoJ, for staffing the qualification examination commission, to select candidates for membership and

¹⁴⁶ Decision no. 1/207 of the HCoJ of 2007; available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202007/207-2007.pdf>, (accessed 21 January 2018).

¹⁴⁷ Decision no. 1/301 of the HCoJ of 2017, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/301.pdf>, (accessed 21 January 2018).

retrain them in accordance with the training module developed by the LEPL National Accreditation and Examination Centre.

As the public information provided by the HCoJ¹⁴⁸ shows, there was a meeting held with the participation of the organisation Promoting Rule of Law in Georgia (PROLoG), the HCoJ and an expert, at which the methodology of a training session to be conducted for members of the Qualification Examination Commission was discussed.

In December 2017, the HCoJ selected 30 candidates for the membership of the expert commission of judicial qualification examination. With the support of the donor organisation – East-West Management Institute (EWMI), PROLoG/USAID – the candidates successfully completed the relevant study programme at the National Accreditation and Examination Centre. In February 2018, the HCoJ (confidentially) staffed the expert commission of judicial qualification examination with 20 experts.

It is noteworthy that within the time frames envisaged by the HRAP, the HCoJ did not conduct a single judicial qualification examination. On 19 March 2018 HCoJ adopted the new rule on conducting the judicial qualification examination test and program of the judicial qualification examination test¹⁴⁹

Regarding the samples of judicial qualification examination test and case study, it is impossible to assess them due to the refusal of the HCoJ to provide them. The reason behind the refusal was the examination software being at development stage due to which it was not considered advisable to provide the samples.

Conclusion: At this stage, the activity is implemented by **75%**, as:

- The section about setting up the Commission of Qualification Examination and its authority is refined;
- Members of the expert commission of qualification examination were selected and trained;
- The Expert Commission of Qualification Examination was staffed;
- The qualification examination software is deficient, which hampers the process of qualification examination; and
- It is impossible to assess samples of an examination test and case study.

Activity - 2.2.1.7. Implement a new standard for the admissibility of cassation appeals.

Indicators:

1. The number of cassation appeals and its comparison with the previous year's data; and
2. The number of cassation appeals admitted (comparison with the data before the amendment).

¹⁴⁸ Response of the HCoJ to GDI, Letter no. 1178/2332-03-o, dated 13.10.2017.

¹⁴⁹ Decisions of the HCoJ 2018, available at:

<http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/152-2018.pdf> [accessed 30 August 2018].

Assessment

Within the third wave of justice reform, in February 2017, grounds for admissibility of cassation appeals in criminal as well as civil and administrative proceedings were extended through legislative amendments. According to the new criteria, the Supreme Court, *inter alia*, has the right to admit a cassation appeal filed against an appeal court's judgment, if the latter contradicts the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights in the context of similar legal issues.

Concerning the practical implementation of the new standard of admissibility of cassation appeals, the Supreme Court is carrying out the following activities:

- a) It is planned to Georgianise the electronic search system of judgments and decisions of the European Court of Human Rights (HUDOC), which will facilitate prompt search of cases in Georgian;
- b) The Human Rights Centre of the Supreme Court updates Georgian translation of the ECtHR judgments systematically, which makes it easier for judges to have access to cases; and
- c) Within the HSoJ retraining programme for court employees of 2017, 20 training sessions were conducted on human rights for 121 judges and 223 court clerks.

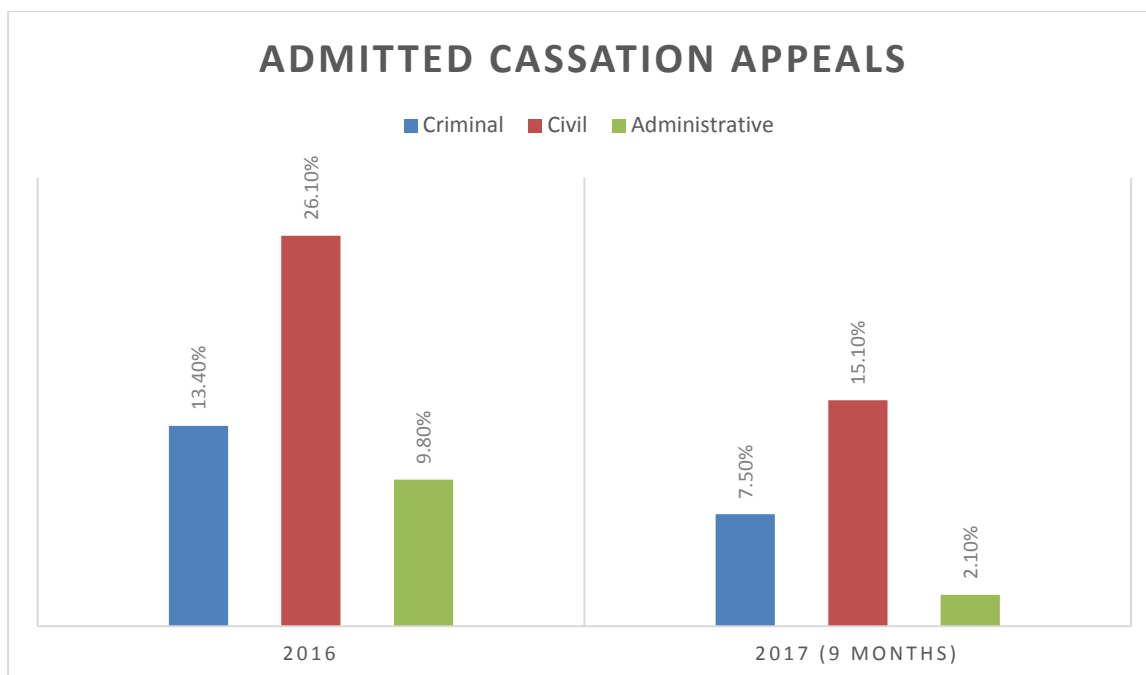
In 2016, the Supreme Court of Georgia received:

- Cassation appeals in 764 criminal cases; 103 were admitted (13.4%)
- Cassation appeals in 940 civil cases; 246 were admitted (26.1%)
- Cassation appeals in 951 administrative cases; 94 were admitted (9.8%)

From 13 March until 31 December 2017 (when the standard of cassation appeal entered into force) the Supreme Court of Georgia received:

- Cassation appeals in 587 criminal cases; 51 were admitted (8.6 %);
- Cassation appeals in 828 civil cases; 173 were admitted (20.8%); and
- Cassation appeals in 902 administrative cases; 52 were admitted (5.7 %).

From the analysis of the data, it can be assumed that the number of cassation appeals is reduced in all three specialisations. Regarding the percentage of admitted cassation appeals, drastic decrease in all specialisations is statistically noticeable. The data is presented in a chart below:



Conclusion: At this stage, the activity is implemented by **50%**, as:

- After extending the grounds for admissibility of cassation appeal, the number of admitted cassation appeals are reduced in all three specialisations almost by 50%; and
- It is also unclear what is implied under practical implementation of the new standard of cassation appeal and, despite certain activities having been implemented by the Supreme Court of Georgia, the existing information does not enable us to identify tangible results and analyse them.

Goal - 2.3. Improve the quality of independence, effectiveness, impartiality and professionalism of the judiciary.

The goal brings together 3 objectives and 10 activities (actions). The objective is so broad in its content that all the issues related to justice can be implied within it. Despite the fact that the identified objectives comply with the goal, it is unclear how independence of the judiciary, its effectiveness and impartiality are achieved through the following: (1) the application of the ECHR and its case-law by common courts; (2) increasing the number of cases in domestic case-law database; collecting statistical data illustrating the frequency of use of the programme and using it as a baseline for its further improvement; posting information on the website of the Supreme Court of Georgia and publication of collections of uniform case-law; and (3) ensuring reasoning, transparency and accessibility of court judgments.

Objective - 2.3.1 Support the use of the European Convention on Human Rights and respective case-law by the common courts.

The objective comprises 4 activities aimed at enhancing the application of the ECHR and its case-law by the common courts, which mainly implies strengthening the Human Rights Centre of the Supreme Court; improving accessibility of judgments of the Supreme Court of Georgia (as domestic case-law); conducting training sessions on human rights and creating the position of a consultant/advisor on human rights within the court system. It can be said that the greater part of the objectives is implemented and the determined objectives indeed are the means of achieving the set goal.

Activity - 2.3.1.1 Strengthen competences of the Human Rights Centre at the Supreme Court.

Indicators:

- The number of updated handbooks on human rights in the Georgian and foreign languages;
- There is an increase in the number of ECtHR judgments translated into Georgian and uploaded to the database. Comparison of the number of translated (and published) judgments in 2016-2017 with the statistics of previous years; and
- The statistics on how frequently judges apply to the Human Rights Centre to have a judgment translated or a legal opinion drafted (comparison with the statistics of previous years).

Assessment

The main objective of the Human Rights Centre of the Supreme Court of Georgia is to study ECtHR judgments, develop analytical documents, translate and review judgments. The description of the activity is obscure and it is not clear what is meant by capacity enhancement. However, the public information provided by the Supreme Court of Georgia¹⁵⁰ shows that, in this case, the responsible agency implies improving the qualifications of the centre's employees and making their performance more active.

In the beginning of 2017, a memorandum was concluded between the Supreme Court of Georgia and the European Court of Human Rights for accessibility to the ECtHR judgments search system in Georgian.

The Human Rights Centre updates the database systematically with recent ECtHR judgments. In 2016-2017:

- More than 200 cases were translated and there are 865 judgments and decisions translated into Georgian that are uploaded to HUDOC database;
- Human rights handbooks and factsheets available in Georgian are updated; and
- The collection titled “Judgments of the European Court of Human Rights on Violence against Women and Domestic Violence” is published.

The Human Rights Centre assists judges in finding and analysing the relevant case-law of the European Court. To this end, in 2016, the centre received 43 requests from the Supreme Court, 5 requests from the district courts of Sachkhere, Gori, and Zugdidi, and 1 request from Tbilisi Court of Appeals. In 2017, there were 70 requests from the Supreme Court and 18

¹⁵⁰ Response of the Supreme Court of Georgia to GDI, Letter no. ns-05-17, dated 31.08.17.

requests from the district/city courts of Zugdidi, Rustavi, Sachkhere, Poti, Akhaltsikhe, Gori, Gurjaani, and Tbilisi. When applying to the centre, judges requested either translation of various judgments or review of ECtHR case-law on particular rights under the ECHR.

As the public information submitted by the Supreme Court of Georgia¹⁵¹ shows, in 2014-2015, the Human Rights Centre did not maintain statistics about requests from judges. Therefore, it is impossible to compare the frequency of requests with the data of the previous years.

Conclusion: At this stage, the activity is implemented by **95%**, as:

- There is an increase in the number of handbooks on human rights in Georgian and foreign languages;
- There is an increase in the number of ECtHR judgments/decisions translated into Georgian and uploaded to the database;
- There is an increase in the number of requests submitted by judges to the Human Rights Centre regarding translation of judgments/decisions or drafting legal opinions; and
- It is impossible to compare the frequency of requests submitted to the Human Rights Centre with data from previous years. However, compared to 2016, the almost twofold increase in the number of requests can be considered as a positive change.

Activity - 2.3.1.2. Introduce a position of human rights advisor/ consultant in large courts.

Indicators:

1. Terms of reference of a consultant/advisor in human rights is determined clearly;
2. Number of courts with the position of a consultant/advisor in human rights (at least in 10 courts); and
3. Frequency of consulting a consultant/advisor (minimum 4 opinions issued in a month).

Assessment

The HCoJ explains the need for creating the position of a consultant/advisor in human rights by the desire to enable both judges and court employees to receive on the spot consultation on human rights in all big courts (where the number of judges is more than 10). At first glance, the initiative can be assessed positively. However, it is partially unclear for us how it is different from the Human Rights Centre in the Supreme Court and why there is a need to have a consultant physically present in a court, where similar services can be received remotely, especially when there is a uniform database accessible for the entire court system and at least it ensures that different persons do not have to work on the same issues in different courts. Accordingly, it is unclear for us why the Human Rights Centre cannot discharge the same functions and if there were shortcomings and deficiencies in its performance, why would it not be more effective to concentrate on their eradication.

¹⁵¹Response of the Supreme Court of Georgia to GDI, Letter no. p-240-17, dated 06.10.2017.

This issue does need clarifications as no effective steps have been made towards the implementation of the given activity within the deadlines envisaged by the HRAP. According to the public information provided by the HCoJ,¹⁵² creating a position of a human rights advisor/consultant was planned from the beginning of 2018, whereas according to the implementation report of the Human Rights Action Plan (2016-2017) of the Government of Georgia, the position of human rights advisor/consultant had been created in Tbilisi City Courts in 2016 and in Tbilisi Court of Appeals and in Kutaisi City Court in 2017. Therefore, the given activity has been considered as fully implemented.

Conclusion: At this stage, the activity is implemented by **0%**, as:

- Within the time frames envisaged by the HRAP, no effective steps were made towards implementing the activity at stake.

Activity - 2.3.1.3. Provide training for judges.

Indicators:

1. The number of thematic training sessions;
2. The duration and number of training sessions is correspondent to the time needed to cover each topic;
3. The number of retrained judges (60% at minimum); and
4. Retrained judges are from both appeal courts and all district/city courts.

Assessment

Within the retraining programme of judges and court clerks, the HSoJ conducts retraining sessions for judges. A programme is developed in accordance with the needs that are identified in advance. The programme is approved by the Independent Council of the HSoJ. Since the activity is directed at implementing task 2.3.1 (support the application by common courts of the European Convention on Human Rights and its case-law), only those training sessions that were dedicated specifically to human rights have been assessed.

In 2016 – 2017, 18 training sessions for judges of common courts were held on the following issues:

- Landmark judgments of the ECtHR (1 training session in 2016, 1 training sessions in 2017);
- European and international standards of human rights – general course (2 training sessions in 2016; and 1 training sessions in 2017);
- Right to a fair trial (2 training sessions in 2016);
- European Convention on Human Rights and its application (2 training sessions in 2016);
- Freedom of expression, including issues related to hate speech (1 training session in 2016 and 1 training session in 2017);

¹⁵² Response of the HCoJ to the letter of GDI. Letter no.1182/2335-03-o, 13.10.2017.

- Prohibition of torture, inhuman, cruel or degrading treatment (4 training sessions in 2016, 1 training session in 2017); and
- Right to respect for private life (2 training sessions in 2016).

In total, the following number of judges from district (city) courts, court of appeal and the Supreme Courts participated in the training sessions:

- ECtHR case-law – 33 judges;
- Human Rights International and European Standards – 40 judges;
- Right to a fair trial – 25 judges;
- ECHR and its application in practice – 30 judges;
- Freedom of expression including hate speech issues – 27 judges;
- Prohibition of torture and inhuman or degrading treatment – 44 judges; and
- Right to respect for private life – 28 judges.

The duration of the training sessions was 2 working days in all cases, which is sufficient to cover the respective topics. According to the public information provided by the HSoJ,¹⁵³ it is difficult to establish whether the same judges attended the training sessions. Accordingly, it is difficult to establish what number of judges working in the system took part in training sessions.

Activity is implemented by **70%**, as:

- The analysis of the conducted training sessions showed that in 2017, compared with 2016, the number of the training sessions held is 4 times less even though the need for a training session is determined in advance;
- Concerning the relevance of the topics discussed at training sessions, it is desirable to have training sessions with more or higher frequency in coming years;
- Duration and number of training sessions correspond to the time required to cover each topic; and
- Retrained judges represent all three instances. However, since there is no information accessible about the judges attending training sessions, it is impossible to analyse whether the same judges attended all training sessions or it was ensured that various judges were involved.

Activity - 2.3.1.4. Increase the number of cases stored in the database of internal case-law; compile statistical data illustrating the frequency of use of the programme and use it as a baseline for its further improvement; place information on the official website of the supreme court and publish collections of similar case-law practice.

Indicators:

1. The number of cases in the domestic case-law database and comparison with the previous year;

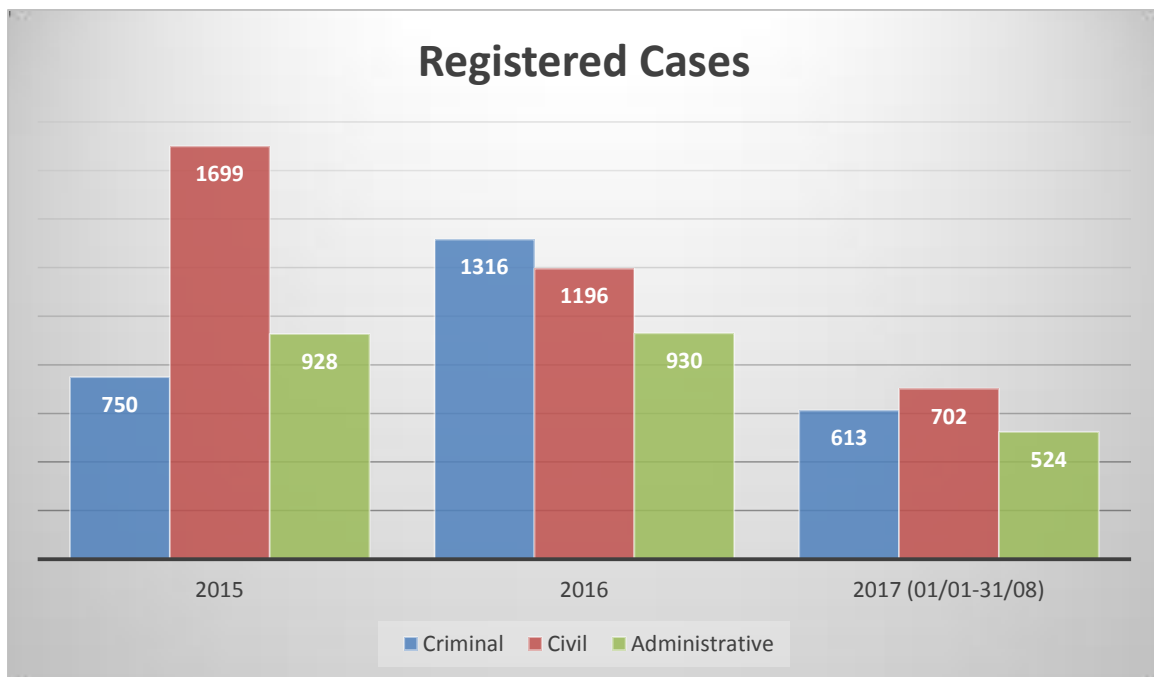
¹⁵³ Response of the HSoJ to GDI, letter no. 02/1641, dated 10.10.2017.

2. The statistics on the frequency of use of the decision search system and comparison with the previous year; and
3. The number of published collections of uniform case-law (minimum 10 collections in each specialisation: criminal, civil and administrative).

Assessment

Judgments of the Supreme Court are posted on the Supreme Court’s website and are accessible for all stakeholders who would wish to become familiar with and study the jurisprudence of the Supreme Court.

The cases registered according to years in the database of the Supreme Court are given below:



In 2016, compared to 2015, there was a drastic increase (almost by 50%) in the number of judgments in criminal cases, whereas there was a 30% decrease in the number of posted judgments in civil cases. Almost the same indicator is maintained in terms of judgments in administrative cases.

As for the year 2017, compared to the year 2016, the number of posted judgments on criminal cases went down by 31%, judgments on civil cases went down by 12% and the posted judgments on administrative cases increased by 15%.

According to the public information received from the Supreme Court of Georgia,¹⁵⁴ the court does not maintain statistics on how frequently the decision search system is consulted and therefore it is impossible to determine how frequently users look up decisions in the database.

¹⁵⁴ Response of the Supreme Court of Georgia to GDI, Letter no. ns/04-17, dated 31.08.17.

In 2017, the Supreme Court of Georgia issued 12 collections of judgments adopted in criminal cases; 12 collections of judgements adopted in civil cases; and 12 collections of judgments adopted in administrative cases.

Conclusion: At this stage, this activity is implemented by **90%**, as:

- Internal case-law database with the court judgments in all the fields has been steadily updated;
- Collections of unified case-law are issued for 2016 and 2017; and
- It is impossible to assess the statistics of consulting the decision search systems.

Objective - 2.3.2. Implement methods for the assessment of the effectiveness of courts.

The objective comprises three activities, which are mostly directed at determining the adequate number of judges and court clerks, developing their job descriptions and developing and implementing the HCoJ electronic software for human resources management in common courts. The objective can be considered not to have been implemented as, within the time frames envisaged in the HRAP, only questionnaires and job description forms were prepared for developing the documents of job analysis and job description in the judiciary and even that was done by the Bureau of Public Service.

Activity - 2.3.2.1 Develop a methodology to determine the adequate number of staff (judges, office) and volume of financial resources.

Indicators:

1. The methodology document has been developed;
2. The methodology document is accessible for all stakeholders; and
3. The developed document is based on the research outcomes.

Assessment

According to the Public Information submitted by the HCoJ,¹⁵⁵ improvement of the mechanism of assessing the effectiveness of judges' performance and monitoring is envisaged by the Strategy of the Judiciary for 2017-2021 and its Implementation Action Plan for 2017-2018.

According to the information¹⁵⁶ received later, in November 2017, with the support of East-West Management Institute (EWMI), PROLoG and USAID, the responsible expert, Jesper Wittrupp, drafted a research document on the methods for conducting analysis on the number of judges in common courts. The research included the analysis of the system of common courts and suggests 3 methods, which could be used for defining the optimal number of judges and court employees. In particular, the first method suggests conducting a research and defining the weight of cases, the formulas, one of the formulas for which has been elaborated by the CoE European Commission for the Efficiency of Justice (CEPEJ). The

¹⁵⁵ Response of the HCoJ to the letter of GDI. Letter no. 1183/2336-03-o, dated 13.10.2017.

¹⁵⁶ Response of the HCoJ to the letter of GDI. Letter no. 771/639-03-o, 05.04.2018.

second method used in European countries envisages defining the optimal number of judges per 100,000 citizens. According to the third method, the research on case overload in the courts should be conducted and, therefore, by assessing the business process, necessary steps¹⁵⁷ should be planned and undertaken for the solution and reducing the number of cases.

The document enclosed to the letter received from the HCoJ is dated 9 August 2017 and it is drafted by the Department of International Co-operation and Quality Management of the HCoJ. The research, “analysis of the number of judges in the common courts,” reflects the situation currently existing the courts, although, the data used there includes information until 2015.

Within the time frames envisaged by the action plan, the HCoJ has not developed any methodology to determine the adequacy of the amount of human (judges and staff) and financial resources. As it is shown from the information submitted by the HCoJ, the council is planning to implement this activity within the Strategy of the Judiciary and its Implementation Action Plan for 2017-2018.

Conclusion: At this stage, the activity is implemented by **50%**, as:

- The concerned expert, Jesper Wittrupp, drafted a feasibility study for the analysis of the number of judges in common courts;
- The research on “analysis of the number of judges in the common courts” conducted by the HCoJ does not meet currently existing challenges;
- The research on the “analysis of the number of judges in the common courts” by the methodology suggested by the expert Jesper Wittrupp has not been conducted; and
- Within the time frames envisaged by the HRAP, the HCoJ has not developed the methodology to determine the adequacy of the amount of human (judges and staff) and financial resources.

Activity - 2.3.2.2 Establish cooperation with the Bureau of Public Service to carry out analysis and job descriptions within the court system.

Indicators:

1. In cooperation with the Bureau of Public Service, terms of references for court employees were drafted; and
2. Job analysis and job description documents for each court position have been developed and approved.

Assessment

For developing documents of job analysis and job description in the judiciary, the HCoJ cooperated with the Bureau of Public Service. The latter prepared the following documents: form of job description, questionnaire of job analysis, instructions for conducting job analysis, and drafting job description and technical manual.

¹⁵⁷ The report on implementation of the HRAP of the Government of Georgia (2016-2017), p.27.

As the public information provided by the HCoJ¹⁵⁸ shows, on 7-8 October 2017, at a meeting organised by the EU project Support to the Judiciary, a three-month plan was developed for the implementation of the objective at stake. According to this plan, the document of job analysis and job description was supposed to be approved by the end of 2017. However, this document has not been approved by the council to this date.

The information¹⁵⁹ provided by the HCoJ later, on 24-25 February 2018 the EU “EU4Justice” program Support to the Judiciary organised a meeting on the elaboration of typical job descriptions and competences. The participants agreed on the managerial and main competences during the meeting. At this stage, development of jobs description for the staff members of the district courts is ongoing.

Conclusion: At this stage, the activity is implemented by **50%**, as:

- There was cooperation between the HCoJ and the Bureau of Public Service, and the latter prepared questionnaires and job description forms for developing job analysis and job description documents;
- Managerial and main competences have been agreed;
- Development of jobs description for the staff members of district courts is ongoing; and
- The HCoJ has not yet approved the jobs analysis and jobs description document;

Activity - 2.3.2.3. Develop and implement an electronic programme of human resources management for judges.

Indicators:

1. Human resources management software is developed and technical assignment complies with the established standard; and
2. Human resources management software operates in the HCoJ.

Assessment

The activity’s title is rather vague as at first glance it can be assumed that the activity aims at developing software for judges so that they could manage their own staff. However, as it was established during consultations, the activity implies the development of human resources management software for the Human Resources Department of the HCoJ. The software would ensure storage of electronic versions of personnel files of common courts’ judges and electronic exchange of various documents.

¹⁵⁸ Response of the HCoJ to GDI, Letter no. 1184/2337-03-o, dated 13.10.2017.

¹⁵⁹ Response of the HCoJ to GDI, Letter no. 771/639-03-o, dated 05.04.2018.

As it is clear from the public information submitted by the HCoJ,¹⁶⁰ negotiations were held with donor organisations to develop this software. However, considering the donors' priorities, working on the project was postponed for 2018.

Conclusion: At this stage, the activity is implemented by **0%**, as:

- There were no effective steps made towards the implementation of the activity within the time frames set by the plan.

Objective - 2.3.3. Increase the justification, transparency and accessibility of court decisions.

The objective comprises three activities, which mostly aim at ensuring reasoning, transparency and accessibility of court decisions. The relevance of making bench-bar more active in terms of this objective creates some confusion. We also believe that it would be desirable to join activity 2.3.1.4 (increase the number of cases stored in the database of internal case law, compile statistical data illustrating the frequency of use of the programme and use it as a baseline for its further improvement; place information at the official website of the Supreme Court and publish collections of similar case law practice) under objective 2.3.3.

Activity - 2.3.3.1. Develop relevant recommendations by the working group within the Supreme Court of Georgia and ensure the introduction of amendments to the normative acts in order increase transparency and accessibility of court decisions.

Indicators:

1. A working group is set up in the Supreme Court of Georgia;
2. All stakeholders are involved in the working group, in particular:
 - a) number of judges (1/3);
 - b) out of this number, judges of regional courts (1/9 of the working group);
 - c) other stakeholders (state agencies, local and international organisations [1/2]); and
3. Recommendations have been developed; amendments to relevant normative acts have been initiated for increasing reasoning, transparency and accessibility of court decisions.

Assessment

For increasing transparency and accessibility of court decisions, the order of the President of the Supreme Court of Georgia¹⁶¹ set up a working group in 2015. The following are included in the composition of this group: judges of common courts (from each instance court), a member of the HCoJ, public officials (representatives of the staff of the HCoJ and the court), the Personal Data Protection Inspector and a representative of the staff, a representative of the Office of the Public Defender of Georgia (added to the group by order of 22 December

¹⁶⁰ Response of the HCoJ to GDI, letter no. 1185/2338-03-o, dated 13.10.2017.

¹⁶¹ Order no. 30-s of the President of the Supreme Court of Georgia of 18.12.2015.

2015), a representative of the GBA and representatives of NGOs (GYLA, IDFI, TI and the Georgian Charter of Journalistic Ethics).

The working group held three meetings (the total duration was 5 working days) with the participation of international experts; recommendations and proposals have been developed, based on which, on 12 September 2016, the HCoJ adopted a decision on Approving the Procedure for Issuing and Publishing Court Decisions by Common Courts.¹⁶² The document governs the procedure of issuing and publishing decisions adopted by common courts.

It is noteworthy that based on the HCoJ decision, the search website (<http://info.court.ge/DecisionBarcodeDocs.aspx>) for the judgements of the common courts is functioning. Any stakeholder can look up the cases of a particular category or a particular case (if one has a case number at one's disposal); personal information related to respective parties and other persons is redacted. Even though the functionality of the search system itself goes beyond the scope of the activity assessment under the Action Plan, it is noteworthy that the website is not functioning properly and it is virtually impossible to find a number of decisions (including the Supreme Court's decisions).

Conclusion: At this stage, the activity is implemented by **100%**.

Activity - 2.3.3.2. Develop methodology, criteria and standards of ensure well-grounded of court decisions.

Indicators:

1. A working group is set up;
2. Methodology, criteria, and standards for reasoning court decisions are developed; and
3. The developed document complies with international standards.

Assessment

For developing methodology, criteria and standards for reasoning of court decisions, there is a working group set up within the Scholarly-Consultative Council of the Supreme Court of Georgia. The working group, consisting of, *inter alia*, the president and judges of Dresden Higher Regional Court, held three meetings in 2016. The recommendations developed by the German judges on structuring court decisions were discussed at the meetings.

According to the public information submitted by the Supreme Court,¹⁶³ the final document was developed in the form of recommendations as the result of the meetings. However, these recommendations were not provided by the Supreme Court and, accordingly, it is impossible to assess whether the developed document complies with international standards.

Conclusion: At this stage, of the activity is implemented by **33%**, as:

¹⁶² Decision no. 1/250 of the HCoJ of 2016. available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/250-2016.pdf>, (accessed 21.01.2018).

¹⁶³ Response of the Supreme Court of Georgia to GDI, Letter no. ns06-17, dated 31.8.2017.

- A working group was set up to develop methodology, criteria and standards for reasoning court decisions; and
- Methodology, criteria, and standards for reasoning court decisions have not been developed yet.

Activity - 2.3.3.3. Renew and reactivate the Bench-Bar activities in the field of human rights protection.

Indicators:

1. The number of meetings held per year (minimum 5 meetings);
2. Percentage of judges participating in the meetings (50%); and
3. Meetings are documented and a corresponding recommendation is adopted based on the agreement reached at a meeting.

Assessment

There were 6 bench-bar meetings held within the time frames envisaged by the HRAP (2016-2017), (total duration was 8 working days), out of which 3 meetings were organised by the Supreme Court of Georgia. Judges from three instances participated in all three workshops, including judges of district (city) courts, and the percentage of their participation was more than 50%.

The following were discussed at the meetings: use of indirect evidence; certain aspects of civil law; review of local and international case-law on drug-related cases; extended jurisdiction of a jury trial – current experience and challenges; and review of local and international practice on entrapment and its legal aspects.

The public information submitted by the Supreme Court of Georgia¹⁶⁴ does not show whether any recommendations were adopted at the end of the meetings.

Conclusion: At this stage, the activity is implemented by **60%**, as:

- Holding 6 meetings in two years cannot be considered as resuming bench-bar activity; and
- It is impossible to assess the effectiveness of the meetings since there is no information accessible whether a proposal or recommendation of any kind was adopted as the result of each meeting.

3. Recommendations:

General recommendations:

1. To include into the judiciary chapter of the HRAP the activities envisaged by the Justice Action Plan for the same period to avoid the existence of two different action plans in the same period;

¹⁶⁴ Response of the Supreme Court of Georgia to GDI. Letter no. ns/18-17, dated 06.10.2017.

2. When defining responsible agencies for the implementation of the HRAP activities, the principle of division of power should be taken into consideration and the judiciary should not be designated as an agency responsible before the executive government.
3. To make the goals envisaged in the action plan more specific and measurable;
4. Objectives determined for the achievement of the goals should be worded in clear terms and should not allow ambiguity; furthermore, the indicators to be used for assessing implementation of activities determined for achieving the set goals should not only assess a fact of implementation of the determined activity but should also be specified in the manner allowing their quantitative and qualitative assessment; and

To the High Council of Justice of Georgia:

1. To observe the statutory terms determined for issuing public information;
2. To improve the existing inefficient system of periodic assessment of judges' performance;
3. To draft criteria for promotion of judges in a timely manner; and
4. To draft proposals regarding the Code of Judicial Ethics.
5. To ensure timely and efficient implementation of the activities under the responsibility of the HCoJ.

Prosecutor's Office

Executive Summary

The third chapter of the Human Rights Action Plan (HRAP) consists of one goal, 5 objectives and 19 separate activities and covers the issues such as independent, impartial and effective investigation and criminal justice policy, transparency of the Prosecutor's Office, capacity building of the Prosecutor's Office and prosecutors, etc.

Active operation of the Prosecutor's Office with the project team on providing relevant information and clarifying the Action Plan's indicators deserves positive assessment. It facilitated the effective monitoring of the implementation of the Action Plan and helped in drafting the present report.

First, it should be noted that the Governmental Human Rights Action Plan failed to include the following important issues: enhancing independence of the Prosecutor's Office, establishment of a prosecutorial system that would be open, transparent and accountable to public, etc. These issues shall be a priority for the Prosecutor's Office of Georgia and their importance have been stressed in numerous international or national reports.

One should underline the irrelevance of some of the objectives and activities to the aim of the Action Plan as well as vague, formalistic and, in certain cases, irrelevant indicators. Therefore, the indicators were revised in co-operation with the representatives of the Prosecutor's Office and some changes were made to them.

The Strategy of the Prosecutor's Office for 2016-2017 was also studied within the framework of the report in relevance to the third chapter of the HRAP. It turned out that the strategy contains some parts of the HRAP without any modifications, including the activities planned to be implemented in 2016; some of them have some modifications; the strategy does not mention at all the obligation undertaken by the Government in the HRAP concerning carrying out quantitative and qualitative analysis of crimes entailing human rights breaches to be published in a quarterly report. Unfortunately, it was impossible to assess the action plan of the given strategy as it was not a public document.

To assess the implementation of the activities of the HRAP, we officially requested the information from the Prosecutor's Office and received the answers in writing on 4 September and 27 December. Besides, in the assessment process, we used the interim reports on the implementation of the Action Plan approved by the Government of Georgia and the report presented by the Chief Prosecutor to the Prosecutor's Council on 19 July 2017.

The assessment shows that, at the moment of drafting the report, out of the 19 activities, 10 activities have been fully implemented; in 2 activities more than half of the issues have been covered; in 3 activities less than half of the issues have been covered; and 4 activities have not been implemented. The total progress of the implementation of the third chapter is 67 %. In conclusion, it should be mentioned that some of the objectives of the Action Plan are not relevant to its aim in terms of establishment of a human rights-oriented, independent, fair, effective and transparent prosecution system. At the same time, certain activities planned for

the implementation of some of the objectives do not contribute either to their implementation or to the fulfilment of the general aim of the Action Plan. Not to mention the failure in the implementation or partial implementation of such important activities as publishing a report on human rights breaches, introduction of prosecutors' performance evaluation system, analysis of widespread crimes for the establishment of effective criminal justice policy, etc.

It should be assessed positively that more than half of the activities envisaged by the Action Plan (out of 19 activities) have been completed fully or mostly (12 activities in total) (Such as developing public-oriented prosecutors' offices, developing a strategy and an action plan of prosecutors' training centre, adopting a new code of ethics for staff at prosecutors' offices, training sessions on various topics for prosecutors, etc.)

1. Overall Assessment of Chapter III of the Human Rights Action Plan

1.1. Content-Related Comments on Chapter III – Relevance to the Challenges and Recommendations

The reform of the Prosecutor's Office is one of the most important goals of the HRAP, aimed at establishing a prosecutorial system, which will carry out fair, effective and transparent prosecution and will be oriented towards human rights protection.

The HRAP of the Government of Georgia shares the importance of this aim and devotes Chapter III with 5 separate objectives to its implementation.

Objectives envisaged by the HRAP should be derived from the Human Rights Strategy and the obligations undertaken by the Georgian Government, whereas the Strategy of the Prosecutor's Office adopted on 2017 and covering 2017-2021 should be one of the means of their implementation. However, the report shows that Chapter III does not fully reflect the reality and some of its activities are irrelevant to the goals and objectives of the HRAP. Moreover, this chapter does not include the recommendations of some international experts and those of the Public Defender of Georgia; some of the objectives on strengthening the institutional capacity of the Prosecutor's Office envisaged by the national strategy are omitted in Chapter III as well.

For the reform process of the Prosecutor's Office, the HRAP considers it important to improve the control mechanism on the prosecutor's work, to carry out criminal prosecution and to use preventive measures in line with international standards. The importance of the above-mentioned as well as other issues, such as the establishment of the mechanism of effective response to the incidents of ill-treatment by law-enforcement agencies, independence of the work of the Prosecutor's Office to avert any unlawful pressure and to ensure better transparency and accountability, have been stressed by the reports of the

European Committee on the Prevention of Torture¹⁶⁵ and the Public Defender of Georgia.¹⁶⁶ These issues have also been mentioned in the report on Progress in the Implementation of the National Strategy for the Protection of Human Rights in Georgia for 2014-2020 and Recommendations as to Future Approaches, prepared by an independent consultant and human rights international expert Maggie Nicholson.¹⁶⁷ Maintaining the reform of the Prosecutor's Office to ensure its independence, protection from any unlawful pressure, its transparency and accountability is also one of the short-term priorities under the justice chapter of the agenda of the Association Agreement between Georgia and the EU.

Therefore, the following list contains the issues which due to their importance should have been included in the HRAP for 2016-2017:

- Increasing independence and political neutrality of the Prosecutor's Office;
- Establishment of an open and transparent prosecution system accountable to public;
- Increasing independence of prosecutors' individual work; and
- Creation of an effective criminal prosecution mechanism on allegations of ill-treatment by law-enforcement officials.

Besides, in spite of the fact that the development of the training centre and its provision with a library and other special programs is one of the important working directions of the Prosecutor's Office, we conclude that the human rights situation and the goal of the HRAP related to the establishment of an independent, effective and human rights-oriented criminal prosecution system could not be achieved solely by strengthening the training centre and improving prosecutors' qualifications or/and by establishing the performance evaluation system for prosecutors.

1.2. Assessment of the Relevance, Effectiveness and Priority of the Activities Envisaged Under Chapter III

Chapter III of the HRAP, as it has already been mentioned repeatedly, aims at establishing a prosecution system that would be able to independently perform fair, effective, transparent and human rights-oriented criminal prosecution.

The present chapter will assess the relevance, effectiveness and the priorities of the HRAP objectives with respect to the HRAP's goal and whether it is possible to achieve it by the thorough implementation of these objectives by the Prosecutor's Office.

¹⁶⁵ Report to the Georgian Government on the visit to Georgia carried out by the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Available at: <https://rm.coe.int/16806961f8>, (accessed 13.01.2018).

¹⁶⁶ Reports of the Public Defender of Georgia on the situation of Human Rights and Freedoms in Georgia for the years of 2014 and 2015; available at: <http://www.ombudsman.ge/en/reports/saparlamento-angarishebi>, (accessed 13.01.2018).

¹⁶⁷ Report on Progress in the Implementation of the National Strategy for the Protection of Human Rights in Georgia 2014-2020, and Recommendations as to Future Approaches, Maggie Nicholson; available at: <http://ewmi-prolog.org/images/files/4265ReportonimplementationHumanRightsStrategyENGEWMIUNDP.PDF>, (accessed 18.01.2018).

Independence of the Prosecutor's Office from the external pressure and the need of transparent criminal prosecution are underlined in numerous reports by non-governmental organisations and the Public Defender of Georgia. These issues became especially relevant since the changes made to the Law of Georgia on Prosecutor's Office led to the introduction of the selection mechanism of the Chief Prosecutor and his/her accountability to the Council of Prosecutors. Coalition for the Independent and Transparent Justice responded to these legislative changes on 25 September 2015 with the following statement: "In spite of some positive changes to the law, the objective of the draft law envisaging de-politicisation is unattainable since these amendments are of fragmented nature and do not cover those fundamental principles which should ensure real independence of the prosecutorial system, irrespective the conclusions of the Venice Commission." Unfortunately, none of the objectives and the relevant activities envisaged under the HRAP meet this challenge to ensure the independence of the prosecutors' work from external pressure.

The goal of the HRAP is to achieve transparency and effectiveness of criminal prosecution, which is also a part of the Human Rights chapter of the AP. For its achievement, the objective of enhancing transparency and accountability of the Prosecutor's Office is planned. Although, out of the activities planned for the achievement of this objective, only one (carrying out qualitative and quantitative analysis of crimes entailing human rights breaches and publishing quarterly reports) envisages proactive publishing of certain information. Other activities are either too general (e.g. developing public-oriented prosecutors' offices) or irrelevant to the respective objectives (e.g. improving the rule for appointment and promotion of prosecutors).

The objective of paragraph 3.1.1 of the HRAP is ensuring "independent, impartial, effective investigation and a crime combating policy that conforms to the existing crime patterns" whereas the action plan itself refers to an independent, fair and effective criminal prosecution, not investigation. Moreover, none of the activities planned for the implementation of this objective ensure independence and impartial investigation. At the same time, nothing is said in the HRAP about the means of achieving crime combating policy relevant to the situation of crime.

It is worth mentioning that some of the activities of the HRAP are too general (e.g. capacity building of prosecutors; conducting training sessions on various topics for prosecutors). The indicators designed for the assessment of the performance of these activities are also vague and formalistic; the quantitative and qualitative indicators used are very few. Therefore, the working group in co-operation with the Prosecutor's Office's representatives reviewed the indicators and made some changes to them.

1.3 Assessment of Other Relevant Action Plans with Reference to Chapter III of the HRAP

In parallel to the HRAP, on 31 January 2017, the Chief Prosecutor approved the Strategy of the Prosecutor's Office for 2017-2021. Later, the relevant action plan has been designed. The strategy of the Prosecutor's Office is public and is placed on the website of the Prosecutor's

Office, although according to the representatives of the Prosecutor's Office, the relevant action plan was not public and thus was not available for the working group. Therefore, the comparison between the timeframes of the activities of the HRAP and the action Plan of the Prosecutor's Office turned out to be impossible.

According to the Strategy of the Prosecutor's Office, during 2017-2021 the Prosecutor's Office of Georgia plans to implement the activities to strengthen the independence of the prosecutor's office and prosecutors, increasing the efficiency of fight against certain crimes (including human trafficking, corruption, terrorism, drug-related crimes and cybercrime), protection of human rights, enhancing the quality of prosecutorial work and establishing a homogeneous criminal policy, increasing public trust, prevention of crime and improving the professionalism and qualifications of staff members.

Some of the HRAP activities have been expected to be implemented in 2016, whereas they are still included in the 2017-2021 Strategy of the Prosecutor's Office. Therefore, it was possible to compare only the activities planned for 2017. Out of the activities planned for 2017, the Strategy of the Prosecutor's Office contains elaboration of the guidelines on the investigation of corruption committed by legal entities,¹⁶⁸ introduction of the prosecutor's performance evaluation system,¹⁶⁹ introduction of a transparent system for prosecutors' disciplinary responsibilities,¹⁷⁰ conducting various training sessions for prosecutors¹⁷¹ as well as strengthening the capacity of the prosecutors' training centre and elaboration of relevant training programs.¹⁷² The activity of the HRAP on increasing the intensity of and improving the efficiency of local crime prevention councils' meetings¹⁷³ has been differently interpreted in the strategy. The Strategy of the Prosecutor's Office envisages not improving the efficiency of the acting local councils but the establishment of new ones.

One should also take into consideration that the activities planned for 2016 under the HRAP, such as the introduction of the performance evaluation system, elaboration of a handbook on legal writing and the investigation methodology, are included in the Strategy of the Prosecutor's Office for 2017-2021 designed in 2017.

The most important is the fact that the Strategy of the Prosecutor's Office does not contain the obligation on carrying out qualitative and quantitative analysis of crimes violating human rights and publishing quarterly reports envisaged under the HRAP although the strategy devotes the whole chapter to the protection of human rights.

Therefore, one could conclude that the Strategy of the Prosecutor's Office and the HRAP are not in compliance with each other either by content or with regard to the timeframes given for the implementation for certain activities. Though it should be noted that the Strategy of the

¹⁶⁸ Human Rights Action Plan approved by the Government of Georgia, 26.07.2016, Chapter III, Activity 3.1.1.6., available at: <http://myrights.gov.ge/uploads/files/docs/2085HRAActionPlan16-17ENG.PDF>, (accessed 07.03.2018).

¹⁶⁹ *Ibid*, Activity 3.1.3.1.

¹⁷⁰ *Ibid*, Activity 3.1.3.3.

¹⁷¹ *Ibid*, Activity 3.1.4.1.

¹⁷² *Ibid*, Activity 3.1.5.

¹⁷³ *Ibid*, Activity 3.1.2.3.

Prosecutor's Office reflects the current situation in the field much better in terms of human rights protection, increasing the quality of the prosecution and investigation, standard of professional ethics, improving the prosecutors' qualifications, increasing the independence of the prosecutors and the Prosecutor's Office as well as its institutional development that the HRAP does with its objectives and relevant activities.

2. The Assessment of Objectives and Activities Envisaged under Chapter III of the HRAP

The implementation progress for the chapter: 67%.

Objective 3.1.1

The implementation progress for the objective: 76%.

The present objective is one of the most important parts of the HRAP. It contains the following 6 activities: capacity building of prosecutors; introduction of a holistic methodology of investigation; publishing a legal writing handbook; developing recommendations on particular crimes and responsibility for legal entities; and analysis of the use of alternative mechanisms for criminal prosecution.

Despite the title of the objective, it does not include publishing correct statistical data on crimes and review of the guiding principles of the criminal policy for improving the existing criminal situation. The need for the latter is underlined even by the HRAP and numerous non-governmental organisations.

Special attention should be paid to the following activities: introduction of a holistic methodology of investigation, publishing a legal writing handbook and analysis of the use of alternative mechanisms for criminal prosecution. We believe that none of them serve the implementation of the present objective – independent, impartial, effective investigation and a criminal policy that conforms to the existing criminal situation and relevant to the general goal of the HRAP.

Despite the above-mentioned, we assessed the implementation of the activities envisaged by this part of the action plan. It turned out that 3 out of them, analysis of particular crimes and preparing recommendations, elaboration of the legal writing handbook and its introduction into the daily work as well as development of a handbook on the investigation and prosecution of crimes of the corruption committed by legal persons, are fully completed. Analysis of the use of alternative mechanisms for criminal prosecution is mostly completed, whereas 2 activities (capacity building of prosecutors and introduction of the holistic methodology of investigation) are completed only up to 30-35%.

Activity 3.1.1.1

Status: Mostly incomplete

Activity implementation progress: 33 %

Modified indicators:

1. Analysis is carried out and the recommendations are developed;
2. Analysis and developed recommendations are provided on prevalent crimes; and
3. Number of recommendations and analysis documents.

Assessment

To prepare qualitative and quantitative assessment of the given activities as well as to check the relevant timeframe, we addressed the Prosecutor's Office of Georgia and asked to provide the information on which particular crimes the analysis and recommendations were drafted in 2016 and the number of recommendations.

In a letter received from the Prosecutor's Office, dated 27 December 2017, activities 3.1.1.1 (capacity building of prosecutors) and 3.1.1.3 (developing recommendations for prosecutors based on the analysis of particular crimes) are united and the list of analytical works carried out by the Prosecutor's Office in 2016 and the relevant recommendations are provided.

For further information, we visited the website of the Ministry of Internal Affairs and found out information on the crime statistics for 2016.¹⁷⁴ It turned out that the following crimes were prevalent in Georgia in 2016: crime against property (37%); drug-related crime (14%); crime against health (13%); traffic crime (9%); crime against the government functioning (6%); crime against public security and order (5%); and other crimes envisaged by the Criminal Code comprised 16% out of the registered offences.¹⁷⁵

The information provided by the Prosecutor's Office mentions analysis and recommendations only on violence (crime against health) and drug-related crimes. It shows that the HRAP activity on drafting recommendations on prevalent crimes to be implemented in 2016 is mostly incomplete (completed only by 33%) as out of the above-mentioned 6 types of crime, only 2 were subject to analysis and recommendations.

Activity 3.1.1.2.

Status: Mostly incomplete

Activity implementation progress: 30%

¹⁷⁴ Ministry of Internal Affairs of Georgia, registered crimes, 2016, available in Georgian at: <http://police.ge/files/pdf/statistika%20da%20kvlevebi/2016/%E1%83%93%E1%83%90%E1%83%9C%E1%83%90%E1%83%A8%E1%83%90%E1%83%A3%E1%83%9A%E1%83%98%E1%83%A1-%E1%83%A1%E1%83%A2%E1%83%90%E1%83%A2%E1%83%98%E1%83%A1%E1%83%A2%E1%83%98%E1%83%99%E1%83%90-2016.pdf>, (accessed 08.01.2018).

¹⁷⁵ *Ibid*, p. 6.

Modified indicators

1. A holistic methodology of investigation is approved and available for all the prosecutors and investigators;
2. Training of trainers (ToT) is conducted (% of trained prosecutors); All the prosecutors were trained on holistic methodology of investigation; (Prosecutors from all the regional offices were trained);
4. Number of training sessions conducted by trainers/prosecutors for investigators from all the structures; % of participants out of the total number of investigators from relevant offices;
5. Percentage of the trained investigators in regional offices;
6. The content of methodology is relevant to the objective and the goal; and
7. The handbook is a part of a training module.

Assessment

To assess the present activity, we addressed the Chief Prosecutor's Office of Georgia with an official letter and asked to provide the information whether the holistic methodology of investigation was available for all prosecutors and investigators; prosecutors from which regional offices were trained as trainers; and whether the handbook on holistic methodology of investigation was included in the training module, if not, when the latter was planned. Moreover, we asked to be provided with the information on the training sessions for investigators to assess the range of introduction of the methodology in practice; in case the training sessions have not been launched, we were interested in when they were planned to start and finish.

We received the information¹⁷⁶ that the handbook on holistic methodology of investigation was published in September 2017 and it became available for all prosecutors and investigators for using it in their daily work. Introduction of this methodology into practice, ToTs and training of investigators were planned for the beginning of 2018 and would be implemented in several stages. At the same time, the inclusion of the methodology in the training module would take place.

As for the relevance of methodology to the HRAP objectives and goals, the content includes all the investigation and procedural methodology, which falls under the authority of the prosecutor and investigator during the investigation process of a case (search, seizure, inspection, investigative experiment, etc.). We believe that thorough implementation of all the steps included by the methodology would ensure their conformity with the procedural code and human rights protection mechanisms; and, the handbook, as soon as it is used in practice, will help the investigative authorities in meeting the legislative requirements.

¹⁷⁶ Letter from I. Chilingarashvili, official responsible for imparting public information from the Prosecutor's Office.

To sum up, we should note that the whole activity has not been implemented within the timeframes envisaged by the HRAP. According to the HRAP, publishing of the methodology, its incorporation into practice and subsequent monitoring of the procedural documents to assess the results of the activity were planned to take place in 2016. It seems that the handbook has not been incorporated into practice even in 2017, not to mention the monitoring of procedural documents which is a time-consuming and lengthy process.

Activity 3.1.1.3.

Status: Fully completed

Activity implementation progress: 100%

Modified indicators:

1. The recommendations have been elaborated;
2. The recommendations include family violence, beating/torture; ill-treatment, fraud, corruption and other important issues; and
3. 3. Number of provided recommendations.

Assessment:

To assess the given activity, we addressed the Prosecutor's Office and requested public information on the list of certain crimes, which had been studied and recommendations on which were elaborated in 2016 as well as the number of these recommendations.

The letter received from the Prosecutor's Office on 27 December 2017 showed that, in 2016, the relevant department of the Prosecutor's Office prepared analytical papers on corruption and drug-related crimes, crimes committed by and against juveniles, domestic violence, homicide of women and crimes against sexual liberty and security. Moreover, based on the analysis and other current issues, the recommendations have been elaborated on investigation of domestic violence, crimes committed on the ground of discrimination, investigation of trafficking, use of Juvenile Justice Code and rules on interrogating/interviewing witnesses. Recommendations have also been elaborated on use of detention and plea bargaining in certain circumstances, guarantees on protection of the rights of disabled persons and taking into consideration their special needs during investigation process, proper categorisation and the strategy on investigation in case of alleged ill-treatment cases; categorisation of hate speech crimes and application of Article 53.3¹ of the Criminal Code in practice.

According to the given letter, the analytical papers, elaborated recommendations based on them as well as the handbooks are only for internal use and not public. Therefore, it is impossible to judge how the topics have been selected; what is the content of the elaborated documents and how they are related to the HRAP objective.

The provided information made clear the fact that, in 2016, the Prosecutor's Office prepared numerous analytical papers and recommendations on current topical issues, therefore, the given activity should be assessed as completed.

Activity 3.1.1.4.

Status: Mostly completed

Activity implementation progress: 100%

Modified indicators:

1. Analytical work has been carried out on juvenile diversion/mediation and diversion for adults;
2. Results of the analytical work have been introduced to the prosecutors working on juvenile cases; and
3. Intensity of analytical work on juvenile diversion/mediation.

Assessment:

To assess the given activity, we addressed the Prosecutor's Office requesting information on whether analytical work has been carried out on juvenile diversion/mediation and diversion for adults. In case of a positive answer, we were interested how many analytical papers have been produced, their timeframes and whether they have been introduced to the prosecutors.

The letter¹⁷⁷ received from the Prosecutor's Office shows that the Prosecutor's Office carries out monitoring of the implementation of the juvenile justice program once in six months (biannually) and prepares a relevant report on the diversion program and the juveniles under the prosecution. According to the letter, these documents contain statistical data as well as the results of the monitoring. Findings of the report are sent to the prosecutors by e-mail and are discussed during working group meetings. The monitoring reports are only for internal use and are not for the public. Therefore, we lack the opportunity to assess its content and quality. Based on the letter, we could conclude that the part of the activity related to juvenile diversion/mediation has been fully completed as far as the action plan envisaged only conducting analytical work. The Prosecutor's Office not only carried out analytical work, but also the gaps revealed by the analysis were sent to prosecutors for information and further consideration. According to the information provided by the Prosecutor's office, they are implementing the same activities for the adults as well. Thus, we consider the activity, namely, [analysis of the practice of using alternative mechanisms of criminal prosecution](#), to be completed by 100%.

¹⁷⁷ *Idem.*

Activity 3.1.1.5.

Starting date: 01/01/2016

Finishing date: 31/12/2016

Modified indicators:

1. Handbook on legal writing has been published;
2. Training of trainers has been conducted;
3. Percentage of the trained prosecutors out of the total number; and
4. Percentage of the trained prosecutors from the Regional Prosecutor's Offices.

Assessment:

To assess the implementation of the present activity, we addressed the Prosecutor's Office and requested information whether the legal writing handbook had been published, whether the ToT for prosecutors had been conducted on the application of the handbook and from which regional offices the prosecutors had been trained.

According to the letter received from the Prosecutor's Office, the handbook was drafted and published in 2016. The ToT took place in April of the same year, whereas training sessions of the prosecutors were launched in the beginning of 2016 and were at the finishing stage when the official answer was sent. The same letter stated that, complying with the deadline of 2016-2017, within the framework of the activity on legal writing handbook, 259 prosecutors and intern-prosecutors underwent training sessions, which constituted 83% out of the total number of prosecutors. 81 prosecutors (60% of the total number) were from regional offices. Therefore, we could conclude that the given activity has been completed.

Activity 3.1.1.6.

Status: Fully completed

Activity implementation status: 100%

Modified indicators:

1. The handbook has been elaborated; and
2. The handbook has been incorporated into the training module.

Assessment:

To assess the present activity, we addressed the Prosecutor's Office and requested information on the handbook on investigation and prosecution of corruption crimes committed by legal persons, when the presentation of the handbook was planned and whether the handbook was included into the training module.

According to the information received from the Prosecutor’s Office, the handbook was being drafted and at the time of sending the official answer, the publishing process was ongoing. As for the incorporation of the handbook into the training module, we were verbally informed that it was planned for the beginning of 2018. Because the handbook has not been published yet we failed to check the compliance of the content of the handbook with the HRAP objectives. Although, the HRAP envisaged only publication of the handbook; therefore, we could conclude that the present activity has been completed.

Objective 3.1.2

Activity implementation progress: 50%

The implementation of the present objective is an important part of the HRAP as the goal of the action plan as a whole is to ensure transparent criminal prosecution. To implement this objective, the HRAP contains 4 following activities: developing public-oriented prosecutors’ offices; carrying out qualitative and quantitative analysis of crimes entailing human right breaches and publishing quarterly reports; intensifying local crime prevention councils’ meetings; and improving the procedure for appointment and promotion of prosecutors.

First, one should note that out of the above-mentioned activities, only two of them (publishing reports and developing public-oriented prosecutors’ office) are relevant to increasing the transparency and accountability of the Prosecutor’s Office, whereas the other two are completely irrelevant to this objective of the HRAP as intensifying local crime prevention council meetings and improving the rules for promotion are more the issues of internal transparency and efficient decision-making process.

Regarding the implementation of the above-mentioned activities, we could state that only half of the objective is completed. Because, the most important component of increasing transparency and accountability of the prosecutor’s office, which is qualitative and quantitative analysis of crimes violating human rights and publishing the relevant report, has not been implemented. On the other hand, development of public-oriented prosecutors’ offices and other activities envisaged under the action plan only partly ensure the implementation of the objective.

Activity: 3.1.2.1.

Status: Fully completed

Activity implementation Progress: 100%

Modified indicators:

1. Develop and approve public relations strategy and action plan or the relevant chapter is included in the Strategy and Action Plan of the Prosecutor’s Office;

2. The strategy and action plan include the part on the accountability obligation as well as the intensity of reporting before the public and Council of Prosecutors;
3. The strategy and the action plan are in full compliance with the legislation: a) Law of Georgia on the Prosecutor's Office; b) regulation of the Council of Prosecutors; c) Charter of the Chief Prosecutor's Office;
4. Number of training sessions carried out within the framework of the Community Prosecution project and their compliance with the objectives and the goal;
5. Number of awareness raising activities and their compliance with the objective and the goal; and
6. The number of beneficiaries of the activities (target groups, juveniles);
7. Number of actions undertaken by the Witness and Victim Assistance Service (how many witnesses were met and the intensity of the meetings).

Assessment:

To assess the given activity, we addressed the Chief Prosecutor's Office and requested information on the implementation of the activities.

In response to our letter, the Prosecutor's Office of Georgia informed us on 27 December 2017 that, in 2016, 20 regional prosecutors' offices were involved in the "Community Prosecution" project. They organised 178 activities in total; 149 out of them were educational-intellectual, 7 – cultural, and 12 were sports related and recreational. They also organised 10 different social actions and the week for the prevention of juvenile delinquency, within the framework of which, the prosecutor's organised lectures and seminars in different schools throughout Georgia on the topic of drug-related offences prevalent among juveniles. 6,166 persons took part in these activities in total.

According to the letter, the scope of the project was broadened and 8 more regional offices were involved in it. Thus, currently 28 regional prosecutors' offices participate in the project.

Unfortunately, we have not received any further information on the given activity; although the working group members learned that the Strategy of the Prosecutor's Office¹⁷⁸ includes a separate chapter on enhancing public trust, which envisages introduction of a common practice in media communication, improving the website of the Prosecutor's Office, modernisation of the system of coordinators, elaboration of the communication documents with citizens and introduction of an electronic program as well as proactive publishing of statistical data. The above-mentioned document envisages a list of activities as well as the obligation of the Prosecutor's Office to proactively inform public about crime statistics and analytical work on these issues.

Regarding the activities on the witness and victim coordinators, we could get only little information from the report of the Chief Prosecutor's Office, according to which, 13,683

¹⁷⁸ The Strategy of the Prosecutor's Office, year 2017, p. 43; available in Georgian at: <http://pog.gov.ge/res/docs/saqartvelosprokuratuiisstrategia.pdf>, (accessed 6 January 2018).

citizens¹⁷⁹ benefited from the witness and victim assistance service in 2016 and the first half of 2017.

Therefore, having analysed the information at our disposal, we could conclude that the given activity of the HRAP is fully completed due to the following reasons:

- The Strategy of the Prosecutor's Office includes the actions to be undertaken in terms of public relations and is in line with the Georgian legislation;
- Numerous educational, social or intellectual activities have been organised within the framework of the Public Prosecutor Project, which is in line with the HRAP objective and goal; and
- Witness and victim coordinators perform their duty quite actively within their competence.

Activity 3.1.2.2.

Status: Not implemented

Activity implementation progress: 0%

Modified indicators:

1. Intensity of publication of a report (quarterly);
2. Number of studied cases;
3. Analysis of statistical data is performed; and
4. The report covers the content of the cases and revealed deficiencies.

Assessment:

To assess the given activity, we addressed the Chief Prosecutor's Office and requested information whether the quarterly reports had been drafted and published in 2016 and 2017 and if the implementation of the activity was planned for each year. We also asked the Prosecutor's Office to send us a copy or electronic version of the drafted report to assess its content.

According to the answer received from the Chief Prosecutor's Office on 4 September 2017, information on the quarterly reports on human rights violations is included in the reports of the Chief Prosecutor, which are public and available on the website of the Prosecutor's Office. After repeatedly requesting the information, we received the answer on 27 December 2017, informing us that results of the study of criminal cases (statistical and content-wise indicators) in terms of human rights violations are referred to in the Chief Prosecutor's reports, which includes a special chapter on this category of crime. According to the same

¹⁷⁹ The report of the Chief Prosecutor, 19 July 2017, p. 66, available in Georgian at: <http://pc.gov.ge/block/index/465>, (accessed 16.01.2018).

letter, the report has been presented to the Council of Prosecutors once in a six-month period; it was public and available for all stakeholders.

It should be noted here that the HRAP obliged the Prosecutor's Office to prepare a quantitative and qualitative study of criminal cases involving human right breaches and publish quarterly (once in 3 months) reports. According to Article 8¹ (6) of the Law of Georgia on the Prosecutor's Office, at least once in six months or by a decision of the majority of the Council of Prosecutors, the Council of Prosecutors is obliged to hold a hearing of a report of the Chief/Deputy Chief Prosecutor on the policy on fight against crime, statistical data, protection of human rights and freedoms during criminal procedures, and other issues of high public interest.¹⁸⁰

We looked for the reports¹⁸¹ of the Chief Prosecutor on the website of the Prosecutor's Office of Georgia to assess implementation of the present activity. It turned out that the report of the Chief Prosecutor, as of 19 July 2017, contains the chapter on incidents of ill-treatment.¹⁸²

Therefore, the available information allows us to conclude that the activity on carrying out qualitative and quantitative analysis of crimes violating human rights and publication of quarterly reports envisaged by the HRAP have not been implemented within the planned timeframe. The Chief Prosecutor's report contains only a small part of statistical data and is published once in 6 months, whereas the qualitative and quantitative analysis has not yet been published by the Chief Prosecutor's Office. Thus, we could conclude that the given activity has not been implemented.

Activity 3.1.2.3.

Status: fully completed

Activity implementation progress: 100%

Modified indicators:

1. Number of meetings per year (at least once in six months);
2. Content and importance of discussed issues; and

¹⁸⁰ Article 8¹.5.d), Law of Georgia on the Prosecutor's Office; 18.09.2015; available in Georgian at: <https://matsne.gov.ge/ka/document/view/19090>, (accessed 6 January 2018).

¹⁸¹ The first report of the Chief Prosecutor of Georgia dates to 30 May 2016 and covers the period from 25 November 2015 until 30 May 2016; the second report dates to 28 November 2016 and covers the period in-between 30 May and 28 November 2016 and the third report dates to 19 July 2017 and covers the year 2016 and the first half of 2017, which is exactly the timeframe planned for the HRAP.

¹⁸² According to the report, in 2016, the investigation was launched on 184 criminal cases and criminal prosecution started against 10 persons. The criminal prosecution was launched on the following articles of the Criminal Code of Georgia: against 1 person - on Article 144¹ (torture); against 4 persons – on Article 144³ (inhuman or degrading treatment); against 5 persons – on Article 333 (abuse of power). In the first 6 months of 2017, investigation on ill-treatment was launched in 99 criminal cases and prosecution against 8 persons. Out of these 8, criminal prosecution on Article 144³ (inhuman or degrading treatment) of the Criminal Code of Georgia was launched against 7 staff members of the Penitentiary establishments and on Article 333 (abuse of power) – against 1 staff member of the police. Report of the Chief Prosecutor of Georgia; 19 July 2017. P.51, Georgian version is available at: <http://pc.gov.ge/block/index/465>, (accessed 6 January 2018).

3. Number of meetings held.

Assessment:

To assess the given activity, we addressed the Prosecutor's Office of Georgia and requested information on the number of meetings of local councils on crime prevention, held from January 2016 till 31 October 2017 and the topics of the meetings. We also asked for the protocol of the meetings in case the latter existed.

Unfortunately, none of the letters received from the Chief Prosecutor's Office contains the information on the implementation of this activity. The report on the implementation of the HRAP approved by the government says that, in March 2016, the Prosecutor's Office launched a new project Local Councils, which are the coordinating bodies on a regional level. The council consists of the representatives of law-enforcement bodies, local self-government, executive authority, non-governmental organisations and public. The main function of the council is to discuss the criminal situation in the region, making decisions on relevant preventive measures, elaboration of initiatives as well as developing the co-coordinated plan on fight against crime in cooperation with other governmental and non-governmental organisations.

According to the same report, in 2016, local council meetings were held in a number of cities. At the meetings, participants were informed on the aim and functioning of the local council taking into consideration the regional particularities. They also received information on the results of surveys on domestic violence and on sexual intercourse with a minor (younger than 16). A number of preventive measures were arranged in the regions within the framework of the local councils in which non-governmental organisations were also actively involved together with government representatives.¹⁸³

In 2017, 14 meetings of local councils were held in the following cities: Kutaisi, Mtskheta, Samtredia, Tbilisi, Telavi, Rustavi, Gori and Zugdidi. At the Tbilisi meetings, the local council, with the participation of state agencies and non-governmental organisations, discussed preventive measures on drug-related crimes whereas the other councils discussed preventive measures applied in domestic violence cases. Besides, the report drafted on the work of the local councils was presented to the advisory board.¹⁸⁴

Taking into consideration all the above-mentioned, we could conclude that the given activity has been fully completed.

Activity 3.1.2.4.

Status: Not implemented

¹⁸³ Interim report of the Government of Georgia on the implementation of the Human Rights Action Plan for 2016-2017, 2017, p.23, available at: <http://myrights.gov.ge/uploads/files/docs/2085HRAActionPlan16-17ENG.PDF>, (accessed 6 January 2018).

¹⁸⁴ Report of the Prosecutor's Office on the implementation of the Chapter III of the HRAP, p. 8, February 2018.

Activity implementation progress: 0%

Modified indicators:

1. Analysis has been carried out;
2. Gaps in the appointment and promotion procedures of prosecutors revealed based on the analysis performed; and
2. New rule on appointment and promotion procedures has been developed, the quality of which is in line with the objective; appointment and promotion criteria are precisely formulated in the law/bylaws.

Assessment:

To assess the activity, we addressed the Chief Prosecutor's Office and requested information on whether the changes had been introduced regarding the rules on appointment and promotion of prosecutors. We also asked to send us a copy of the relevant normative act or the Chief Prosecutor's order, which regulated the functioning and duties of the consultative council.

Unfortunately, none of the letters received from the Chief Prosecutor's Office contain the information on the implementation of this activity. The report on the implementation of the HRAP approved by the government says that, according to an order of the Chief Prosecutor, of 19 February 2016, a consultative council was set up to discuss important issues for strengthening the Prosecutor's Office, including the promotion of staff members. The consultative council has already studied several persons' cases and provided the Chief Prosecutor with recommendations on their promotion. These recommendations were taken into consideration. According to the same report, one of the objectives of the Strategy of the Prosecutor's Office for 2017-2018 is to carry out the reforms, which brings light to the rule on appointment of prosecutors.¹⁸⁵

At the same time, the report of the Chief Prosecutor to the Council of Prosecutors mentioned the work of the consultative council on number of issues, including promotion, dismissal and demotion of prosecutors. This issue was discussed during the assessment of action 3.1.3.3.

The information received from the Chief Prosecutor's Office after discussions around the interim report showed that a working group has been set up for improving the rules on appointing and promoting ordinary prosecutors without competition, by which time, elaboration of the draft was ongoing.

Therefore, one could conclude that the activity planned for the end of 2016 has not been implemented, in particular: review of the existing procedure on appointment and promotion of prosecutors and introduction of relevant changes in legislative and normative acts did not take place. It is also vague as to which criteria does the consultative council uses in its decision-making process on promotion and/or demotion of prosecutors, as the Chief

¹⁸⁵ Interim report of the Government of Georgia on the implementation of the Human Rights Action Plan for 2016-2017, 2018, p.36.

Prosecutor's Office failed to introduce any normative act to govern the work of the council. Moreover, we received the information that such regulations do not exist at all. It should be noted that it was the initiative of the Public Defender of Georgia and some of the non-governmental organisations to include this activity in the HRAP.

Objective 3.1.3

Objective implementation progress: 64%

Public trust to a great extent depends on unbiased, fair and efficient work of the staff-members of the Prosecutor's Office. For the implementation of this objective, the HRAP includes the following 3 activities: introduction of prosecutors' performance evaluation system, adoption of the new Code of Ethics and introduction of a transparent system for prosecutors' disciplinary responsibility. This objective is the result of monitoring of the reform of the prosecution system. The fourth report¹⁸⁶ of the Council of Europe Group of States against Corruption (GRECO) reveals disproportion between disciplinary responsibility envisaged by law and disciplinary misconduct. Therefore, the GRECO recommended to review the existing rules on disciplinary offences, ensure more precise definition of disciplinary offences and proportionality of sanctions. The same report underlines the need to resume working on the Code of Ethics, introduce it to all prosecutors and make it public.

The importance of the Code of Ethics is mentioned in the Report on Progress in the Implementation of the National Strategy for the Protection of Human Rights in Georgia 2014-2020, and Recommendations as to Future Approaches, drafted by Maggie Nicholson in March 2017. Maggie Nicholson, the expert, recommends the Prosecutor's Office of Georgia to approve the Code of Ethics, which better determines disciplinary prosecution, as soon as possible. At the same time, in the expert's opinion, the Code of Ethics should be a constantly updated document which should be disseminated among prosecutors and followed by practical measures for ensuring its implementation.¹⁸⁷

The assessment of the Prosecutor's Office made by the Public Defender in his special report also deserves consideration. According to the document, the General Inspectorate of the Prosecutor's Office launches official inspection only in few cases; the normative act does not define the criteria for launching the inspection and the recommendation of the General Inspectorate might not be taken into consideration without further justification by the consultative council working on the promotion and disciplinary issues of the staff members; thus, a person might not be held responsible. It is also important to keep the applicants informed on the developments of their cases and on the closing of their cases, which is a problematic issue. Moreover, the Public Defender recommends ensuring the transparency of

¹⁸⁶ GrecoEval4rep (2016)2, January, p. 57, available at: <https://rm.coe.int/16806dc116>, (accessed 10.01.2018).

¹⁸⁷ Report on Progress in the Implementation of the National Strategy for the Protection of Human Rights in Georgia 2014-2020, and Recommendations as to Future Approaches, Maggie Nicholson; March 2017, page 21, available at: <http://ewmi-prolog.org/images/files/4265ReportonimplementationHumanRightsStrategyENGEWMIUNDP.PDF>, (accessed 10.01.2018).

internal inspection, periodical publication of relevant statistical data and making the website more user-friendly for citizens.¹⁸⁸

Taking into consideration the above-mentioned recommendations while assessing the implementation of the given objective in terms of introduction of controlling mechanisms, it turned out that only one activity (elaboration of Code of Ethics) has been implemented, whereas one of the other two activities (introduction of transparent disciplinary responsibility) is mostly completed and the other one (introduction of the performance evaluation system of prosecutors) is mostly incomplete.

Activity 3.1.3.1.

Status: Mostly incomplete

Activity implementation progress: 40%

Modified indicators:

1. Performance evaluation criteria for the prosecutors has been elaborated and approved;
2. The criteria are in line with the main characteristics of the prosecution work (number of cases, launching prosecution, termination of prosecution, plea bargaining, diversion, consideration of complaints, participation in the substantial consideration of a case, participation in appellate hearings, etc.);
3. % of the evaluated prosecutors; and
4. Results of the evaluation; % of promoted, demoted and dismissed prosecutors out of the total number.

Assessment:

Considering the fact that the activity envisaged is not only the elaboration of the performance evaluation system but also its introduction, we addressed the Chief Prosecutor's Office of Georgia and requested information on the criteria of the performance evaluation of prosecutors as well as the number of evaluated prosecutors and, as a result of the evaluation, the number of promoted, demoted or dismissed prosecutors.

The letter of 4 September 2017 informed us that the performance evaluation system of prosecutors was approved by the Chief Prosecutor of Georgia on 31 January 2017, whereas from the letter of 27 December 2017, we received additional information that the

¹⁸⁸ The results of the study by the Public Defender of Georgia on disciplinary proceedings against the employees of the Chief Prosecutor's Office, Ministry of Internal Affairs, Ministry of Corrections and State Security Service of Georgia based on individual complaints, Tbilisi, 2017, p. 7, available at: <http://www.ombudsman.ge/en/reports/specialuri-angarishebi/disciplinary-proceedings-against-the-employees-of-the-prosecutors-office-of-georgia-ministry-of-internal-affairs-penitentiary-and-state-security-service-of-georgia-on-the-basis-of-individual-complaints.page>, (accessed 10.01.2018).

performance evaluation process of prosecutors had been launched and the first results would be available in the first quarter of 2018.

Therefore, it seems that in this part of HRAP, the activity is mostly incomplete. The performance evaluation system, which is in line with the main characteristics of the prosecutorial work by its content, has been elaborated and approved by the Chief Prosecutor.¹⁸⁹ According to the given document, performance evaluation will be based on managing prosecution, support of the state prosecutor at court hearings, justified procedural documents, discipline, ethical norms, results of participation in training sessions, volunteering and pro-activeness. According to the authors of the document, the introduction of the performance evaluation system will ensure the improvement of quality of prosecutorial work, transparency in promotion and disciplinary responsibility system as well as increasing the motivation of the prosecutors. Apart from the above-mentioned, the performance evaluation process will reveal the direction of work requiring qualitative improvement and ensure undertaking additional steps towards this aim.¹⁹⁰

It should be noted that by the end of 2017, performance evaluation has not been conducted for any of the prosecutors and, therefore, there is no information about promoted, demoted or dismissed employees as a result of the evaluation, although the process had been launched.

Taking into consideration the above-mentioned, since the elaboration of the system constitutes only 40% of the activity implementation, we think that the activity is mostly incomplete.

Activity 3.1.3.2.

Status: Fully completed

Activity implementation progress: 100%

Modified indicators:

1. The Code of Ethics has been adopted;
2. The provisions of the new Code of Ethics have been improved compared to the previous document; and
3. The new Code of Ethics is in line with the goal and objective.

Assessment:

This part of the HRAP envisaged adoption of the new Code of Ethics for the employees of the Prosecutor's Office. As only the adoption of the Code of Ethics was marked as the indicator of the implementation of the activity, the working group tried to refine the

¹⁸⁹ Prosecutor's performance evaluation system, 2017, available in Georgian at: <http://pog.gov.ge/res/docs/prokurortashefasebissistema.pdf>, (accessed 10.01.2018).

¹⁹⁰ *Ibid*, p. 2.

indicators and added the level of improvements in the new Code of Ethics and how it was in line with the goal and objectives of the given action plan.

The information received from the Prosecutor's Office of Georgia shows that although the activity was planned to be implemented in 2016, the new Code of Ethics¹⁹¹ was approved by Order no. 234 of the Minister of Justice on 25 May 2017. The same order invalidated the previous Code of Ethics¹⁹² for the employees of the Prosecutor's Office, approved by the General Prosecutor on 19 June 2006.

Comparison of the invalidated code and the new Code of Ethics shows that the latter contains obligations on protecting human rights, including the respect for private life while working on personal information; underlines inadmissibility of any type of discrimination on the part of an employee of the Prosecutor's Office; prohibits revealing and personal use of not only secret information, but also any other confidential and non-public information; obliges the employees of the Prosecutor's Office to act with dignity even outside the work and to take care of the reputation; and the employees' actions in the internet space should be correct and be in line with the principle of the Code of Ethics. Moreover, current Code of Ethics defines types and reasons for disciplinary responsibility, which should be considered as a step forward in terms of the transparency of the process.

We think that the weakness of the current Code of Ethics is that it does not contain the obligation of the prosecutor to obey court practice along with the law, internal instructions and public interest in general; abstain from expressing one's religious views publicly if it violates others' human rights; not to use the service property for personal use and in case of damaging such property, to compensate the state for the damage. Still, these deficiencies do not have an impact on the implementation progress of the activity.

Therefore, despite the late adoption of the Code of Ethics, it is fully in line with the modern tendencies and challenges of the Prosecutor's Office as well as with the experts' recommendations. It describes in detail the basis and types of disciplinary responsibility, some of the issue are regulated in a new way and generally it is in conformity with the HRAP goal and objectives. Therefore, we believe that this activity has been fully completed.

Activity 3.1.3.3.

Status: Mostly completed

Activity implementation progress: 60%

Modified indicators:

1. The mechanism of disciplinary responsibility is established, which ensures the joint decision-making process;

¹⁹¹ Code of Ethics for the employees of the Prosecutor's Office of Georgia, 25 May 2017; Georgian version available at: <https://matsne.gov.ge/ka/document/download/3679145/0/ge/pdf>, (accessed 10.01.2018).

¹⁹² Code of Ethics for the employees of the Prosecutor's Office of Georgia, 12 June 2006; Georgian version available at: <https://matsne.gov.ge/ka/document/download/65056/0/ge/pdf>, (accessed 10.01.2018).

2. Elaborated system allows proper functioning of fair and unbiased legal proceedings: the mechanism ensured a transparent system for prosecutors and gives them the possibility to defend themselves in case of any misconduct; and
3. In case of necessity, the types and number of follow-up decisions on disciplinary responsibility.

Assessment:

In order to assess the present activity, we addressed the Chief Prosecutor's Office of Georgia and requested information on what has been done in 2016-2017 in terms of establishing a transparent system for prosecutors' disciplinary responsibility; when the Consultative Council¹⁹³ was established and how many cases have been considered since then until 31 October 2017; in case of disciplinary misconduct, what types of responsibility were used in 2016-2017 (until 31 October 2017) and how many such decisions were made.

Despite the above-mentioned request, the letters received from the Prosecutor's Office of Georgia do not contain any information regarding the implementation of this activity. However, this information could be found in the report¹⁹⁴ of the Chief Prosecutor to the Council of Prosecutors as of July 2017.

As stated in the report, the head of the Consultative Council, the Chief Prosecutor of Georgia, took into consideration all the recommendations provided by the council.¹⁹⁵

The report and the information published on the website of the Prosecutor's Office give the possibility to conclude that the Consultative Council has been established in the Prosecutor's Office in the beginning of 2016. Since then, it has considered number of cases on encouragement, promotion and disciplinary responsibility of prosecutors. Though it is difficult to find out from the report what kind of information was used as a ground for the decisions. It is also vague as to what other measures have been undertaken to create a

¹⁹³ We received the information on the existence of the Consultative Council during the meeting with the representatives of the Prosecutor's Office. Information is available at: http://pog.gov.ge/geo/news?info_id=849, (accessed 10.01.2018).

¹⁹⁴ The General Inspectorate of the Prosecutor's Office conducted 97 internal inspection against 181 employees. Disciplinary sanctions were imposed on 37 employees due to deficiencies in work; recommendations were sent to 70 employees; 17 employees were dismissed upon their request; and 2 employees were demoted to lower positions. At the same time, the General Inspectorate launched investigation in 27 criminal cases; criminal prosecution – against 7 employees; diversion was used against 1 employee whereas 19 pled guilty (3 advocates; 10 citizens; 1 advisor at the Prosecutor's Office; 1 former prosecutor; 1 employee of the public registry; 3 notaries). In line with the needs assessment, 214 employees participated in the training sessions on ethical standards and conflict of interest.

In 2016 and the first half of 2017, the General Inspectorate sent to the Consultative Council reports on the inspection of the work of 60 employees and only in 34 cases it was considered to impose disciplinary sanctions. At the same time, the Consultative Council discussed the promotion of 299 employees, which was positively decided in case of 108 persons. The Council also discussed the issue of promotion to managerial post of 58 employees and a positive decision was made in 22 cases.

¹⁹⁵ *Ibid*, p. 62.

transparent system for prosecutors' disciplinary responsibility apart from establishing the Consultative Council in which the same prosecutor who was alleged of misconduct could participate.

We should assess as a positive tendency the fact that the Code of Ethics for the employees of the Prosecutor's Office of Georgia, approved by the Minister of Justice on 25 May 2017, contains the grounds for disciplinary responsibility and types of disciplinary misconduct. It makes the application of disciplinary responsibility and their grounds¹⁹⁶ more transparent and clear compared to the previous Code of Ethics.

It should also be taken into consideration that this activity was included in the action plan following the assessment by the Public Defender of Georgia which recommended ensuring the transparency by periodical publication of the relevant statistical data and making the website more user-friendly for the citizens/applicants. Unfortunately, we could not find any information on the implementation of this recommendation.

Coming from the above-mentioned, we consider the activity to be mostly completed by 60%. Because, the objective and relevant recommendations required establishing a system of disciplinary responsibility for prosecutors, transparent for public, which was not fulfilled.

Objective 3.1.4

Objective implementation progress: 100%

Improving qualifications of the prosecutors in terms of human rights protection is one of the objectives of the HRAP. For the implementation of the present objective, the HRAP includes 2 main activities, viz., provide training sessions on various topics for prosecutors and improve the rules for interviewing witnesses and provide respective training sessions to prosecutors. This part of the action plan is much more refined and the given indicators provide the possibility of qualitative assessment of its implementation. Still, the working group reviewed the indicators and together with the working group of the HRAP, they were modified and further used for the present assessment.

Finally, it turns out that both activities envisaged by the HRAP have been fully completed.

Activity 3.1.4.1. Provide respective training to prosecutors

Status: Fully completed

Activity implementation progress: 100%

Modified indicators:

¹⁹⁶ Code of Ethics of the employees of the Prosecutor's Office, 25 May 2017, Articles 24 and 25, Georgian version available at: <https://matsne.gov.ge/ka/document/download/3679145/0/ge/pdf>, (accessed 10.01.2017).

1. The training plan has been elaborated;
2. Number of organised training sessions;
3. The relevance of the topics of training sessions with the objectives of the HRAP;
4. Percentage of the trained prosecutors on certain topics out of the total number of prosecutors;
5. Percentage of trained prosecutors from regional offices; and
6. Plan of training sessions until the end of 2017.

Assessment:

To assess the implementation of the activity, we addressed the Chief Prosecutor's Office of Georgia and requested information on the topics of the training sessions as well as their geographical scope. The received information shows that the Centre of Professional Development and Career of the Department of Human Resources and Development of the Prosecutor's Office of Georgia, provides training needs assessment at the end of each year, which defines training priorities for the following year. According to the same letter, in 2016 and during 10 months in 2017, 1,075 prosecutors participated in 63 different training sessions of various length and content, which are fully in line with the goal envisaged by the HRAP, namely, fair, transparent and effective criminal prosecution, oriented towards human rights protection. Within this period, the training sessions were organised on the following rights envisaged by the European Convention on the Protection of Human Rights: right to a fair trial, prohibition of discrimination, right to life, prohibition of torture and ill-treatment, etc. From 1 January 2016 until 15 August 2017, 81 activities and 8 study visits were organised on human rights protection issues. Prosecutors from all the regional offices took part in the training courses. In 2016, 62 interns participated in a 2-months training course, which also envisaged topics on human rights protection. According to the information received from the Chief Prosecutor's Office, it is also planned to organise an introductory training course for interns and training sessions for prosecutors by the end of 2017 on the following topics: fight against hate speech, fight against domestic violence and violence against women, right to respect for private and family life, personal information, etc.

Therefore, we consider that the Prosecutor's Office fully completed the obligation undertaken under the HRAP to provide training sessions for all prosecutors and interns on human rights issues. The training covered the following important topics on the protection of human rights: right to life, right to a fair trial, right to liberty, fight against hate speech, fight against domestic violence and violence against women, right to respect for private and family life, personal information, etc.

Activity 3.1.4.2.

Status: Fully completed

Activity implementation progress: 100%

Modified indicators:

- | |
|---|
| <ol style="list-style-type: none">1. Percentage of trained prosecutors out of total number;2. Percentage of trained prosecutors from regional offices out of the total number of prosecutors;3. Rules on interviewing witnesses have been elaborated; and4. Elaborated rules have been improved. |
|---|

Assessment:

According to the present activity, the Prosecutor's Office had the obligation to train prosecutors on the changes made to the Criminal Procedure Code of Georgia in December 2015 on interviewing witnesses. After having used the new rules in practice, to improve them, the Prosecutor's Office had to initiate relevant changes for the Government of Georgia, although according to information from the Prosecutor's Office as of 4 September 2017, it turned out that from 1 January 2016 until 31 December 2017, 21 activities were organised on the topic of interviewing witnesses (6 activities in Tbilisi and 15 in the regions), that allowed to retrain 339 prosecutors and 90 investigators. Out of the total number, 231 persons (171 prosecutors and 60 investigators) were from Tbilisi offices and 198 (138 prosecutors and 30 investigators) were from regional offices. Training on introduction of the new rules on interviewing witnesses aimed at proper implementation of the legislation in practice.

By the letter sent on 27 December 2017, the Prosecutor's Office informed us that the process of improving the rules on interviewing witnesses and the relevant training sessions continued in 2017. In December 2017, investigators from the Prosecutor's Office participated in training sessions on interrogation/interviewing techniques, organised in cooperation with the Justice Department of the United States.

Taking into consideration the above-mentioned, we believe that the Prosecutor's Office of Georgia fully completed the obligation on training its staff on the new rules. In terms of improving the rules on interviewing, which is also envisaged under the HRAP, no steps have been undertaken as it was decided that the study of practice had not revealed the need.¹⁹⁷

Taking into consideration the above-mentioned, we conclude that the activity has been fully completed.

Objective 3.1.5

Objective implementation progress: 46%

¹⁹⁷ Report of the Prosecutor's Office on the implementation of the Chapter III of the HRAP, p. 10, February 2018.

The present objective envisages capacity building of the training centre of the Prosecutor's Office and elaboration of the training programs.

Although the present objective is very important for strengthening the Prosecutor's Office, the analysis of this objective and the relevant activity shows inconsistency with the HRAP goal. It is impossible to measure whether capacity building of the training centre that means opening and its equipment and elaboration of the strategy and action plan of the teaching program helped or will help the Prosecutor's Office to become more independent, fair, effective, transparent and human rights oriented.

Moreover, along with the capacity building of the training centre, the objective envisaged elaboration of training programs, though none of the planned activities were dedicated to it.

In total, 4 activities were planned for the implementation of this objective. Only one of them (develop a strategy and action plan) is fully completed; another one (equipment of the library) is mostly completed whereas none of the activities related to e-programs have been implemented.

Activity 3.1.5.1.

Status: Not implemented

Activity implementation progress: 0%

Modified indicators:

1. Technical specifications have been prepared;
2. Technical specifications are in line with the objective and the goal, in particular, ensures the capacity building of the training centre and elaboration of the training programs;
3. E-program has been developed; and
4. E-program is in line with the objectives and the goal ensures the capacity building of the training centre and elaboration of the training programs

Assessment:

To assess the given activity, we addressed the Prosecutor's Office of Georgia and requested public information on whether the e-program on training needs assessment and analysis had been elaborated and asked to provide detailed information on the project. Furthermore, for the efficient assessment of the activity, we asked about the frequency of the use of the e-program, how many prosecutors filled in the questionnaires since its launch and in how many cases the needs/requests of the prosecutors were satisfied.

A letter¹⁹⁸ sent from the Prosecutor's Office on 27 December 2017 in reply stated that a working group had been set up on the e-program on training needs assessment, the concept of

¹⁹⁸ Chief Prosecutor's Office of Georgia, 27 December 2017, letter no. 13/84670, p. 5.

the e-program has been already drafted and at the time of sending the letter the group was working on technical specifications. According to the letter, development of e-program on training needs assessment and analysis was planned for 2018.

Taking into consideration that the HRAP envisaged development of an e-program on training needs assessment and analysis in 2016-2017 and only preparation works have been undertaken and the activity is postponed for the year 2018, in our opinion the activity has not been implemented.

Activity 3.1.5.2.

Status: Fully implemented

Activity implementation progress: 100%

Modified indicators:

1. The Strategy and Action Plan have been elaborated and/or the relevant chapter is included in the overall Strategy of the Prosecutor's Office and its Action Plan; and
2. The Strategy and the Action Plan define objectives and priorities for the capacity building of the training centre; the timeframe for activities is properly designed.

Assessment:

To assess the activity, we addressed the Chief Prosecutor's Office and officially requested information about whether the Strategy and Action Plan for the training centre had been developed and, in case of a positive answer, we asked to send us a copy of the document. Unfortunately, the letter sent from the Prosecutor's Office in reply did not contain any answer to our question. However, during the meetings with the persons responsible on the implementation of the HRAP, we learned that the overall Strategy and Action Plan of the Prosecutor's Office included all the working directions and capacity building of a training centre was among them.

Hence, for the assessment of the given activity, we studied the Strategy of the Prosecutor's Office approved by the Chief Prosecutor on 31 January 2017, the XII Chapter of which aims at increasing the professionalism and qualifications of the employees of the Prosecutor's Office. For this aim, the Prosecutor's Office of Georgia plans to use target-oriented training sessions. There are plans on the elaboration and introduction of new training programs, which will be based on interactive methods, etc.¹⁹⁹

Therefore, one could conclude that the strategy of capacity building of the training centre is included in the overall Strategy of the Prosecutor's Office and this part of the activity has

¹⁹⁹ The Strategy of the Prosecutor's Office of Georgia (2017-2021), p. 55, available at: <http://pog.gov.ge/res/docs/saqartvelosprokuratuisstrategia.pdf>, (accessed 15.01.2018).

been fully completed. Although, one could argue whether the strategy fully reflects objectives and priorities necessary for the capacity building of the training centre. In particular:

The objective of the above-mentioned chapter (improving the professionalism and qualifications of the employees) of the strategy are the following:

- Providing the Prosecutor’s Office with qualified and professional employees;
- Facilitation of introduction of international standards on human rights protection in the system;
- Improve the quality of investigation and prosecution on certain crimes;
- Facilitate the introduction of holistic approach in practice;
- Properly implement the obligations undertaken by the Prosecutor’s Office within the framework of different action plans;
- Encourage the employees’ professional development and promotion;
- Awareness raising, promotion of legal education and co-operation with universities; and
- Development of flexible e-programs for the employees.

To achieve the above-mentioned objectives, the strategy plans to ensure training of the employees; elaboration and introduction of new training programs; introduction of the mentorship program; introduction of new e-products; organisation of educational activities for students and reform of the ranking system.

Based on the analysis of the information available in the strategy, we could conclude that the Strategy of the Prosecutor’s Office and its XII Chapter (paragraph 6) fully reflects the objectives needed for the capacity building of the training centre, namely, introduction of a new e-program, ensuring the availability of the relevant literature and facilitation of the process; training of prosecutors on the topic of great priority such as prohibition of discrimination, right to fair trial, skills used at the court, protection of women’s rights and gender equality, right to respect for private and family life, hate speech; etc. Because the Action Plan of the Strategy is not public, we lack the opportunity to assess the timeframe of the planned activities. Despite all the above-mentioned, we conclude that this activity has been fully implemented.

Activity 3.1.5.3.

Status: Mostly completed

Activity implementation progress: 80%

Modified indicators:

1. Number of provided literature; and
2. Relevance of the provided literature with the prosecutorial work.

Assessment:

To assess the implementation of the activity, we addressed the Prosecutor's Office with the official request of information on how many books were added to the library of the Prosecutor's Office from 1 January 2016 until 31 July 2017 and the type of literature procured. The letter sent from the Prosecutor's Office in reply on 4 September and 27 December 2017 informed us that the library had been equipped with legal literature of 22 different titles in the period from 1 January 2016 until 31 December 2017. Therefore, we fail to provide quantitative analysis of the activity's implementation. Though, as for the content of the books, they are fully in compliance with the work of the Prosecutor's Office as well as with the goal and objectives of the HRAP.

Moreover, one should take into consideration the fact that the existing literature does not fully meet the needs of the Prosecutor's Office either in terms of fair and effective criminal prosecution or human rights protection.

Thus, we could conclude that the activity has been mostly completed. We would also like to give a recommendation to the training centre of the Prosecutor's Office to equip the library with literature that would contain important aspects such prohibition of torture, effective investigation of ill-treatment, liberty and security, fair trial, freedom of expression, freedom of religion, right to assembly and demonstrations. etc., which we consider to be the priority of the prosecutor's work.

Activity 3.1.5.4.

Status: Not implemented

Activity implementation progress: 0%

Modified indicators:

1. E-library has been developed; and
2. The relevant of uploaded literature with the activity.

Assessment:

To assess the implementation of the activity, we addressed the Prosecutor's Office with an official request for public information, whether the e-library had been developed, how many books were available in the e-library and what kind of books were uploaded there.

In reply to our letter, we received the information²⁰⁰ that a working group has been set up for the development of an e-program. The concept has been drafted in co-operation with the EU and the work on the technical specifications was ongoing. According to the letter, introduction of the e-library was planned for 2018-2019.

Since the indicator for this activity was introduction of the e-library which has not been currently the case, we conclude that this activity has not been implemented.

²⁰⁰ Letter of the person responsible for providing public information, 27 December 2017.

3. Recommendations and Suggestions

To the group working on the Human Rights Action Plan of the Government of Georgia for 2018-2020:

To the Prosecutor's Office:

1. Conduct an analysis of prevalent crimes and elaborate relevant recommendations for an effective criminal policy;
2. Ensure timely introduction of the handbook on holistic methodology of investigation and evaluation;
3. Prepare the analysis of alternative mechanism of prosecution – diversion of adults and introduce it to the prosecutors;
4. Prepare and publish quantitative and content-based quarterly report on criminal cases on human rights violations;
5. Study the rules of appointment and promotion of ordinary prosecutors and elaborate the changes for their improvement;
6. Continue intensive work for the establishment of the system of disciplinary responsibility of the prosecutors, which would be transparent for public, in line with the Public Defender's recommendations;
7. Elaborate the monitoring mechanism of the implementation of some of the activities envisaged under the action plan (methodology of investigation, Code of Ethics, performance evaluation system) and introduce it into practice; and
8. Additionally, equip the library with literature (including foreign literature) that covers human rights protection, discrimination and other issues relevant to the work of the Prosecutor's Office.

Protection of Human Rights in Penitentiary System

Executive Summary

This section of the report covers the findings of the monitoring conducted on Chapter 4 of Georgia's Governmental Action Plan of Human Rights Protection (for 2016 – 2017). Chapter 4 of the Action Plan is linked with one of the priorities set by Georgia's National Strategy of Human Rights Protection (for 2014 – 2020) – development of a penitentiary and probation system that complies with international standards and care mechanisms for former prisoners.

The legislative and other changes made in the reporting period improve prisoners' situation to a certain extent. However, more needs to be done to achieve the goal of establishing a penitentiary system that complies with universal and European standards. The amendments, as a rule, fail to be based on systemic analysis of legislation and needs assessment. The discriminatory approach adopted towards prisoners placed in special security penitentiary establishments deserves negative assessment.

The measures aimed at preventing overcrowding similarly lack systemic approach. Relevant changes are not planned to be made in either normative acts or practice. The steps made towards effective functioning of the conditional early release mechanism are insufficient as well.

The implementation of individual approaches, risk assessment and other modern mechanisms is commendable. However, this process is punctuated with serious shortcomings as convicted persons are not involved in the assessment and reassessment processes.

The measures aimed at raising awareness among prisoners are insufficient and only apply to certain portion of the prison population.

Ensuring accessibility of existing appeal procedures, their effective functioning and protection from impunity is problematic. These problems are largely related to the scarcity of the appropriate activities implemented by the state.

It is important to accelerate the process of improving prisoners' living conditions, prison infrastructure and of providing prisoners with relevant goods. On the one hand this is a continuous process, but on the other hand the minimum standards should have already been ensured in all the establishments. The infrastructure required for long visits is still missing in five establishments. This is discriminatory towards the convicted persons placed in those establishments.

Storage of convicted persons' personal files, medical records and other documentation continues to fail to fully comply with the requirements of the Law on Personal Data and the Law on Patient's Rights.

Carrying out relevant activities, rehabilitative, employment or educational programmes for persons held in penitentiary establishments remain particularly problematic. This is related to the nonexistence of a uniform policy and interagency coordination as well as lack of strategic planning.

Preventive and adequate responsive measures on ill-treatment, suicide and self-harm cases need further improvement and systemic integration. In this regard, adoption of the suicide

prevention programme is a step forward. However, at this stage, it is practically not feasible to assess its effects.

Improvement of penitentiary healthcare services and retraining of medical personnel are underway. However, the intensity of the process is insufficient. No thoroughly defined steps have been undertaken on the way of integration with the civil healthcare sector and adequate measures for improving the quality of medical services have not been ensured.

The challenges in terms of the rights of vulnerable groups remain to persist. The Ministry of Corrections has failed to conduct assessment of gender-based needs of sentenced female prisoners and needs assessment in terms of disabled prisoners. Similarly, foreign prisoners' rights are secured inadequately. There are no activities planned to ensure greater respect for the rights of ethnic, religious and sexual minorities.

An increase in the range of non-custodial punishments is commendable. However, to ensure their proper implementation in practice, the capacities of the National Probation Agency (NPA) should increase and develop further.

The efforts of the Penitentiary and Probation Training Centre (PPTC) aimed at offering quality and modern study programmes and training modules are to be mentioned positively. The Ministry of Corrections, however, in its turn should ensure training and retraining of all staff members and make efforts towards attracting and retaining professional personnel.

General Overview

During the past few years, numerous changes were initiated in the penitentiary system, which were aimed at improving the protection of prisoners' rights to attain the set goal, i.e., creation of a penitentiary system that complies with international standards. However, despite these initiatives, many other improvements need to be made.

The Human Rights Action Plan (HRAP) fails to indicate any universal or European standard relied upon by the authorities while elaborating certain amendments. This hampers the assessment processes.

Integrating the so-called "penitentiary" and "civil" healthcare systems and establishing equal standard: equivalence of healthcare is one of the fundamental premises of the European Prison Rules. There are separate verticals of penitentiary and community-based healthcare systems in Georgia. The aim of the Healthcare Strategy of the Penitentiary System for 2011 – 2013 (joint order no. 24-no.28/n of 5 February 2010) was to integrate these two systems. However, unfortunately, this is no more considered a priority in the present governmental strategies. The extension of the community-based healthcare regulation (licensing and certification) to the units of prison medical services has been one of the main achievements of the implementation of the plan. However, this process has not been expanded, which is one of the critical issues. Those providing medical services within the penitentiary system remain to be staff members of the latter and, therefore, independence of their professional activity remains questionable.

In terms of accountability, it is a significant challenge that in many cases statistical data is unavailable or where available, the quality is low. It turns out that, on the one hand, there is no data collected within the system that would enable a stakeholder to discuss the efficiency

of the implementation of a programme. On the other hand, the collected data is not systematised in various reports; there are different quantitative indicators identified regarding the same data.²⁰¹

The information on expenditure cannot practically be subjected to analysis; the programme budget drafted in accordance with the requirements of the Law of Georgia on State Budget fails to comply with the priorities determined in the strategy.

Assessment of Other Relevant Action Plans

This part of the report discusses other relevant governmental plans and assesses their duplication, economy and efficiency. Furthermore, the report identifies coordination issues in the process of implementing the goals/objectives/activities referred to in relevant governmental plans.

The monitoring of the government's action plan has revealed the unreasonableness of the set timeframes. In most of the cases, the actual terms of conducting activities went beyond the pre-determined timeframes. This demonstrates the weakness in interagency coordination among ministries and inadequate communication with the government's administration.

The Uniform Strategy and the Action Plan of the Ministry of Corrections of Georgia for 2015 – 2017 mainly cover the activities provided for in the government's action plan and, in a way, elaborate on them. However, unlike the HRAP, the ministry's action plan should be more specific.

The Uniform Strategy and the Action Plan do not specify the amount of budgetary and non-budgetary (e.g. donors) resources allocated for various goals. The ministry's action plan and the programme budget fail to coincide. Therefore, without a separate research, it is not feasible to conclude that there is a financial overlap/duplication between these two plans.

The existing discrepancies between the two action plans in terms of timeframes and workloads remain unclear. For example, the government's action plan provides for enhancing qualification of medical personnel. However, the activities determined within the ministry's strategy are on a larger scale and cover the elaboration of a programme of continuous medical education and professional development for doctors and nurses in 2017 (it would be, however, desirable that continuous/regular retraining of non-medical personnel on first aid, personal protective equipment (PPE), patients' rights and other relevant topics was also provided).

On the other hand, the ministry's plan reduces the volume of the activities that the action plan provides in terms of treatment/rehabilitation of substance-addicted persons. The ministry's plan aims at implementing only long-term replacement therapy, whereas the HRAP provides for the treatment of persons addicted to psychoactive substances (not only opiates) as well.

²⁰¹For instance, the total number of probationers indicated in the 2016 annual report of the Ministry of Corrections and in the 2016 report of the National Probation Agency.

The ministry's plan completely leaves out the improvement of the psychiatric care system except in terms of psychosocial rehabilitation services for a certain group of convicts and probationers. This omission is a matter of concern.

Apart from the above-mentioned, other relevant documents related to certain specific directions have also been taken into consideration when drafting the report.²⁰²

Assessment of Objectives and Activities

4.1: Develop a penitentiary system in accordance with international standards.

The functioning of Georgia's penitentiary system has been punctuated with serious shortcomings for years. This has negatively affected the protection of prisoners' rights. Grave incidents of human rights violations are documented in the reports of Georgian and international organisations. Accordingly, the set goal should be to prevent such incidents and eradicate their consequences.

The goal is worded in the vaguest terms and it tends to be virtually similar to any other goals and objectives listed under the same chapter. The action plan invokes international standards without any details. It is a considerable shortcoming since there is a great discrepancy among imprisonment standards as established, for instance, by the instruments of the United Nations and the Council of Europe. It is not clear which standards were relied upon when improving the legislation. The information on the applied international standards has been requested, although unsuccessfully.

4.1.1: Review and amend (if necessary) existing legal framework and internal regulations for the protection of human rights in penitentiary system on a regular basis.

Improvement of legislation is vital for creating a penitentiary system that complies with international standards. For accomplishing this goal, it was necessary to conduct a preliminary systemic analysis of the existing legislation and based on this analysis to draft appropriate amendments, which would better ensure the achievement of the set goal.

4.1.1.1. Prepare and initiate appropriate legal changes and internal regulations based on the analysis of existing legal framework for the protection of rights of the convicted persons and recommendations provided by international organisations – 30 %.

²⁰²The Strategy of Georgia's Socio-Economic Development - Georgia 2020, within which, in 2014-2020, the Government of Georgia aims at conducting a number of activities, including with regard to human resources in healthcare. It implies the development of the mechanisms of motivation for healthcare personnel and raising qualification through enhancement of medical educational system and assessment tools to allow significant improvement of life expectancy and health condition of the Georgian population.

- The State Concept of Healthcare System of Georgia for 2014-2020 – Universal Healthcare and Quality Management for Protection of Patients' Rights (Resolution no. 724 of the Government of Georgia of 26 December 2014);
- Sector Strategies of Healthcare: AIDS, tuberculosis, mental healthcare, Hepatitis C, protection of mothers and children, aging, etc;
- Strategy Document of Mental Healthcare Development and Action Plan for 2015-2020 (Resolution no. 762 of the Government of Georgia of 31 December 2014); and
- Council of Europe Strategy for the Rights of the Child.

According to the information submitted by the ministry,²⁰³ on 1 June 2017, changes were made to the Code of Imprisonment along with other respective legislative as well as sub-legislative acts.

Some changes improved prisoners' legal status. For instance, extension of application of home arrest to adult convicts;²⁰⁴ changes made to the Code of Imprisonment;²⁰⁵ right to receive higher education; right to use his/her own TV and fridge; involving court in the mechanism of exemption from punishment due to health, etc.

Positive effects of some of the changes are open to debate:

- A sentenced female prisoner with a minor, within a year, after a child leaves an establishment, was granted with the right to leave the establishment during days off and weekends. This change is in itself positive; however, it is debatable how giving a mother the possibility to leave an establishment for a year is compatible with the child's interests. It is desirable to give mothers the possibility of leaving prison establishments until their children become of age; they should be deprived of this entitlement only in exceptional cases, for a serious breach of law committed during the leave. It is also desirable to extend the same right to other sentenced female prisoners who do not have children less than three years in an establishment, but have underage children.
- Along with the right to annul the decision of the local council, a court was granted with the power to order the local council to decide about the change of the conditional early release (CER) or the remaining part of the sentence to a lighter penalty, although, without resolving the matter before it, the court can annul a decision of the local council to refuse to grant CER²⁰⁶ and order the council to issue a new act. In such case, unless the court indicates the reasons for declaring the act as null and void in clear terms as well as the ways of eradicating them, there is a risk that the council issues a new act with the same content thus *de facto* rendering the appeal procedure devoid of any meaningful function.

Convicted persons placed in special risk establishments are virtually unable to enjoy some of the rights afforded by the legislation to prisoners held in establishments of other types.²⁰⁷ Moreover, they are constantly under the visual and electronic surveillance²⁰⁸ and compared to the inmates classified as different based on risk assessment, they enjoy the right to contact with the outside world to a lesser extent.²⁰⁹ The Imprisonment Code envisages twice the terms for disciplinary responsibility for inmates posing special risk.²¹⁰

Such an automatic restriction does not comply with international standards. The regime at an establishment should be aimed at reducing risks only and security measures should be of

²⁰³ Letter no. MoC 3 17 00706801, dated 11/09/2017.

²⁰⁴ Change made to Article 40.1 of the Criminal Code of Georgia under Law no. 944 of 1 June 2017.

²⁰⁵ Law no. 943 of 1 June 2017.

²⁰⁶ Early conditional release.

²⁰⁷ Video visits – Article 17¹ (1) of the Imprisonment Code of Georgia; electronic educational program for rehabilitation – Article 20 (Part I) of the Imprisonment Code of Georgia; Rights to work – Article 66³, Part I, Subparagraph “a” of the Imprisonment Code of Georgia.

²⁰⁸ Article 12¹ (Part II) of the Imprisonment Code.

²⁰⁹ Article 66³, Part II, Imprisonment Code of Georgia.

²¹⁰ Article 90, Parts 1³ and 2 of the Imprisonment Code of Georgia.

individual nature.²¹¹ In case this approach is established, the adequacy of categorisation of penitentiary establishments in accordance with risks is questioned. The restrictions applied to special risk establishments virtually amount to additional punishment, in violation of international standards of managing dangerous offenders.²¹²

An important change such as abolition of administrative detention is diminished to a mere change in terminology, whereas its negative effects remain intact:²¹³

- Under the new wording, the term of disciplinary detention will still not count towards a convict's sentence;²¹⁴ and
- Reduction of detention terms is commendable. However, determination of different maximum terms for the same actions for convicted persons placed in different types of establishments is in violation of the principle of equality before law.

4.1.1.2 Identify discrepancies and flaws by analysing the existing framework for human rights protection of convicted persons and respective recommendations developed by international organisations – 0%.

According to the information submitted by the ministry²¹⁵, legislative shortcomings revealed in the process of serving a sentence are regularly identified and proposals are elaborated to address them. According to the information submitted again by the ministry, the analysis of the shortcomings revealed to this date is not set out in a uniform document. However, work is under way to resolve the identified needs and will come to an end in the nearest future.

4.1.2. Prevent penitentiary establishments' overload.

The said objective, unfortunately, is only relied on the activities to be accomplished by the Ministry of Corrections only. Whereas, preventing overcrowding also implies humanisation of justice system²¹⁶ and improvement of court practice,²¹⁷ which are missing from the list of activities provided under this objective. This raises misgivings about the likelihood of accomplishing the objective, augmented by the fact that the activities indicated in the plan have not been practically performed.

4.1.2.1. Ensure standard minimum living space for convicted persons – 20%.

²¹¹ See European Prison Rules, Part IV.

²¹² See Recommendation CM/Rec(2014)3 of the Committee of Ministers to member states concerning dangerous offenders, available at:

<http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%282014%29+3+concerning+dangerous+offenders.pdf/cec8c7c4-9d72-41a7-acf2-ee64d0c960cb>;

Also, see the UN Handbook on the Management of High-Risk Prisoners, available at: https://www.unodc.org/documents/justice-and-prison-reform/HB_on_High_Risk_Prisoners_Ebook_appr.pdf; and the Public Defender's Parliamentary Report of 20016, pp. 20-21, available at: <http://ombudsman.ge/uploads/other/4/4882.pdf>.

²¹³ Instead of "administrative detention" disciplinary detention is used.

²¹⁴ Article 94.3 of the Code of Imprisonment.

²¹⁵ Letter no. MoC 2 17 00717312, dated 14/09/2017.

²¹⁶ For instance, non-custodial punishments, decriminalisation of some acts posing less danger to public, etc.

²¹⁷ For instance, application of detention in exceptional cases.

The Code of Imprisonment provides 4 m² as the minimum living space for convicted persons.²¹⁸ However, the national standard for accused persons is 3 m²,²¹⁹ whereas the relevant CPT standard applies to convicted and accused prisoners equally.

The shortcomings associated with the enforcement of this statutory provision are reflected in 2016 and 2017 Reports of the National Preventive Mechanism of the Public Defender of Georgia.²²⁰

It is recommended that the minister, at the very stage of determining the limits for penitentiary establishments, should take into consideration 4 m² as the minimum standard of living space for each prisoner so that, even if limits are filled up, the standard is followed. The ministry should take up the obligation to follow this standard for future infrastructural projects as well.

4.1.2.2. Facilitate effective operation of early conditional release mechanisms – 50%.

Under the changes made in 1 June 2017, the minimum period required to serve before a life-sentenced prisoner could request to have his/her punishment converted into community service or home arrest is now set at 15 years.²²¹

The initial indicator of this activity is the statistical data on conditional early release. According to the information published on the ministry's website,²²² the statistical data on the prisoners having benefited from conditional early release has not changed substantially over the past three years. According to the quantitative data alone, the effectiveness of the mechanism has not increased. We should positively assess the fact that, according to the information provided by the representatives of the ministry, the local councils make decisions based on oral hearings with all the prisoners and, moreover, take into consideration family and social environment of the inmate. At this stage, we do not possess the information for

²¹⁸ Under the change made to Article 15 of the Code of Imprisonment by Law of Georgia no. 2241 of 16 April 2014, the standard of living space per convict shall not be less than 4 m² in medical establishments for accused/convicted prisoners and establishments of deprivation of liberty.

²¹⁹ Article 15.4 of the Code of Imprisonment.

²²⁰ According to the annual report of the Public Defender for the year 2016, not everyone is provided with 4 m² living space in penitentiary establishments nos. 2, 7, 8, 12, 14, 15, and 17. The same problem was identified in these establishments in previous years as well. The standard of living space is only upheld in establishment no. 3.

The Public Defender's report for 2017 states (p.36) that "the provision of each convicted person with 4m² as the minimum standard of living space as determined by Article 15 of the Imprisonment Code remains a challenge in establishments nos. 2, 8, 12, 14, 15, and 17. This is not caused by insufficient number of available places in the respective establishments, but by inadequate planning in allocating prisoners to facilities. In particular, though there are sufficient places within the set limits in other establishments of open type, the number of convicted prisoners in establishment no. 15 exceeds the limit by 328 as of December 2017.

²²¹ Article 73.7 of Criminal Code of Georgia; however, Article 72¹ added by the amendment of 1 June 2017 still sets a 20-year term as the threshold for eligibility for conditional early release.

²²² According to the monthly statistical reports of 2017 of the Ministry of Corrections of Georgia, from January to November, 930 individuals left the system through conditional early release,

Available at: <http://www.moc.gov.ge/ka/saqarthvelos-sasjelagh-rulebisa-da-probaciis-saministros-sistemis-statistikis-2017-tslis-angarishi>;

According to the annual statistics, in 2016, 972 convicts benefited from conditional early release (p. 20), available at: <http://www.moc.gov.ge/images/temp/2017/06/02/c95a2d57fa8923d18ce3b0aefd39b75f.pdf>;

According to the annual statistics, in 2015, 1033 convicts benefited from conditional early release (p. 23), available at:

<http://www.moc.gov.ge/images/temp/2016/05/11/f3bcb63287f84369208717a248dc595b.pdf>.

more extensive analysis,²²³ which is important for assessing the effectiveness of the mechanism, in particular, information about the beneficiaries' sex and age, the type of offence committed, and the remaining term of sentence.

4.1.3. Implement and further improve the methodology for the classification of convicted persons, risk assessment and individual serving plan.

Individual approach towards a convict, implementation of individualised sentence planning, streamlining convicts' risk assessment and reassessment system are aimed at improving the penitentiary system. The activities detailed under this objective, in case of their due implementation, will be sufficient for the accomplishment of the objective. Unfortunately, the shortcomings of the risk assessment mechanism (the process lacking any transparency and assessment by a group exclusively formed by an establishment's employees) do not allow adequate protection of convicted persons' rights, which is reflected in the low quality of accomplishment of the objective.

4.1.3.1. Multidisciplinary group to assess risks and place inmates in appropriate facilities – 50%.

According to the information submitted by the ministry,²²⁴ “initial assessment of convicted persons and their placement in respective establishments is finalised by 1 July 2017.”²²⁵

While this process is commendable, the existing mechanism of risk assessment is not transparent, as it does not envisage the involvement of a convicted person in the assessment procedure, thus failing to comply with European standards.²²⁶

4.1.3.2. Improve the assessment instrument further, based on risk probability – 10%.

In 2016-2017, several changes were made to Order no. 70 of the Minister of Corrections as of 9 July 2015, which defined the risk assessment modalities for prisoners. The changes were mainly technical in nature and ensured the improvement of the mechanism only to a smaller extent.²²⁷

The report already highlighted the significant shortcoming characteristic to the present assessment tool, which is related to the involvement of a convicted person in the process (see activity 4.1.3.1) and which has not been changed during the refinement process. Furthermore, the group in charge of the initial data assessment consists only of an establishment's personnel; this could subject the impartiality of the process to certain doubts. Moreover, the

²²³ Within the present report, the objectivity of the criteria of conditional early release and the quality of an individual approach are not examined, as it requires studying the decisions.

²²⁴ Letter no. MoC 2 17 007 15332, dated 13 September 2017.

²²⁵ Risk posed by convicts is assessed in accordance with the procedure approved by Order no. 70 of the Minister of Corrections of 9 July 2015.

²²⁶ See, for instance, Recommendation CM/Rec(2014)3 of the Committee of Ministers to member States concerning dangerous offenders, para. 32, available at:

<http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%282014%29+3+concerning+dangerous+offenders.pdf/cec8c7c4-9d72-41a7-acf2-ee64d0c960cb>;

Also, the Public Defender's Parliamentary Report of 2016, p. 52, available at: <http://ombudsman.ge/uploads/other/4/4882.pdf>.

²²⁷ For example, gambling addiction was added to the assessment criteria. It was specified that the order does not refer to prisoners placed in psychiatric institutions; different reassessment terms were defined for different risk-groups;

convicted persons, whose assessment is conducted by the said group, might find themselves in an unequal position *vis-à-vis* those who are assessed by a multidisciplinary group in charge of individualised sentence planning.²²⁸

4.1.3.3. Implement progressively the methodology for individual serving plans for convicted persons in penitentiary establishments – 100%.

According to the information provided by the ministry, by the end of 2017, the individual sentence planning methodology had been implemented in 13 out of 15 active establishments. Thus, the result aimed by the indicator has been fully reached. However it covered only 23% of the total number of convicted prisoners.²²⁹

The Public Defender's report of 2016 discussed the general nature of individualised sentence planning, with the example of the establishment for women, which does not allow identifying prisoners' actual needs.²³⁰

4.1.4. Raise awareness of inmates about their rights, grievances, disciplinary and administrative procedures.

It is practically not feasible to ensure the fulfilment of the objective only through the indicated activities. Apart from brochures and educational workshops, it is necessary to conduct other activities as well for raising awareness among prisoners. Among such activities, sufficient number of social workers should be provided; prisoners should be given access to various specific publications, *inter alia*, reports of monitoring bodies, documents of international and national human rights organisations as well as court news; list of rights should be posted at visible places, e.g. in yards, etc.

4.1.4.1. Print and disseminate information brochures on rights of accused and convicted persons in penitentiary establishments (in Azerbaijani, Armenian, Turkish, Russian, English, Arabic and Persian languages) – 50%.

According to the ministry's information,²³¹ in 2015, 500 copies of brochures were printed, whereas no such activity was conducted in 2016 – 2017. According to statistical data, in 2016, the number of non-Georgian prisoners and prisoners without the command of Georgian placed in penitentiary establishments amounts to 300 – 400 per month. The brochures printed two years ago contain old information, on the one hand, and, on the other hand, they would not be sufficient for this many beneficiaries.

4.1.4.2. Organise education consultations and/or group meetings with prisoners to raise awareness of their rights – 50%.

According to the final report of the Human Rights Secretariat, for raising awareness of rights among prisoners, a relevant training module was prepared, among others, with specific

²²⁸ These two avenues are discussed in Article 6 of Order no. 70. According to the information provided by the MoC, individual sentence planning was applied to 23% of the prisoners.

²²⁹ The individual sentence planning methodology has not been introduced in establishments nos. 7 and 9 by the end of 2017.

²³⁰ See p. 132: However, plans are of general nature and specific activities are not specified. For instance, there are frequent entries such as 'meeting with a psychologist' or 'meeting with a social worker'. However, there is no purpose, or topic, etc., specified. Therefore, it is impossible to see the full picture and the work identified by specialists; available at: <http://ombudsman.ge/uploads/other/4/4882.pdf>.

²³¹ Letter no. MoC 1 17 006996555, dated 08/09/2017.

content for women and underage persons. In 2016, 513 sentenced persons and in 2017, 364 sentenced prisoners were trained. It is our assessment that the baseline indicator of this activity – participation of 400 sentenced persons – is inadequate, because this number is completely at odds with the total number of prisoners.²³²

4.1.5. Improve accessibility to the procedure of complaints review stipulated by the Imprisonment Code of Georgia.

The only activity of this objective is formulated in rather vague terms and mostly related to legislative changes, which were not made either. For the fulfilment of the objective, along with legislative activity, regular analysis of established practices should also be carried out and the shortcomings revealed in the process must be eradicated.

4.1.5.1. Identify and study flaws within existing grievance mechanisms and implement respective amendments based on the study of grievance mechanisms – 0%.

According to the ministry's information,²³³ based on the analysis of the applications/complaints lodged by accused/sentenced persons and the shortcomings revealed during legal proceedings, a problem is identified, comprehensively studied and a corresponding legislative initiative is drafted and/or a change is made.²³⁴ As it is evident from the letter, no analysis of shortcomings was carried out in 2016 – 2017. The same document refers to the study prepared by the Special Preventive Group in 2015 “On the Mechanism of Examination of an Application/Complaint in the Georgian Penitentiary System”.²³⁵ However, nothing was done in the reporting period to fulfil the recommendations given in the study.²³⁶ This leads to a conclusion that the problems raised in the study prepared by the NPM remain the same.²³⁷

4.2. Improve living conditions of the convict/ accused through approximation to international standards.

Improvement of living conditions in penitentiary establishments and bringing them into compliance with international standards is one of the most basic requirements from the point of view of human rights protection. The main instruments reflecting European and universal

²³² More than 9,000 individuals in 2016.

²³³ Letter no. MoC 3 17 00794624, dated 10/10/2017.

²³⁴ According to the letter, within the legislative amendments made to the Code of Imprisonment and other relevant legislative acts on 1 June 2017, the existing appeal procedure was changed. In particular, based on the amendments made to the Code of Imprisonment and Administrative Procedure Code, the mechanism of appealing decisions adopted by the Local Council was improved; however, this change is discussed regarding the mechanism of conditional early release.

²³⁵ Available at: <https://drive.google.com/file/d/0B9BM3M8hbgAUQ0RzaVIGcTZuODQ/view>.

²³⁶ For instance, the parliament is recommended to adopt a legislative amendment to the effect of obliging the ministry to analyse complaints periodically for establishing the major reasons for prisoners' complaints; the agency should develop procedures for safe, accessible, confidential and impartial examination of applications/complaints; applications/complaints should be followed up in timely manner and corresponding decisions should be developed, etc.

²³⁷ The Public Defender's parliamentary report for 2017 mentioned (p. 18) a case in establishment no. 3: a convicted prisoner stated that upon refusal by the Western Georgia local council on granting conditional early release, he drafted a complaint, dated 23 January 2017 to the Tbilisi City Court and submitted it to the administration of penitentiary establishment no. 3, although the Tbilisi City Court has not received it. The same report (p. 56) states about complaints regarding the alleged ill-treatment that the complaint mechanism has deficiencies as individual cases have a chilling effect on submitting a complaint.

standards on imprisonment are relied upon in the process of the assessment of the above goal.²³⁸

Furthermore, it is noteworthy that despite their significance, improvement in public receptions and archive system does not improve living conditions of accused/convicted persons; therefore, the third and fourth objectives are irrelevant to the above goal.

4.2.1. Renovate infrastructure and develop new projects based on current needs.

This objective is one of the best means of achieving the set goal. Moreover, the activities detailed under this section cover not only the improvement of infrastructure but also renewal of goods in stock and providing prisoners with necessary supplies. It is advisable, for the better fulfilment of the objective, to have a pre-determined detailed plan to ensure that living conditions are consistently improved and infrastructural changes are made in all establishments, also taking into consideration the recommendations of the Public Defender of Georgia.²³⁹ As a result of analysis of the activities, the objective may be considered partially fulfilled; infrastructural improvements are still needed in some establishments and providing prisoners with necessary supplies is still problematic.

4.2.1.1. Equip and maintain infrastructure in penitentiary establishments based on current needs (shower rooms, sewage system, ventilation, lighting, heating system, yard and fitness inventory) – 50%.

According to the information submitted by the ministry,²⁴⁰ a number of infrastructural projects were carried out in 2016 – 2017.²⁴¹

According to the assessment of the NPM, the provision of basic conditions, such as natural light, individual placement at night, outdoor space allowing adequate physical exercise, opportunities to conduct various activities, etc., remains problematic in a number of establishments.²⁴²

4.2.1.2. Ensure appropriate infrastructure for long-term visitations – 70%.

²³⁸ Recommendation Rec(2006)2 of the Committee of Ministers to member states on **the European Prison Rules** available at: <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>;

UN Standard Minimum Rules for the Treatment of Prisoners (**the Nelson Mandela Rules**) revised by UN General Assembly resolution A/RES/70/175, available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf;

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (**the Bangkok Rules**), UN A/RES/65/229 , available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf; and

CPT Standards, CPT/Inf (2015) 44, available at: <https://rm.coe.int/16806cc449>.

²³⁹ The Public Defender's Parliamentary report (p. 36): "It is generally important, based on the existing situation and resources, to ensure that the ministry develops a concept and a respective action plan for dividing the system into smaller establishments and creating balanced infrastructure. Smaller establishments will make it easier to manage it, maintain order and safety, as well as create better conditions for rehabilitation activities."

²⁴⁰ Letter no. MoC 4 17 00794878, dated 10/10/2017.

²⁴¹ The showers were renovated in establishment no. 5. The canteen and kitchen in establishment no. 17 and the medical unit in establishment no. 14 were completely overhauled; a bakery was opened in establishments nos. 8 and 14; infrastructure for long visits was arranged in establishment no. 8. The Establishment no. 6 was renovated completely.

²⁴² See the Public Defender's Parliamentary Reports of 2016 and 2017.

According to the ministry's information,²⁴³ in 2016-2017, infrastructure for long visits was arranged in two establishments.²⁴⁴ Accordingly, by the end of 2017, long visit infrastructure was provided in 10 out of 15 establishments.

According to the explanation provided by the MoC representatives, establishments nos. 18 and 19 are medical facilities and the law does not allow long-term visits there as this right is granted by the Imprisonment Code for convicted prisoners in prison facilities, which is not the case for medical establishments.

Such an explanation is not satisfactory. If convicted prisoners retain this right while being transferred to a detention facility except the cases when there is a motivated decision of an investigator/prosecutor,²⁴⁵ it is not clear why a prisoner transferred to a medical facility does not retain the same rights except in cases when otherwise is exceptionally recommended due to health status and for the security of a third person.²⁴⁶

Prisoners placed in other 3 establishments, upon request, may be temporarily transferred to another establishment that has the requisite infrastructure.²⁴⁷ The said solution allows for the arbitrary application of the mechanism as it can be abused by the administration as a tool of punishment/encouragement.

4.2.1.3. Regularly provide inmates within penitentiary system with soft furniture and necessary personal hygiene items – 50%.

According to the ministry's information,²⁴⁸ the establishments are regularly supplied with the means of personal hygiene and soft furniture; however, there are still complaints concerning the accessibility and quality of items of personal hygiene and soft furniture.²⁴⁹

4.2.2 Construct a new penitentiary establishment.

The fulfilment of this objective cannot ensure in itself the achievement of the set goal, i.e., improving prisoners' living conditions, unless the standards the newly constructed establishments should meet are specified. As regards the activities, establishment no. 6 becoming fully operational – the only activity that was carried out for fulfilling the objective – cannot be regarded as the construction of a new establishment.

4.2.2.1. Make special risk facility no. 6 fully operational – 100%.

According to the ministry's information,²⁵⁰ the establishment is operational and the total number of prisoners held therein amounts to 170 as of 1 June 2017.²⁵¹

²⁴³ Letter no. MoC 8 17 00781542, dated 05/10/2017.

²⁴⁴ Infrastructure for long visits was arranged in establishment no. 8 in 2016, whereas during the preparation of the present report, work was underway in establishment no. 9.

²⁴⁵ Imprisonment Code, Article 55¹ (3);

²⁴⁶ The mentioned problem is underlined also in the report of the public Defender of Georgia for 2017 (p. 37).

²⁴⁷ See Order no. 132 of the Minister of Corrections of 22 July 2015 on Approving Procedure for Arranging Long Visits for Convicted Persons.

²⁴⁸ Letter no. MoC 1 17 00785767, dated 07/10/2017.

²⁴⁹ According to the Public Defender's Report of 2016, "Individuals in establishment no. 2 are not provided with seasonal clothing; items of personal hygiene are only provided upon entry into establishments nos. 2, 6, and 18 and in a number of cases, stock is insufficient; persons held in a de-escalation room in establishment no. 8 are not given any items of personal hygiene."

²⁵⁰ Letter no. MoC 3 17 00781501, dated 05/10/2017.

4.2.2.2. Construct a special risk establishment in Laituri district – 0%.

The activity indicator envisaged to finalise the construction of the facility and to launch its operation in 2017, which has not been implemented. According to the information of the Ministry the process of construction is suspended due to the legal dispute/proceedings against the construction company.

4.2.2.3. Start building a modern specialised rehabilitation facility for convicts aged 14 – 21 years – 0%.

According to the ministry's initial information,²⁵² work on the concept of the establishment is ongoing and the document was approved on 1 December 2017. Later, the ministry informed us that due to the recommendation provided by the UNICEF expert, the construction of this facility has not been considered cost-effective. Therefore, its construction is no longer on the agenda.

4.2.2.4. Rehabilitate establishment no. 7 as per international standards – 0%.

Within the reporting period the activity has not been implemented. In July, 2018, on the territory of establishment no. 9 was started new building of the no. 7 establishment.²⁵³

4.3. Improve services stipulated by law for inmates' family members, friends, relatives and other interested individuals.

The wording of the goal reaches farther than the objectives enumerated under it. It would be more appropriate to have under this objective the activities such as improving arrangements for long visits and video-visits, as well as the appeal systems. However, the HRAP is structured according to agencies and these objectives are set out elsewhere in the document.

4.3.1. Improve services of public reception.

Since 2012, public reception service has been gradually replacing the obsolete and degrading system of submitting parcels and complaints, which involved prisoners' relatives having to endure waiting for hours in line as well as other degrading procedures. The improvement of reception services is significant for attaining the above goal. The objective's activities are also adequately determined and as the result of their assessment, the quality of fulfilling the objectives can be considered as satisfactory in terms of improvement of both infrastructure and quality of services rendered.

4.3.1.1. Build a public reception and make it operational in those facilities that do not have one – 50%.

According to the ministry's information,²⁵⁴ in 2017, public reception at semi-open and closed type establishment no. 14 became operational. No additional public reception began functioning in 2016.

²⁵¹ Under Order no. 106 of the Minister of Corrections of 27 August 2015, the capacity of the establishment is limited to 309 prisoners.

²⁵² Letter no. MoC 1 17 00787459, dated 09/10/2017.

²⁵³ <http://www.moc.gov.ge/ka/pressamsakhuri/akhali-ambebi/article/23203-kakha-kakhishvilma-n7-penitenciuri-datsesebuleba-oficialurad-dakhura>

²⁵⁴ Letter no. MoC 2 17 00785768, dated 07/10/2017.

The wording of the activity makes us think that it was planned to open public receptions in all penitentiary establishments; whereas, according to the indicator of this activity, one additional public reception should have become operational annually.²⁵⁵ Apart from the fact that there is a discrepancy between the activity and the indicator, in the reporting period, as already mentioned above, not even one public reception was opened per year as mentioned in the indicator.

4.3.1.2. Train staff of public reception in serving customers – 100%.

According to the secretariat's interim report, 92% of the staff (46 staff members) was retrained in 2016.

According to the information submitted by the ministry,²⁵⁶ in 2017, a new service “online chat” was added to the public reception. In parallel to the introduction of this service, all the staff members engaged in the “online chat” service (22 staff members) underwent retraining.

4.3.2. Follow the principles stipulated by the Law on Personal Data Protection.

According to the present wording, the content of the above objective goes beyond the scope of the set goal and has far greater implications. In its turn, the adjustment of the ministry's central archive is only one of the components of the requirements of the Law of Georgia on Personal Data Protection. The improvement of the practices established in the establishments themselves also serves upholding the principles of the said law. However, it goes beyond the set goal, which focuses on the rights of prisoners' relatives and friends.

From the point of the above-mentioned law, Order no. 90 of the Minister of Corrections of 25 May 2011 is particularly problematic. The order approves the list of personnel specially authorised to have access to personal files of accused/convicted persons. Considering how diverse information (among others, medical information) is contained in such files, it would be desirable that certain officials, e.g. the minister, representatives of the ministry and audit office, had access to only certain type of personal information without a convicted person's consent.²⁵⁷ The same applies to the procedure of maintaining personal files in establishments, which is approved by Order no. 82 of the Minister of Corrections of 10 May 2011; the annex determines the ample list of those who can study a psychologist's records and psychological evaluation of a prisoner. This violates the principle of confidentiality of personal data; for instance, it is unclear what could be the urgency warranting the minister or his/her deputies getting themselves familiar with a prisoner's psychological evaluation without the consent of the latter.

Regarding the activities under the objective, none of them has been comprehensively fulfilled. Moreover, when carrying out these activities, the requirements regarding the terms of storage of data set by the Law of Georgia on Personal Data Protection has not been considered. Therefore, the fulfilment of the above objective should be deemed unsatisfactory.

4.3.2.1. Full operation of the ministry's central archive – 70%.

²⁵⁵ According to the information at our disposal, presently, public receptions are operational in 10 out of 15 establishments.

²⁵⁶ Letter no. MoC 2 17 00785768, dated 07/10/2017.

²⁵⁷ See activity 4.5.2.1 for detailed information of medical nature.

According to the information provided by the ministry, the safe room of the archive's department has been equipped with specific goods and consumables and by the end of 2017, the documents of 10 establishments and 5 structural units were archived.

4.3.2.2. Review shelf life of archived documents as per the principles of the Law on Personal Data Protection – 100%.

The ministry submitted²⁵⁸ the 2017 case database nomenclature,²⁵⁹ according to which the term of storing personal files and documents of the accused/convicted prisoners are kept for 25 years after cleaning them up from the registration, which is a reasonable term and is in line with the principles of the Law on Personal Data Protection.²⁶⁰

4.3.2.3. Set up a search programme for the archive, based on the best practices – 60%.

According to the information submitted by the ministry,²⁶¹ the archive's search system is based on Microsoft Excel. The relevant upgraded software support will be provided when a corresponding financial resource is available. This activity was supposed to be finalised in 2016. Later, the ministry informed us that due to the satisfactory work of the current search system, the development of a new specialised program is no longer on the agenda.

4.4. Re-socialise/rehabilitate accused/convicted persons.

Under the European Prison Rules, it is important to set up a penitentiary system which offers “meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society [...]”²⁶² Accordingly, this goal is significant and without achieving it the penitentiary system cannot comply with international standards. The objectives – prisoners' employment, education, inclusion in rehabilitation programmes and raising awareness among personnel – are the means of achieving this goal. However, usually, there is much more to it like individualised sentence planning, recreational activities, etc.

Therefore, the objectives enumerated under the goal ensure only partial fulfilment of the latter. The conditions of convicted persons held in closed and special risk establishments should be once more emphasised. They are deprived of the means of rehabilitation and reintegration; however, they need it the most due to the high risk they pose.²⁶³ Inadequate fulfilment of the objectives is less likely to ensure achieving the goal.

4.4.1. Take measures to improve employment opportunities of convicted persons.

Offering convicted persons adequate work is one of the unaccomplished objectives of Georgia's penitentiary system. The reason for the above-mentioned is the incoherent approach, which is also evident from the only activity pursued under this objective. For boosting employment opportunities, it is necessary to ensure interagency coordination, attract

²⁵⁸ Letter no. MoC 17 00782354, dated 06/10/2017.

²⁵⁹ Approved by Order no. 8735 of the Minister of Corrections of 30 December 2016.

²⁶⁰ Article 4.e) of the Law on Personal Data Protection reads as follows: “Data may be stored only for the term necessary for reaching the objective of data processing. After the objective for which the data was processed was reached they shall be blocked, erased or destroyed or stored in a form that prevents the identification of a person concerned, unless otherwise stipulated by the law.”

²⁶¹ Letter no. MoC 17 00782354, dated 06/10/2017.

²⁶² See para. 5 of the recommendation.

²⁶³ Regarding this issue see the report of the Public Defender of Georgia for 2017, pp. 21-22, 34, 36

private sector, motivate convicted individuals, etc.²⁶⁴ The ministry failed to demonstrate that convicted persons' employment opportunities increased as the result of its efforts in 2016-2017. Therefore, the fulfilment of this objective is unsatisfactory.

4.4.1.1. Create employment zones and set up small employment bases – 10%.

According to the information submitted by the ministry,²⁶⁵ the number of prisoners in mini-workshops is less than 1% of the entire population of convicted persons.²⁶⁶ The statistical data maintained by the ministry shows that the number of prisoners employed in housekeeping service amounts to 5% of the total number of the sentenced men and 8% of the total number of sentenced female prisoners.²⁶⁷ It should be noted that according to the information provided electronically by the ministry, the number of employed prisoners is comparatively high in 2016-2017.²⁶⁸

In our opinion, the volume of presented activities, taking into consideration even the calibration in statistical data, does not correspond to the high priority of the matter at hand.

Offering employment opportunities is one of the problematic issues in penitentiary establishments of Georgia. The existing shortcomings are regularly reflected in the reports of the Public Defender and the CPT. It is therefore recommended to intensify and systematise the work in this field. It is necessary to work with agencies towards introducing incentive schemes for private sector, changing prisoners' attitude towards employment, etc.²⁶⁹

4.4.2. Improve educational and vocational training programmes for convicted persons.

The activities set out under the objective, in case of their adequate fulfilment, will ensure the adequate fulfilment of the objective. Unfortunately, the number of convicted persons involved in educational programs continues to be small and these programmes are not

²⁶⁴ According to the information provided by the ministry, in future, it is planned to draft a legislative package, which will promote the work of the prisoner on the territory of the establishment. In this regard, the issue of some tax benefits has been discussed to gain interest from business sector. Non-governmental organisations have also been involved in the process.

²⁶⁵ Letter no. MoC 1 17 00777595, dated 04/10/2017.

²⁶⁶ In establishments nos. 15 and 16, bakeries have been functioning since 2016, each employing 10 individuals. It is planned to open a bakery in establishment no. 8 from 2018, which will probably employ 4 individuals. In 2016, a small sewing workshop was opened in establishment no. 5 and its expansion is planned. There were 31 individuals employed in the workshop in 2016 and 32 in 2017.

²⁶⁷ In 2017, there were 461 individuals (22 women and 439 men) employed in the housekeeping service and their remuneration amounted to GEL 87,202 by November. Furthermore, 39 prisoners were engaged in individual activities and 28 prisoners were engaged in workshop activities. Accordingly, the percentage of employed male prisoners is 5% and it is only 8% in case of women.

In 2016, 454 individuals (20 women and 434 men) were employed in housekeeping service and their remuneration amounted to GEL 87,063 by November. The number of prisoners employed in individual and workshop activities is not counted. Accordingly, the percentage of employed male prisoners is 4.8% and in case of women it is only 7.5%.

²⁶⁸ The year 2017: in total 850 prisoners. 717 Out of them -are employed in the service providing field, 66 – in small enterprises and 67 – individual work.

²⁶⁹ Nowadays, one of the hindering factors in terms of employment of convicted persons, along with the lack of employment hubs, is the presence of strong criminal underworld in prisons, which places an employed prisoner at the bottom of the informal prison hierarchy. According to unofficial information, low risk establishment no. 16 cannot be filled completely because a convicted person should be committed to work and participate in other activities to be placed in that establishment. Instead, convicts prefer serving their sentences in a stricter establishment, where they have less chance of early release rather than working and thus find themselves at a lower step of the informal hierarchy.

accessible in all establishments. Therefore, the quality of fulfilment of the above objective is unsatisfactory.

4.4.2.1. Provide quality educational and vocational training programmes – 25%.

According to the ministry's information,²⁷⁰ the programmes are constantly being developed. The information received electronically stated that the needs assessment of social activities was conducted twice in 2016-2017,²⁷¹ because of which the professional training sessions plan has been developed.

Since the number of persons involved in educational and vocational programmes remains to be very small,²⁷² we believe that elaboration of quality and effective programmes (that addresses the interests of convicted persons as well) still requires significant improvement.

4.4.2.2. Increase opportunities for receiving education and training for alternative professions in all penitentiary establishments – 25%.

As mentioned above (activity 4.4.2.1), the number of persons involved in educational and vocational programmes is very small. Such programmes are only available in 10 out of 15 operational establishments.

4.4.2.3. Ensure the access of inmates to high education regarding existing risks – 50%.

In 2016 – 2017, legislation did not allow convicted persons to receive higher education. According to the information provided by the ministry by e-mail, despite the legislative shortcomings, based on the request of the beneficiaries, because of the negotiations with the relevant high schools, in 2016 and 2017-18, 1 remand and 1 convicted female prisoners and 13 convicted prisoners started high education respectively.

Under the changes made to the Code of Imprisonment on 1 June 2017, they will be able to receive higher education as of January 2018. However, this right is not extended to the convicted persons held in special risk establishments. Such an approach, as already mentioned when assessing activity 4.1.1.1, is discriminatory and does not correspond to European standards.

4.4.3. Develop effective psycho-social, informational and rehabilitation programs and ensure service delivery for the resocialisation and rehabilitation of inmates.

The activities planned for the fulfilment of the objective are appropriate. However, the quality of their accomplishment is unsatisfactory. None of the activity discusses the effectiveness of similar programmes, which is undoubtedly a shortcoming in terms of ensuring the provision of services and their quality.

²⁷⁰ Letter no. MoC 2 17 00777613, dated 04/10/2017.

²⁷¹ In 2016, 2,087 convicted prisoners participated in the interview, whereas in 2017 – 2,112 convicted prisoners did;

²⁷² 1,034 convicts (11% of the total number) in 2016 and 577 - in 2017 (6% of the total number) – letter no. MoC 2 17 00777613, dated 04/10/2017. The information provided by e-mail indicated that in 2016, 1,325 convicted prisoners and in 2017 – 1,567 prisoners were involved in educational professional programs. The enclosed chart showed that a great part of the beneficiaries was involved in training/professional training sessions (788 convicted prisoners in 2016) and educational training programs (870 convicted prisoners in 2017), which cannot be considered as involvement in educational professional programs.

4.4.3.1. Develop a unified standard for psycho-social, informational and rehabilitation programmes and a package of programmes, taking into consideration special groups (including violence, substance abuse, changing mentality and standpoint, healthy lifestyle, preparing for release, etc.) – 10%.

According to the ministry's information,²⁷³ no uniform standard has been elaborated in this period. However, 12 psycho-rehabilitative programmes and 2 group therapies were implemented, and 6 informative training sessions were conducted in the establishments. A psychosocial rehabilitation program called Atlantis operates in two establishments.²⁷⁴

According to the information provided by the ministry through electronic mail, in 2016, 5%²⁷⁵ of the convicted prisoners were involved in psycho-social programs and therapies, whereas in 2017 – 9%²⁷⁶ did so. Considering that the main emphasis of the activity was on creating a package based on uniform standards and needs-oriented programmes, functioning of isolated programmes in some of the establishment shows the support of the civil society and donor community rather than a uniform and systemic approach taken by the state towards rehabilitation services.²⁷⁷

4.4.3.2. Train/retrain social workers and psychologists in group and individual working techniques and rehabilitation programmes in cooperation with reputable international and local organisations/agencies – 50%.

According to the ministry's information, training sessions that were given to psychologists and social workers,²⁷⁸ considering the small number of the employees trained and the content of the training sessions, do not prepare them adequately in the methodology of group and individual work and rehabilitation programmes.

Later, the ministry as well as the Training Centre of the MoC provided us the additional statistical data which was substantially different from the data written in the letter dated to October 2017 and from each other.²⁷⁹ Therefore, we could not consider any of these data

²⁷³ Letter no. MoC 8 17 00798094, dated 11/10/2017.

²⁷⁴ The instruction for the implementation of the programme is approved by Order no. 161 of the Minister of Corrections of 31 December 2014; this programme is implemented in establishments nos. 2 and 5. As of October 2017, 25 convicted persons participated in the programme (12 convicted persons in establishment no. 3; and 13 convicted persons in establishment no. 5).

²⁷⁵ 437 convicted prisoners/ 8230 (total number of convicted prisoners in 2016 according to the statistics' report of the MoC).

²⁷⁶ 719 convicted prisoners/ 7976 (total number of convicted prisoners in 2017 according to the statistics' report of the MoC).

²⁷⁷ The ministry provided us via electronic mail with the information that in 2017, together with the EU (EU4Justice) and US (INL) international experts, the logical model and overview and assessment matrixes have been elaborated, which, probably will be applied in future and will ensure the improvement of the efficiency of rehabilitation programs.

²⁷⁸ According to Letter no. MoC 8 17 00785746, dated 06/10/2017.

- In 2016, within the EU/CoE study project, 5 social workers from 5 penitentiary establishments and 10 psychologists from 7 establishments participated in the training session on Awareness of Crime Among Adults;
- In 2017, 12 social workers from 4 establishments and 1 psychologist from 1 establishment participated in the training session on Motivational Interview;
- In October 2017, in cooperation with UNICEF, 30 social workers and psychologists working with the underage were retrained.

²⁷⁹ According to the comments on the present report made by the Training Centre of the MoC, in 2016-2017, 122 persons underwent training sessions in different training programs; Moreover, in 2017, 49 persons were trained as facilitators.

valid. Completely different statistical data is included in the final report of the Human Rights Secretariat.²⁸⁰

4.4.4. Raise awareness of staff at penitentiary and probation systems on equality and tolerance.

The activities aimed at raising awareness among personnel are important, albeit insufficient for eradication of discrimination. It would be desirable to conduct a comprehensive research on discriminatory practices rooted in establishments and plan adequate activities for their eradication. Here too, similar to employment, the rules of criminal underworld in prison lay in the forefront of the problem as the major reason behind discrimination against certain categories of prisoners.

4.4.4.1. Introduce staff at penitentiary and probation systems to human rights training, focusing on the rights of special category of prisoners – 100%.

According to the ministry's information,²⁸¹ the training module on Human Rights and Fundamental Freedoms (16 academic hours) is integrated in the study programme designed for personnel comprises, among other topics, equality and tolerance, fighting against discrimination and gender equality. Training based on this course was initiated in 2017 and 14 civil officials participated in it.

Later, as a comment to the present report, the ministry informed us that the mentioned topics are included in the mandatory special professional training, certifying and periodic retraining courses as well as into the first and the second stage programs for training the staff-members appointed for the probation period; therefore, all the personnel underwent training/vocational training on this topic.

4.5. Improve medical services for convicted/accused persons.

The relevant international and domestic documents have been used for the assessment of the quality of medical services provided to prisoners.²⁸²

In the process of assessing the accomplishment of the goal, the original material was not sought or analysed to determine what the impact of the change was for prisoners' healthcare. The document's authors relied on the information received from responsible agencies (which in some cases, contained shortcomings), findings of consultations with experts, officially published reports, statistical data and similar sources.

There might be nothing against certain objectives under the set goal. However, it is of particular concern that all the activities within this goal are aimed at strengthening the vertical

As for the information provided by the ministry, in 2016, 70 persons out of 180 staff members and in 2017 – 210 staff members participated in the training sessions for psychologists and social workers.

²⁸⁰ According to the data of the Human Rights Secretariat, 157 psychologists and social workers have been trained within the different programs in 2016 and 79 persons have been trained as facilitators in 2017.

²⁸¹ Letter no. MoC 1 17 00785758, dated 07/10/2017.

²⁸² Among others, under the International Covenant on Economic, Social and Cultural Rights that was ratified by Georgia on 25 January 1994, everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.

Recommendation No. R (98) 7 of the Committee of Ministers of the Council of Europe to Member States concerning the ethical and organisational aspects of health care in prison and the 3rd General Report of CPT determine the major principles of organising medical services in a penitentiary system.

of medical services within the penitentiary system and the necessity of integrating the penitentiary healthcare with the civil healthcare is demonstrated nowhere.²⁸³

We consider it appropriate to apply the preventive medical care throughout the whole system including the personnel of the penitentiary system as they also face environmental and psychological risks like the prisoners do.²⁸⁴

4.5.1. Improve disease prevention based services.

Prevention has particular importance in places of deprivation of liberty, since, on the one hand, for the majority of those placed in such establishments this could be a chance to receive comprehensive medical services (e.g. screening for a number of infectious and chronic diseases). On the other hand, these establishments, in terms of public healthcare, themselves pose risks. In particular, there are high risks of spreading infectious diseases, high indicators of worsening mental and other health issues in closed establishments.

There is only one activity envisaged within the objective, i.e., implementation of penitentiary healthcare standards. While there are voluminous preventive measures reflected in the developed standard, it would be desirable to ensure the following in the process of its practical implementation: (1) to update the document regularly to expand it; (2) to set up a tool for assessing its implementation; and (3) to determine the measures required for the implementation, such as retraining personnel, developing protocols, setting up an information system for healthcare, etc.

4.5.1.1. Implement verified standard for penitentiary healthcare – 60%.

The standard of penitentiary healthcare is based on internationally acknowledged principles, such as the European Prison Rules and WHO recommendations on Health in Prisons. The standard also covers specific medical services that are prevention-oriented and evidence based

According to the ministry's information,²⁸⁵ this standard was approved in 2015. However, the list of medical services covered by the standard has not been updated since. This does not comply with good practice in terms of providing healthcare service where progress is rather rapid.

The assessment of implementation of the standard is difficult; no implementation plan or accountability format is determined. The existing data allows the assessment of the progress made about managing particular diseases. However, it is desirable in this regard also to have

²⁸³ It is emphasised in the Public Defender's Parliamentary Report of 2016 as well (p. 21) that "no steps made towards elaboration of activities and their timetable for the transfer of the penitentiary healthcare to the Ministry of Health, Labour and Social Affairs of Georgia." Available at: <http://ombudsman.ge/uploads/other/4/4882.pdf>. It should be mentioned that according to the information provided by the ministry, the activities are ongoing, oriented on equal implementation of the medical service regulations and on involving the remand/convicted prisoners in the state healthcare programs.

²⁸⁴ It should be noted that according to the ministry, the personnel of the penitentiary establishments do have a medical insurance and have the possibility to receive medical assistance in relevant medical facilities. One should definitely welcome this fact, although, since these persons are located in the closed-type establishments like the prisoners do, their health risks differ from the general population/public and their preventive healthcare should be considered in the context of prison population.

²⁸⁵ Letter no. MoC 2 17 00782158, dated 06/10/2017.

a clearly determined methodology as well as references to the sources of data, how it should be collected and who should collect and analyse the said data.

Accountability about the standard is largely made difficult because the existing system of data collection does not give information about the volume and results of the services provided. For instance, when initial and subsequent preventive evaluations are mentioned, it is unclear what percentage of prison population is covered by these services.

It is important to have accountability about the standard discussed separately, to agree upon what information should be collected for accountability, who should ensure their systematisation, and, in general, how the results of this preventive services will be measured (e.g. averted incidents).

4.5.2. Improve the health information protection system for accused and convicted persons.

The objective only covers one activity, i.e., retraining medical personnel. It is necessary to carry out other numerous activities for fulfilment of this objective, including determination of detailed procedures for storing medical documentation, access to the medical documentation and monitoring how the rules are followed. Furthermore, apart from medical personnel, other staff members of prison establishments, including higher-level officials of prison administration, should be trained on confidentiality of medical information; prison population should be regularly informed about patients' rights.

4.5.2.1. Train healthcare personnel in issues related to the protection of confidentiality of health information – 30%.

The problem of respecting the confidentiality of medical/health-related information has numerous times been addressed in the reports of external monitoring bodies.^{286&287}

According to the ministry's information,²⁸⁸ in 2016, a long-term study programme was elaborated for medical personnel, which among other topics, comprises of the confidentiality of information related to health. However, this programme is not implemented so far.

According to the information provided by the ministry, during the same period, number of short-term training sessions have been organised on different topics, including the issue of confidentiality.

Numerous legislative and sub-legislative acts govern the confidentiality of a patient's (medical) information (e.g. the Law of Georgia on Patient's rights). The preconditions of receiving anonymous treatment are also determined statutorily, which is practically impossible to follow in penitentiary establishments.

According to the ministry's information, in 2016 – 2017, the legislation was amended to the effect of governing accessibility of medical information without a patient's consent.²⁸⁹ The

²⁸⁶ CPT/Inf (2015) 42, Article 88.

²⁸⁷ National Preventive Mechanism's Report of 2016, pp. 144-146, available at: <http://ombudsman.ge/uploads/other/4/4584.pdf>.

²⁸⁸ Letter no. MoC 9 17 00783811, dated 06/10/2017.

amendments made in 2016 – 2017 mostly determined the group of persons entitled to have access to this information;²⁹⁰ specified and changed documentation forms with medical content, their use, etc.

We deem it important to have the following issues regulated:

1. To conduct monitoring/assessment as to how important it is and to what extent this right is exercised by the wide group of persons determined by the order. Unless it is necessary for carrying out an activity to restrict a person's right to respect for confidentiality of health-related information, a patient's consent should be obtained;
2. According to the present amendment, the persons determined by the order have access to full medical documentation, whereas, within their relevant competence, it might be sufficient to have access to specific information. Accordingly, the order should specify which official has access to what information/documentation;
3. Even though the legislation in force obliges the group of persons determined by the order to respect confidentiality, it is desirable that in each instance of such access they should confirm in writing/orally to respect the confidentiality of information; and
4. A person – about whom the information has been imparted whenever, due to objective reasons, it was unreasonable to obtain his/her consent, or consent could not be obtained – should at least be informed post factum so that he/she could respond by filing an appeal.

According to the ministry's information, in penitentiary establishments, medical documentation is stored in special metal cupboards and only medical personnel have keys to them. However, in practice, storage of documents is not so strictly controlled and non-medical personnel also have access to them. NPM's report of 2016 mentions existing problems related to storing/archiving medical documentation.²⁹¹

4.5.3. Improve mental health care system.

Mental health is one of the main challenges in Georgia. The burden of mental illnesses is far greater in places of deprivation of liberty than in general population.

The reports of the CPT and the Public Defender constantly emphasise that the situation in Georgia's penitentiary establishments is not conducive to mental health; there is no opportunity for adequate employment, education or other activities. Furthermore, there is no infrastructure for exercise and natural light in many establishments.

According to the assessments made by external monitoring bodies, the situation is also bad in terms of treatment of patients with mental disorders; there are limited opportunities for

²⁸⁹ Order no. 180 of 31 December 2015 (available at: <https://matsne.gov.ge/ka/document/view/3128278>) governs the issue in relation to the underage, Order no. 90 in relation to adults (available at: <https://matsne.gov.ge/ka/document/view/1339194>).

²⁹⁰ For instance, the list of officials entitled to study medical documentation is determined by Order no. 157 of the Minister of Corrections of 22 December 2016 on amending Order no. 180 of the Minister of Corrections of 31 December 2015 Approving the Procedure for Maintaining Registry and Personal Files of Underage Accused/Convicted Persons.

²⁹¹ Order no. 198/n of the Minister of Labour, Health and Social Affairs of 17 July 2002 on The Procedure for Storing Medical Records in Medical Establishments, available at: <https://www.matsne.gov.ge/ka/document/view/54136>.

psychosocial rehabilitation; and indicators for the use of psychoactive substances and self-harm are high.²⁹²

According to the ministry, the consumption of psychotropic substances within the system has been reduced dramatically down to 4% with the support provided within the framework of the program implemented by the Global Initiative in Psychiatry Fund. The program ensured the establishment of multidisciplinary approach towards the abuse of psychotropic drugs, which continued after the end of the program by the ministry's own resources.

The activities given within the objective are not voluminous and, except for the suicide prevention programme, do not consist of the components of practical implementation.

The improvement of the mental health system should concern not only penitentiary establishments but also all closed institutions in general. Accordingly, within the scope of this objective, it would be imperative to have the Ministry of Healthcare actively involved and significant changes carried out in terms of the quality of in-patient and rehabilitation services.

4.5.3.1. Adopt a strategic document for mental healthcare in penitentiary system – 10%.

Resolution no. 762 of the Government of Georgia of 31 December 2014 approved the Strategic Document for Developing Mental Health and Action Plan for 2015 – 2020. Some of the activities covered within these acts are related to the penitentiary system as well. In particular, objective 4.1 is about ensuring equal standards of mental healthcare services in the penitentiary system. This, in turn, covers three activities to be carried out in 2015 – 2016, viz., conducting a needs assessment survey, developing a uniform and integrated programme, and implementing the programme. According to the information at our disposal, these activities have not been conducted/finalised.

The same Action Plan covers the elaboration of the programme for stigma reduction, suicide prevention and its implementation in prisons and in the community. The Action Plan provides for a separate activity for the suicide prevention programme and accordingly, the matter will be discussed in the context of that specific activity. Concerning stigma reduction, according to the information provided by the ministry, in 2017, up to 200 medical and non-medical personnel were trained to raise their awareness on psychiatric healthcare.

According to the submitted information, the Crisis Management Action Plan has been elaborated. Based on this document, which has yet to be approved, a plan for the development and improvement of mental health should be elaborated.

It is noteworthy that, according to the ministry's response,²⁹³ a screening tool for persons with mental disorders has been elaborated.²⁹⁴ The tool allows, "A comprehensive screening of accused/convicted persons entering the penitentiary system, assessing specific needs in terms of mental health and establishing whether specialists of relevant specialisation should be involved." While this fact is commendable, the tool is not used in practice, since no legal

²⁹² See the Public Defender's report of 2016, pp. 122-128, available at: <http://ombudsman.ge/uploads/other/4/4882.pdf>.

²⁹³ Letter no. MoC 4 17 00787380, dated 09/10/2017.

²⁹⁴ It was conducted within the EU/CoE joint project - Human Rights and Healthcare in Prisons and Other Closed Institutions in Georgia II.

regulations have been adopted that are required for its implementation. Furthermore, it is unclear whether the medical personnel have the requisite skills to use this tool.

Moreover, according to the information, 2 clinical guidelines (approved by the Ministry of Healthcare in 2017) and the Crisis Management Action Plan have been elaborated, implementation of which is planned for future (not in the reporting period). Additionally, by the initiative of the ministry and by the support of the national and international experts, a program for training psychiatric nurses has been elaborated, based on which 15 nurses underwent training of trainers in 2017. In the present year, it is planned to arrange cascade training sessions to cover all the nurses working in the system.

4.5.3.2. Consideration of penitentiary system requirements in planned amendments to legal framework for mental health – 0%.

The main objective of the 2015 – 2016 Action Plan of developing mental health is to ensure that the standard of services in the penitentiary system are equal to those existing in the society.

According to the ministry's information,²⁹⁵ based on the legal analysis carried out in 2016, work on draft laws is ongoing.²⁹⁶

4.5.3.3. Finalise a pilot programme for the prevention of suicide and implement the fully developed programme progressively in penitentiary establishments – 90%.

Suicide is a problem for the penitentiary system. Against the background of psychological stress linked with the application of detention or sentencing, suicidal behaviour is more frequent among accused/convicted persons than in general population.

According to the ministry's information,²⁹⁷ a suicide prevention programme is operational in all establishments.²⁹⁸ The programme incorporates rather voluminous work involving retraining of respective personnel and implementation of the service along with respective infrastructure. Thus, the present activity could be considered as completed.

Based on the given statistical data, it cannot be concluded whether the suicide prevention program is effective. The data indicates the following:

1. The mechanism of routine assessment and monitoring of the suicide prevention programme is not developed within the system (considering that the information has been

²⁹⁵ Letter no. MoC 6 17 00783548, dated 06/10/2017.

²⁹⁶ In 2016, within the EU/CoE joint project, legal analysis was conducted to identify legislative shortcomings. Recommendations are detailed and, among other important issues, cover the following:

- Different regulations about accused and convicted persons, specifically, in terms of involuntary treatment;
- Restriction of political rights (e.g. participation in elections);
- Procedure for appealing a court judgment on involuntary treatment;
- Clinical treatment and placement issues (quality of treatment, placement of individuals under 18 in with adult inpatients, etc.); and
- Terms of serving sentences imposed on those persons who were placed in a psychiatric establishment while serving their sentences.

²⁹⁷ Letter no. MoC 4 17 00781971, dated 06/10/2017.

²⁹⁸ Approved by Order no. 13 of the Minister of Corrections of 11 February 2016 on Approving the Suicide Prevention Programme for Accused/Convicted Persons.

requested and has not been imparted either publicly or in writing). The two types of statistical data on suicide and attempted suicide collected at this stage is insufficient. Though there was a decrease in the number of persons held in the penitentiary system in the past three years (2015, 2017), there was an increase in the number of suicides (2015 – 2016).²⁹⁹ Accordingly, it is not possible to discuss the extent of the problem based on raw data alone.

2. Major decrease in the number of suicide attempts in 2017 is possibly related to the change in the mode of registration; however, this too cannot be claimed expressly without focused research.

3. Suicide prevention programme implies risk-categorisation. It is important, for assessing the programme's effectiveness, to analyse completed and inchoate incidents within the groups categorised according to those very risks.

4.5.4. Ensure adequate medical services to substance-dependent accused/convicted persons.

The wording of the objective only covers pharmacotherapy for opiate users and individual treatment (there is no recording as to the implications thereof) for non-opiate users. There is no holistic approach that would be aimed at harm reduction as recommended by WHO and UNODC.

4.5.4.1. Develop methadone replacement and maintenance programmes during opioid use disorder – 30%.

Methadone replacement therapy has been available in the penitentiary system for several years now. It exists in the form of a short-term detoxification programme and in one establishment only. It was envisaged by the Action Plan to ensure offering short-term and long-term therapy within the system. During long-term therapy, a person could be treated for lifetime. Therefore, this treatment should be in place and easily accessible.

According to the ministry's information,³⁰⁰ joint Order nos. 92, 01-26/n of 14 July 2016 approved the Procedure for Implementing the Replacement Therapy Programmes for Opioid-Dependent Persons in Penitentiary Establishments, which governs the terms of providing treatment in penitentiary establishments.³⁰¹ It should be noted that according to the information provided by the ministry, it was unnecessary to elaborate a separate program as far as the services offered within the penitentiary system became integrated into the ongoing program in civil sector (this program has been approved on an annual basis by the Government of Georgia and has been implemented by the Ministry of Healthcare).

The implementation of the programme remains problematic.

Despite the claims that the so-called long-term replacement therapy became accessible within the system, according to the ministry's information, not a single person is receiving this

²⁹⁹ In 2015, there were 2 completed and 142 attempted incidents of suicide. In 2016, this indicator went up to 5 suicides and 146 attempted suicides. In 2017, there have been 2 suicides and 51 attempted suicides.

³⁰⁰ Letter no. MoC 0 17 00783075, dated 06/10/2017.

³⁰¹ The indicator of prisoners recently involved in methadone detoxification replacement programme:

2015: 313 (number of accused/convicted persons – 9,716);

2016: 321 (number of accused/convicted persons – 9,334);

2017*: 445 (number of accused/convicted persons - 9,359) * including November.

treatment. According to the information provided by the MoC, implementation of a long-term replacement therapy is postponed until 2020 (although, as recommended by the WHO and UNODC, it should be a basic/essential service). Regarding the detoxification programme, the number of persons involved is higher, though 60% of these persons benefited from methadone programme in the civil sector.

The services are available only in penitentiary establishments nos. 3, 2, 8, and 18. It shows progress compared to the previous years when this service was available only in one establishment.

4.5.4.2. Ensure adequate treatment of inmates with non-opioid substance abuse – 0%.

According to the ministry's information,³⁰² there is no programme developed for non-opiate users. However, "if needs be, a doctor specialised in treating drug addiction is involved along with a psychiatrist, within the multidisciplinary group in diagnostics, treatment and management of accused/convicted persons suffering from mental and behavioural disorders caused by the administration of non-opioid substances."

It is impossible to discuss the results of the services rendered due to the inaccessibility of information on the programmes' practical aspects. Furthermore, due to unknown reasons, since 2017, the ministry has not maintained statistics on treating persons with non-opioid dependency.³⁰³ Accordingly, it is impossible to assess the situation regarding the treatment of non-opioid substance-addicted persons.

4.5.5. Enhance qualification of medical personnel at penitentiary establishments in issues related to providing adequate health services to inmates.

Inadequate achievement of the activities is negatively assessed. The ministry's strategy itself reflects this objective on a larger scale. Retraining and education of medical personnel should be regular (e.g. the compulsory credit hours) and cover clinical (e.g. managing a specific disease) and management issues (e.g. infection control, washing hands, using PPE, etc). In general, it is considered a shortcoming that there is no clear vision within a system about the volume of educational activity, topics and regularity.

One should welcome the fact that medical and non-medical staff undergo training on a regular basis to ensure the improvement of the medical care. In 2016-2017, medical as well as non-medical personnel (in total 2,965 staff-members) underwent training sessions on Healthy Environment and Preventive Healthcare. The given topic has been integrated into the mandatory professional training course (2,699 persons in 2016 and 809 persons in 2017).

4.5.5.1. Prepare education programmes and materials, and update existing programmes for training medical staff – 50%.

The ministry's strategy and action plan refer to setting up a system of continuous medical education, which is clearly an ambitious goal but has not been accomplished.

³⁰² Letter no. MoC 1 17 00782986, dated 06/10/2017.

³⁰³ Annual statistics of the Ministry of Corrections of previous years showed the indicator of utilisation of treatment of non-opioid drug users:

2015: 1312 (number of accused/convicted persons - 9 716);
2016: 1110 (number of accused/convicted persons - 9 334).

According to the ministry's information,³⁰⁴ two study programmes have been elaborated for the medical personnel.³⁰⁵

1. Registering injuries sustained by accused/convicted persons as the result of alleged torture and other cruel, inhuman or degrading treatment in penitentiary establishments (2016); and
2. Long-term study programme for teaching and retraining medical personnel of the penitentiary system (2016).

Despite the significance of both programmes, there are several related problems as follows:

The long-term programme is focused on relevant normative acts and specifics of the penitentiary system, and thus only partially ensures enhancement of the participants' competence from the medical point of view;³⁰⁶

- Programmes have not been renewed; and
- It is desirable to have opportunities for more substantiated continuous/post graduate medical education in general clinical competences.

4.5.5.2. Train/retrain health care staff of penitentiary system in issues related to the treatment of prisoners, protection of the right to health, human rights, the prevention of torture and other inhuman treatment, through short and long-term programmes developed in accordance with the national legislation and international standards – 50%.

According to the ministry's information,³⁰⁷ medical personnel have been retrained in registering injuries,³⁰⁸ suicide prevention³⁰⁹ and risk determination.³¹⁰ Since the fourth quarter of 2017, there has been a long-term study course implemented for the medical personnel of the penitentiary system. The course is focused on normative acts.³¹¹

Based on this information submitted by the ministry, it can be assumed that, apart from the shortcomings associated with the programmes that were discussed when assessing the activity under 4.5.5.1, the retraining programme does not cover the entire medical personnel. It is nowhere demonstrated that the study programmes have become compulsory for employees of the Medical Department. The long-term programme developed in 2016 (referred to under activity 4.5.5.1) is not used yet in retraining medical personnel.

³⁰⁴ Letter no. MoC 0 17 00773147, dated 03/10/2017.

³⁰⁵ Developed within the EU/CoE joint project - Human Rights in Prisons and Other Closed Institutions in Georgia.

³⁰⁶ E.g. The initial medical examination (2 sessions – 3 hours), management of hunger strike (2 sessions – 3 hours), mental health (4 sessions – 6 hours), etc.

³⁰⁷ Letter no. MoC 0 17 00773147, dated 03/10/2017.

³⁰⁸ Training session on Registering Injuries Inflicted to Accused/Convicted Persons as the Result of Alleged Torture and other Cruel, Inhuman, or Degrading Treatment in Penitentiary Establishments; 145 medical professionals were retrained in 2016-2017.

³⁰⁹ Training session on Prevention of Suicide; 52 employees were retrained, out of which 6 were medical professionals.

³¹⁰ Training session on Suicidal Adult Assessment Protocol (SAAP); in total 18 participants, out of which 4 participants specialised in medicine.

³¹¹ 15 employees were supposed to participate in the course in the last quarter of 2017.

4.5.6. Undertake effective actions to increase access of vulnerable groups to healthcare.

Within the objective, it would be important to specify the vulnerable groups upon which emphasis is made. The objective is rather broad; one activity under the objective has been implemented in an unsatisfactory manner and it fails to cover the measures required for achieving the objective.

4.5.6.1. Prepare and upgrade/improve relevant education programmes in cooperation with competent international and local organisations/agencies. Include themes related to vulnerable groups in all core education programmes running at the Training Centre. Train/retrain healthcare personnel on adequate medical service delivery to individuals with special needs, based on international recommendations and the national legal framework to ensure the protection of the right to health without any form of discrimination – 25%.

According to the ministry's information,³¹² the relevant content on normative acts governing the rights of vulnerable persons is covered in the "long-term retraining programme" to enhance qualifications of medical personnel.³¹³

The HRAP envisaged development of new programmes, revision of old ones and delivery of training sessions.

It is desirable to have in place a short-term programme as well for extending the scope of coverage and plan retraining of medical personnel in specific issues of providing medical assistance to vulnerable groups, groups with special need, and high-risk groups (disabled persons, elderly persons, LGBTI community, etc.).

4.6. Ensure the protection of rights for special categories of inmates.

The numerous objectives are not equally adequate for achieving the goal. For instance, it is unclear as to what different activities are planned for female convicts in accordance with gender issues under the Bangkok rules. It is a serious shortcoming that nothing is planned in terms of improving the rights of ethnic, religious, sexual and other minorities. As in most other cases, here too a needs assessment has not been conducted for relevant focus groups to plan activities based on the findings. Such non-systemic approach hampers achieving the goal.

4.6.1. Ensure training on the rights of particularly vulnerable groups of inmates.

The objective and the activity are virtually identical. It would be desirable to determine development of training materials as a separate activity. Incomplete fulfilment of the only activity, in its turn, fails to ensure the achievement of the objective.

4.6.1.1. Include a course on human rights of special category of inmates in a training programme for the staff of the penitentiary system who work directly with accused and convicted persons – 100%.

According to the information of the Penitentiary and Probation Training Centre (PPTC),³¹⁴ topics on the rights of special categories of accused/convict persons are incorporated in

³¹² Letter no. MoC 0 17 00773147, dated 03/10/2017.

³¹³ See activities 4.5.5.1 and 4.5.5.2.

various programmes.³¹⁵ These topics are integrated within the compulsory vocational training, certification and periodic retraining, and first and second level study programmes for the retraining of new employees. These programmes were launched in September 2017.³¹⁶

The PPTC also submitted training topics and materials.

4.6.2. Further improve the legal framework concerning juvenile convicts/accused. Facilitate the preparation for resocialisation of juvenile inmates.

The objective that covers several different directions is limited to a single activity, which in its turn has virtually not been implemented.

4.6.2.1. Approve a statute of juvenile rehabilitation facility; approve a statute of the early conditional release board for juveniles; develop normative changes based on needs – 5%.

The Statute of Juvenile Rehabilitation Establishment³¹⁷ and the Statute of the Local Council of Early Conditional Release of Juveniles were not approved in the reporting period. Regarding the latter the ministry informed us that it was not considered appropriate to introduce different regulations for the juveniles as the existing statute³¹⁸ fully covers all those issues which are necessary for the functioning of the local council for juveniles.

Under the change made by Order no. 118 of the Minister of Corrections of 27 August 2015,³¹⁹ convicted persons under 18 were given the right to receive first level higher academic education (bachelor's programme). However, at the same time, maintaining correspondence among accused/convicted persons in penitentiary establishment was prohibited.³²⁰

4.6.3. Provide a series of training tailored to the needs of juveniles for all staff of the corrections system, who directly work with juvenile inmates and probationers.

The HRAP provides for appropriate activities for the fulfilment of the objective at stake. It is commendable that cooperation with international and local experts to develop study programmes tailored to the needs of the underage was ensured from the outset. Unfortunately, in the reporting period, not all the employees working with the underage were covered by this programme.

³¹⁴ Letter no. MoC 8 17 00773146, dated 03/10/2017.

³¹⁵ In 2016, 2,508 employees were trained in this subject, and 809 employees, as of October 2017.

³¹⁶ By the end of the year, the following were supposed to be trained/retrained:

- 14 employees from 5 penitentiary establishments, in the first level study programme; and
- 52 employees from 9 establishments, in the second level study programme.

³¹⁷ Hereby we mean a statute of the special rehabilitation establishment for 14-21 years old convicted prisoners, which has not been any more on the agenda since its construction has not been considered to be feasible.

³¹⁸ Order no. 138 of the Minister of Corrections of 19 October 2015.

³¹⁹ Order no. 86 of the Minister of Corrections of 21 August 2017, available at: <https://matsne.gov.ge/ka/document/view/3778039>.

³²⁰ Since there was no formal, statutory prohibition on maintaining correspondence among convicted persons in different establishments, according to the established practice, relatives or family members, as a rule, could communicate in writing from different establishments.

4.6.3.1. Develop or improve (as required) relevant training programmes and materials in cooperation with competent international and local organisations/ agencies.

According to the PPTC's information,³²¹ in 2017, within a joint project of UNICEF and the centre, with the involvement of contracted local experts, a study programme for capacity building of specialists working with underage accused/convicted persons has been developed, viz., Retraining of the Personnel (social workers and psychologists) Working with Underage Accused/Convicted Persons (40 academic hours). A study course has been developed (20 academic hours) for the personnel working with convicted persons who had committed a crime while being underage.

4.6.3.2. Train/improve qualification of the staff of penitentiary establishments working directly with juveniles on treatment, special needs and age-related specifics of juveniles – 50%.

According to the PPTC's information,³²² in 2015, within a joint project of UNICEF and the centre, a specialised study course has been developed, viz., Juvenile Justice, Psychology, and Methods of Interacting with the Underage (24 academic hours). In 2015 – 2017, all those employees officially dealing with underage accused/convicted persons were trained in the specialised programme (in total, 131; out of this number, 104 were trained in 2015).

In October 2017, 30 employees of penitentiary establishments were supposed to participate in the programme called Retraining of the Personnel (social workers and psychologists) Working with Underage Accused/Convicted Persons.

In 2016-2017, the study course – Juvenile Justice, Psychology, and Methods of Interacting with the Underage – was attended by 30 employees of penitentiary establishments; out of this number, 5 were from establishment no. 11.

There are up to 100 employees in establishment no. 11 for the underage. However, the underage can be placed in other establishments too, namely, in establishment no. 5 (girls) and no. 2 and no. 8 (in these two cases, mostly accused persons). Considering this, the number of the employees retrained in special study courses in the reporting period cannot be considered satisfactory.

4.6.4. Further improve living conditions of female inmates in compliance with the Bangkok Rules.

It is unclear what it means to improve shower rooms according to gender-based needs. However, improvement of infrastructure in establishments for women is important and ensures the adequate fulfilment of the objective. It would be desirable to conduct at least in future the assessment of the needs specific to female prisoners and have the needs reflected in relevant normative acts or practical activities.

³²¹ Letter no. MoC 9 17 00772750, dated 03/10/2017.

³²² Letter no. MoC 9 17 00772750, dated 03/10/2017.

4.6.4.1. Assess and identify special needs of female prisoners within the penitentiary system – 50%.

A special report on the specific needs of female prisoners has not been drafted. Although, the ministry commented that as a compensation the process of individual sentence planning has been in place since 2015 and covered all female prisoners. However, the Public Defender of Georgia states that “individual sentence planning for convicted persons are general in nature and fail to reflect a work conducted by a specialist after identifying individual needs of convicted persons”.³²³

According to the information additionally provided by the ministry, “in 2017, in cooperation with the case managers of establishment no. 5, representatives of the PRI (Penal Reform International) studied 68 cases of victims of violence female convicted prisoners and revealed the needs and offered the services”.

4.6.4.2 Improve infrastructure based on gender specifics (shower rooms) – 100%.

According to the ministry’s information,³²⁴ in establishment no. 5, special lifts and ramps were installed at the entrances for disabled persons; construction and refurbishment work was conducted in classrooms and cells.

According to the secretariat’s interim report, the cells and showers in establishment no. 5 were completely renovated and equipped with renewed ventilation systems; the rooms for medical purposes were refurbished according to medical standards; and ramps were arranged in the establishment.

4.6.5. Support the rehabilitation of female inmates.

The Bangkok rules place particular emphasis on offering female prisoners activities and programmes that consider gender-based needs. The activities planned for rehabilitation of women are rather diverse and ensure the accomplishment of the objective too. Unfortunately, the progress reached in terms of their accomplishment is not so high and should be a subject of intensive work in future too. It is desirable to review from gender perspective the rehabilitation programmes and activities offered by the establishment for women and tailored to specific needs of women.

4.6.5.1. Create small employment opportunities at establishments – 30%.

There is no systemic approach to employing sentenced female prisoners. The sewing workshop³²⁵ and the beauty salon about which the ministry informed us³²⁶ have been operational for years in establishment no. 5 and their existence cannot be considered as the fulfilment of the above activity. We should additionally note positively here, in 2016-2017, the percentage of female prisoners involved in small enterprises and individual work increased: 20% in 2016 and 26% in 2017.³²⁷

³²³ Parliamentary report of the Public Defender of Georgia, p. 36.

³²⁴ Letter no. MoC 3 17 00781114, dated 05/10/2017.

³²⁵ Organised by LTD Woman and Business.

³²⁶ Letter no. MoC 6 17 00785762, dated 07/10/2017.

³²⁷ In 2016, 31 were employed in the sewing workshop; 32 in 2017; In 2016, 2 and in 2017 3 female prisoners were employed in the beauty salon. Individual activities have been carried out by 14 female prisoners in 2016

4.6.5.2. Ensure access to higher education for female convicts – 50%.

As already mentioned,³²⁸ the legislative change, which will enable convicted female prisoners to receive higher education, will be enforced starting from 2018 only.

According to the information of the Ministry of Corrections,³²⁹ in 2017, based on the agreement among the Ministry of Corrections, the Ministry of Education and Universities, 1 accused woman and 1 convicted woman were enrolled in a distance learning programme. This looks more like an exception rather than the rule. Therefore, such a solution to the problem cannot be considered as ensuring accessibility to higher education.

4.6.5.3. Further improve approaches to the psycho-social rehabilitation of female convicts and implement respective programmes – 30%.

According to the information provided by the ministry, rehabilitation programme for substance abusers – Atlantis – was implemented in establishment no. 5 for women. In 2016, 9 convicted female prisoners were enrolled in the programme and in 2017 5 female prisoners were enrolled.³³⁰

The Ministry of Corrections has also informed us³³¹ that there had been no changes made in the psychosocial rehabilitation programmes for convicted female prisoners during the reporting period.

The ministry sent us via electronic mail the list of beneficiaries, which showed that considerable part of the convicted female prisoners underwent short-term psychosocial training sessions while 23% out of them were enrolled in the psychosocial programs and therapies³³².

According to the same source, in 2016, practically the entire population of the women's establishment was involved in psychosocial rehabilitation programmes (286 women); whereas from **January until October 2017**, approximately 65% (174 women) are involved in such programmes. It is unclear at this stage, why some of the women pulled out from the programmes.

and by 29 women in 2017. The given activity does not include the number employed in service providing work as only small business are meant here.

³²⁸ See activity 4.4.2.3.

³²⁹ Letter no. MoC 3 17 00775481, dated 04/10/2017.

³³⁰ It is noteworthy that under Order no. 161 of the Minister of Corrections, this programme should have been implemented back in 2014, available at: <https://matsne.gov.ge/ka/document/view/2641522>.

³³¹ Letter no. MoC 2 17 00785740, dated 06/10/2017.

³³² In 2016, 226 convicted female prisoners underwent psychosocial training sessions and 189 convicted female prisoners did so in 2017; in 2016, 60 female prisoners participated in the programs and therapies and in 2017 their number was 59.

4.6.5.4. Revise a list of items regarding gender based specifics – 70%.

According to the secretariat's interim report, female prisoners are provided with soft furniture and items of personal hygiene, as regulated by the establishment's statute.

According to the information of the Ministry of Corrections,³³³ the list of items permitted for convicted women has not been revised.

4.6.6. Raise awareness of staff working in the system on gender equality related issues and domestic violence.

The importance of the issues covered within this objective is emphasised in the Bangkok Rules. The only activity that is implied therein combines several issues. It would be desirable to have these issues presented separately. It is important that study programmes have been developed with the involvement of international and local experts. However, the number of trained employees is rather low, due to which the accomplishment of the said objective is successful only partially.

4.6.6.1. Develop and upgrade/improve relevant training programmes in cooperation with competent international and local organisations/agencies. Include relevant themes in all core programmes running at the Training Centre. Provide training sessions for the corrections staff on the rights of women and gender equality issues pursuant to international standards and recommendations as well as the national legislation – 100%.

According to the information of the PPTC,³³⁴ in 2017, in cooperation with contracted experts, the centre elaborated the first and second level study courses for employees appointed for probationary period to the special penitentiary service. The study courses, among other theoretical and practical issues, include human rights, gender equality and non-discrimination.³³⁵ This programme was started in September 2017 and continued until the end of the year.³³⁶

Later, the ministry clarified via electronic mail that the given topics have always been included in the training programs for the personnel of the penitentiary establishments and all of them underwent the relevant training course³³⁷.

According to the same source, in October 2017, the PPTC was working on the study programme called Modification of Violent Behaviour and Attitude. It was planned to be conducted in the fourth quarter of 2017 (one group consisting of 15 participants)³³⁸.

³³³ Letter no. MoC 3 17 00781114, dated 05/10/2017.

³³⁴ Letter no. MoC 1 17 00773148, dated 03/10/2017.

³³⁵ Basic human rights and freedoms, equality and tolerance, prevention of violence (*inter alia*, violence against women and domestic violence) and fight against discrimination; vulnerable groups (*inter alia*, women), their rights and specifics of working with them; prevention of torture and other ill-treatment and degrading treatment in prison system; effective communication; management of aggression, violent behaviours, etc.

³³⁶ The first level study course – 14 employees; the second level study course – 52 employees.

³³⁷ In 2016-2017, 2708 staff members of the special penitentiary service underwent training sessions on gender equality and domestic violence: out of them, in 2016 – 2483 persons; in 2017 – 305 persons.

³³⁸ We have not received any information on this issue.

4.6.7. Protection of female prisoners' right to privacy.

It is important for the rehabilitation of female prisoners to ensure their proper contact with family members and minor children. The planned activities are adequate to the objective at stake. The activities carried out in the reporting period ensure the implementation of the objective rather well. However, contact of convicted females with their minor children needs further improvement.

4.6.7.1. Fully operate infrastructure specifically for long-term visitations in Establishment no. 5 – 100%.

According to the information of the Ministry of Corrections,³³⁹ rooms designed for long meetings resemble hotel suites with all requisite facilities.³⁴⁰ It is confirmed by the Public Defender's assessment.³⁴¹

4.6.7.2. Revise a normative framework related to children leaving penitentiary institutions to reflect their best interests, so that they are adapted to the outside world to the extent which will help to minimise the trauma likely to be caused by their separation with their mothers – 50%.

According to the ministry's information,³⁴² the regulatory framework on the procedures of children leaving penitentiary establishments has been revised.³⁴³ A female convict in a penitentiary establishment, who has a child under three, is given the right to leave the establishment on week-ends within a year after the child had to leave the establishment to facilitate his/her adaptation to the outside world.

This development can be considered positive. However, it is unknown whether the ministry cooperated with local and international organisations when initiating this change and which standard, if any, was relied upon in this regard. It should be analysed to what extent the one-year term set by the order takes into consideration the best interests of the child and why it should not be possible, if mother's behaviour allows for it, to extend this term until the child becomes of the age on the one hand and, on the other hand, to have this rule extended to other mothers with underage children.

4.6.8. Protection of the rights of persons with disabilities as per the UN Convention on the Rights of Persons with Disabilities.

Disabled persons are one of the most vulnerable groups in penitentiary establishments. Accordingly, improvement of regulatory framework and development of relevant strategic

³³⁹ Letter no. MoC 3 17 00781493, dated 05/10/2017.

³⁴⁰ Each residential room has its *en suite* bathroom and kitchenette. The rooms for visits are equipped with the main household items: a bed (if needs be, an additional folding bed), a table, chairs, a storage chest, a nightstand, a TV set and a fridge. There is a water heater installed in the bathroom; the kitchenette is equipped with a cupboard, sink and kitchen utensils.

³⁴¹ See the Public Defender's Parliamentary Report of 2016, p. 65.

³⁴² Letter no. MoC 7 17 00754334, dated 27/09/2017.

³⁴³ Joint Orders nos. 105-01-57/n of the Ministry of Corrections and the Ministry of labour, Health and Social affairs of 31 August 2017, available at: <https://matsne.gov.ge/ka/document/view/3791137>.

documents, as envisaged by the HRAP, would be commendable in terms of securing the rights of this group. It is unfortunate that this important objective has not been implemented.

4.6.8.1. Analyse the existing legislation and adopt changes and new regulations as necessary – 0%.

The ministry has not provided any information regarding this activity; the secretariat's interim report does not impart any information in this regard.

4.6.8.2. Develop a social model to approach accused/convicted persons with disabilities – 30%.

According to the information provided by the ministry by electronic mail, with the involvement of external experts, standards for treatment of disabled accused/convicted persons held in penitentiary establishments were developed. These standards are based on the UN Convention on the Rights of Persons with Disabilities (CRPD).

The tool for determining the target group and implementing its needs remains a significant challenge. The Ministry of Health is currently at the stage of developing this tool, after which it will be approved, disseminated and implemented.

4.6.9. Create special and adapted living conditions for inmates with disabilities.

The objective comprises only one activity that is appropriately worded. It is vitally important to have in place the infrastructure, which is adapted to the needs of disabled prisoners. However, this objective was practically not implemented in the reporting period.

4.6.9.1. Carry out needs assessment to improve infrastructure at penitentiary establishments to ensure that special needs of persons with disabilities are met and create physical environment adapted to reasonable accommodation – 10%.

According to the ministry's information,³⁴⁴ at this stage, project documents are being developed for adapting conditions to the needs of disabled prisoners in penitentiary establishments; special lifts and ramps were installed at the entrances for disabled persons in establishment no. 5. A needs assessment has not been conducted so far. A plan aimed at eradicating shortcomings has not been developed either.

4.6.10. Ensure adequate service delivery to persons with disabilities.

The objective only covers one activity – implementation of habilitation/rehabilitation programmes. It only implies healthcare services (habilitation/rehabilitation and occupational therapy) and cannot ensure fulfilment of the objective on its own. More complex activities need to be carried out, among others, in terms of ensuring regular, social, employment, educational and legal services for disabled prisoners. It is a matter of concern that the only activity planned was not carried out in the reporting period.

³⁴⁴ Letter no. MoC 7 17 00785763, dated 07/10/2017.

4.6.10.1. Implementation of habilitation/rehabilitation programmes tailored to the needs of persons with disabilities – 0%.

According to the ministry's information,³⁴⁵ habilitation/rehabilitation of beneficiaries with special needs has been implemented within the framework of individual approaches towards adults since 2009, for the underage since 2015, and is being gradually accessible for all convicted persons.

Individual approach implies study of a person's needs and providing services tailored to that person's needs, which is already done during medical treatment. Therefore, such an approach cannot make up for the nonexistence of a relevant programme.

4.6.11. Raise awareness on issues related to persons with disabilities.

The objective as well as the activity planned for its implementation is adequate and commendable. However, it has not been implemented.

4.6.11.1. Organise a series of meetings and training with fellow inmates and other accused/convicted persons on the rights of persons with disabilities - 10%.

According to the information provided by the ministry by electronic mail, some of the psychosocial program modules contain the issues related to persons with disabilities (PwD) – stigma/discrimination, tolerance, etc. During the reporting period, 2% out of the total number of convicted prisoners underwent training sessions on this topic.³⁴⁶

4.6.12. Ensure the protection of rights of foreign prisoners.

The objective envisages three activities and covers almost all the issues that are related to serving a sentence by a foreign prisoner, with respect to their dignity. However, no activities were carried out adequately in the reporting period.

4.6.12.1. Ensure that foreign prisoners are informed on their rights and responsibilities including the right to legal counsel and assistance, and prison regimen in an understandable language – 10%.

According to the comments made by the ministry to the present report, there are brochures on the rights of remand/convicted prisoners available in 5 foreign languages in all the establishments. In 2017, the ministry provided translation for foreign prisoners 766 times.

The Public Defender's parliamentary report of 2016 (p. 77) notes that foreign prisoners of penitentiary establishments, due to linguistic barriers, face difficulty in communicating with personnel and are unable to be involved in rehabilitation activities. While foreign prisoners are offered courses to learn Georgian, such courses are not conducted regularly. The issue of language barrier has also been discussed in the Public Defender's report for 2017 (p. 38).

³⁴⁵ Letter no. MoC 7 17 00785763, dated 07/10/2017.

³⁴⁶ In 2016, 126 convicted prisoners underwent training sessions and 140 prisoners in 2017.

4.6.12.2. Ensure that foreign prisoners go through adequate medical examination and are provided with respective medical services using the assistance of a translator upon requirement – 30%.

The ministry has not submitted information concerning the said activities.

Whereas, according to the Public Defender, due to the same linguistic barriers, foreign prisoners cannot receive adequate medical treatment.³⁴⁷

4.6.12.3. Preparing foreign prisoners for their release – 50%.

According to the information of the ministry, foreign prisoners who need interpretation/translation services for gathering relevant documentation for returning to their home-country before release have always been provided with such service.

Meanwhile, there is only negative information on the situation of foreign prisoners in the Public Defender's report of 2016, which is an indicator of implementation of this activity.³⁴⁸

4.7. Further perfection of non-custodial sentencing system.

For humanisation of criminal policy, the state ought to make efforts towards diversifying non-custodial sentences and improving their practical implementation. The objectives determined in the HRAP, namely, development of the probation system and ensuring adequate services for probationers are adequate and necessary for achieving the set goal. Effective steps were made in this regard in the reporting period. However, certain problems, such as ensuring adequate resocialisation and rehabilitation of conditionally sentenced persons, and development of long-term and effective strategies, remain.

4.7.1. Build capacity of the National Probation Agency.

The objective and the activities for its implementation are relevant. Introduction of home arrest with the use of modern technologies for the implementation of non-custodial sentences is commendable, so is individual sentence planning through risk and needs assessment. It will ensure further development of the implementation of non-custodial sentences, provided staff-members of the National Probation Agency undergo regular and relevant retraining.

4.7.1.1. Assess the work of the Electronic Monitoring Department and elimination of identified discrepancies – 100%.

According to the secretariats' assessment, whether enforcement of home arrest and its electronic monitoring is conducted effectively and without shortcomings is unclear.

On 28 December 2017, the Minister of Corrections approved Order no. 146, which governs the enforcement of home arrest. According to the ministry, the order governs all the issues

³⁴⁷ See the Public Defender's parliamentary report of 2016, p. 76: due to the language barriers, communication between foreign prisoners and prison staff is problematic. Especially problematic is communication with medical personnel. Even though sometimes interpreters are secured, prisoners usually face difficulty in communicating with prison staff. The report of the Public Defender of Georgia also mentions the unavailability of service due to the language barrier on page 38.

³⁴⁸ See pp. 233-238, available at: <http://ombudsman.ge/uploads/other/4/4882.pdf>.

related to the execution of home arrest of juveniles, which starting from 2016 has been problematic and needed resolution.

4.7.1.2. Implementation of an electronic monitoring system of house arrests – 100%.

According to the information submitted by the NPA,³⁴⁹ on 1 October 2017, there were 31 court mandated home arrests applied to juvenile convicts, whereas, according to the NPA report of 2017, home arrest proceedings were instituted against 40 juveniles in the reporting period (2017)³⁵⁰.

According to the NPA's written communication, it is possible that due to the introduction of home arrest for adult convicts,³⁵¹ the number of convicted persons will be increased. Accordingly, for preparing a report on the activities of the electronic monitoring division, a commission will be set up involving representatives of the ministry itself, as well as external experts and/or civil society representatives. The secretariat's interim report emphasises the involvement of social workers in pre-trial proceedings against a juvenile accused, who will be responsible for making recommendatory reports to a judge.

4.7.1.3. Further development of video visitation services; development of infrastructure of probation bureaus – 90%.

According to the annual report of NPA of 2017, it is possible to use video meeting services in 10 regional offices of probation³⁵² and in 13 out of 17 penitentiary establishments. According to the same report, it is planned to provide this service in other penitentiary establishments too in 2018.

According to the NPA report of 2016, a new office with video meeting equipment was opened in Rustavi and the Gurjaani office was refurbished. According to the report of 2017, a new regional office that provides video meeting service was opened in Ozurgeti; Senaki and Kutaisi offices were refurbished.

4.7.1.4. Preparation and initiation of changes to the legislation where necessary, based on the analysis of the legal framework and international recommendations – 100%.

The legislative amendment made in 2017 (see activity 4.7.1.2) widens the scope of the use of non-custodial sentence, namely, home arrest, and, starting from 1 January 2018, allows its application to adult convicts as well.

On 28 December 2017, the Minister of Corrections adopted Order no. 146,³⁵³ which approved the new procedure of the use of home arrest.³⁵⁴

³⁴⁹ Letter no. MoC 6 17 00789236, dated 09/10/2017.

³⁵⁰ According to the National Probation Agency, the number indicated in the report of 2017 includes convicted persons, who's case of home arrest proceedings started in 2016 and continued in 2017.

³⁵¹ Criminal Code of Georgia, Article 40.1f¹).

³⁵² According to the agency's website, presently there are 11 regional offices operating, see: <http://probation.moc.gov.ge/geo/main/index/74>, (accessed 24 January 2018).

³⁵³ Available at: <https://matsne.gov.ge/ka/document/view/3957873>.

³⁵⁴ Order no. 178 of the Minister of Corrections of 31 December 2015 on Approving the Procedure and Methodology of Using the Means of Electronic Surveillance was in force until now and only applied to juvenile offenders.

4.7.1.5. Probation officers work with convicted persons according to risk and individual needs assessment as well as an individual sentence plan – 90%.

Regarding this activity, the NPA submitted ministerial order no. 39,³⁵⁵ whereas, according to the secretariat's report, the indicator for risks and needs assessment and individual sentence planning amounts to 91.13% for the reporting period.³⁵⁶

According to our information, British and German experts from respective fields took part in developing the risks and needs assessment questionnaire to ensure its compatibility with international standards; the NPA's reports also inform about employees receiving relevant training in this regard.³⁵⁷

4.7.2. Development of rehabilitation programmes and community and public engagement measures for the conditionally released.

The objective and activities envisaged for its implementation are relevant. The NPA's efforts to ensure rehabilitation, cultural and educational programmes for conditionally sentenced persons are commendable. However, the agency, due to the lack of resources or strategic planning, is unable to ensure proper implementation of these activities.

4.7.2.1. Implement rehabilitation programmes for the conditionally released – 20%.

Following our written request, the NPA submitted³⁵⁸ the order of the Minister of Corrections of 30 May 2014. The order determines three rehabilitation programmes for conditionally sentenced persons and those conditionally released. The necessity of involving a person in these programmes is determined through risk-assessment and individual sentence planning.³⁵⁹

According to the NPA's reports,³⁶⁰ in 2016, 22%³⁶¹ of probationers were involved in psycho-rehabilitation programmes; and 16%³⁶² – in 2017. The NPA stated that “only middle and high-risk persons have been enrolled in the rehabilitation programs. Compared to 2016, the drop in the percentage indicator of the probationers involved in the rehabilitation programs in 2017 is caused by the decrease in the number of middle and high-risk probationers”.

³⁵⁵ The order approved the principles, procedure and form of risk assessment of convicts and individual sentence-planning, available at: <https://matsne.gov.ge/ka/document/view/2820641>.

³⁵⁶ Out of 19891 registered probationers, only 18127 were assessed.

³⁵⁷ According to the NPA's report of 2016, up to 50 specialists were trained in the rehabilitation programme for managing violent behaviour; according to the report of 2017, up to 158 employees were trained in rehabilitation programmes; 24 persons participated in pilot implementation of risks and needs assessment tool.

³⁵⁸ Letter no. MoC 1 17 00787837, dated 09/10/2017.

³⁵⁹ Order of the Minister of Corrections of 5 June 2015 on Approving the Principles, Procedure and Form of Risk Assessment of Convicts and Individual Sentence Planning, available at: <https://matsne.gov.ge/ka/document/view/2820641>.

³⁶⁰ The report of the Ministry of Corrections of 2016 (p. 104) indicates a different number of probationers and individuals involved in programmes; available at: <http://www.moc.gov.ge/images/catalog/items/zzzz.pdf>. However, the statistical data coincides (p. 54) with that of the NPA; available at: <http://www.moc.gov.ge/images/temp/2017/06/02/c95a2d57fa8923d18ce3b0aefd39b75f.pdf>.

³⁶¹ 4,821 out of 21,453 probationers.

³⁶² 3,566 probationers out of 2285.

4.7.2.2. Support employment for the conditionally released – 5%.

According to NPA's reports, in the reporting period, approximately 1% of probationers were retrained and participated in educational programmes.³⁶³ In the same period, 0.5% of probationers were employed³⁶⁴.

The statistics show that only a small number of probationers benefits from the agency's support in employment. It is desirable that the agency has a predetermined strategy for supporting probationers' employment, including proactive measures to inform and motivate probationers as well as attract private sector.

The NPA stated³⁶⁵ that employment of conditionally sentenced persons is not defined by law as the obligation of the agency, although the obligation occurs in the Action Plan for 2016-2017, approved by the Government of Georgia on 21 July 2016 by Act no. 338.

4.7.2.3 Increased engagement in sports, cognitive and cultural activities – 50%.

According to the Agency's reports, in the reporting period, 3 – 4% of the total number of probationers was involved in social, cultural and sports activities.³⁶⁶

4.8. Ensure qualified human resources for the penitentiary and probation system.

The objectives determined for achieving the goal are important, albeit insufficient. It is desirable to pay more attention in future to adequate and regular training of employees in the use of force, special means as well as search procedures; *i.e.*, all those interventions which may cause serious breach of human rights.

4.8.1. Build capacity of the Training Centre.

The said objective and the activities determined for its implementation are adequate and in line with the European Prison Rules. Active efforts of the PPTC in this regard are commendable as well. It is another matter how the ministry manages to ensure systemic approach to training/retraining of the ministry's personnel, retaining trained staff or attracting new qualified human resources.

³⁶³ 240 individuals in 2016; and 356 individuals in 2017.

³⁶⁴ In 2016, 156 conditionally sentenced persons were employed (0.7% of the total number of probationers); this indicator amounted to 108 in 2017 (0.4% of the total number of probationers).

³⁶⁵ Letter no. 335792 of 16 April 2018.

³⁶⁶ In 2016, 878 probationers participated in social and cultural activities (4% of the total number of probationers); 723 in 2017 (3% of the total number of probationers).

4.8.1.1. Ensure the quality of training sessions, development of training programmes, implementation of new programmes, preparation of training materials and preparation/revision of examination questions and tests – 100%.

The PPTC provided detailed information about those new study programmes that were added in 2016 – 2017.³⁶⁷ Furthermore, to ensure the quality of training process, “a six-person group facilitating quality assessment” was set up and entrusted with inviting experts in various fields for participating in discussions on various topics. The group prepares feedback questions as well as draft recommendations. It is noteworthy that the PPTC implements almost all the programme in close cooperation with the EU, CoE, IRZ and other international or local non-governmental organisations, which clearly indicates the readiness of the centre to provide high quality services.

4.8.1.2. Institutionalise implemented training programmes with consideration to their content with the support of donor organisations – 100%.

According to the PPTC’s information,³⁶⁸ in 2016-2017, 21 new programmes were introduced in cooperation with international organisations.³⁶⁹ This is undoubtedly commendable; however, it is desirable that the state undertakes the provision of these programmes in future.

4.8.1.3. Pre- and post-implementation assessment of training programmes – 100%.

According to the PPTC’s information,³⁷⁰ training feedback forms are regularly analysed. According to the secretariat’s report, the PPTC is going to work on the scheme of post-training assessment (through a questionnaire). After a training session is over, assessment will be conducted at the end of a 6-month interval. The analysis of the feedback received as a result will be used to improve the planning of future study programmes

4.8.1.4. Develop a plan for the preparation of trainers of the training centre, enhancement of their qualification based on new methodology and themes – 100%.

According to the PPTC’s information,³⁷¹ there were ToTs conducted on various topics in 2015.³⁷² In cooperation with the IRZ, in the fourth quarter of 2017, it was planned to prepare candidates who are to become trainers in the methodology of conducting a training session and developing training skills.

³⁶⁷ Letter no. MoC 8 17 00775855, dated 04/10/2017.

³⁶⁸ Letter no. MoC 8 17 00775855, dated 04/10/2017.

³⁶⁹ E.g. In cooperation with the joint EU/CoE project - registering injuries sustained by accused/convicted persons because of alleged torture, other cruel, inhuman or degrading treatment; management of prisoners with mental health problems; in cooperation with UNICEF – retraining of employees (social workers, psychologists) working with accused/convicted juveniles in the penitentiary system, etc.

³⁷⁰ Letter no. MoC 8 17 00775855, dated 04/10/2017.

³⁷¹ Letter MoC 8 17 00775855, dated 04/10/2017.

³⁷² CPT standards (12 participants); working with asylum seekers, refugees, stateless persons in penitentiary establishments (20 participants); methodology of conducting training sessions and development of training skills (101 participants); planning training, methodology of conducting training and feedback forms (19 participants); international standards on vulnerable groups of prisoners (12 participants).

4.8.1.5. Train/retrain nominees/candidates selected by the Ministry of Corrections and Legal Assistance to appoint at various positions within the system (penitentiary and probation) in human rights under specially designed training programmes – 100%.

According to the PPTC's information,³⁷³ from 1 January 2016 until 1 October 2017, within various programmes, 235 training sessions were conducted involving 5,068 participants working for the penitentiary and probation systems and persons related to these systems.³⁷⁴ The PPTC informed us about the topics of the training sessions, which include sufficient information on human rights.

4.8.1.6. Training and certification of the penitentiary service staff through a specially designed course – 100%.

According to the same letter of the PPTC,³⁷⁵ in accordance with the requirement of the Law of Georgia on Special Penitentiary Service, employees of this service (current staff and newly employed personnel – learners) underwent the certification and retraining in 2015 – 17. In total, 2,690 participated in the process.³⁷⁶

In 2016–2017, 2,735 employees underwent examination using the electronic testing facility at the centre in various programmes; out of this number, 2,668 employees surpassed the minimum threshold and obtained certificates of respective level.

4.8.2 Update the code of ethics for staff of the penitentiary system.

The said objective and the activities determined for its implementation are relevant. Revision of the code of professional ethics will ensure the improvement of the penitentiary system's employees' standard of behaviour and protection of the rights of accused/convicted persons, provided the ministry ensures in its turn that the contents of the document are communicated to the staff adequately.

4.8.2.1. Upgrade/develop the code of ethics based on the principles enshrined in the recommendation N(2012)5 of the Committee of Ministers of the Council of Europe to the Member States and the European Code of Ethics for Prison Staff – 50%.

The professional ethics code for employees in the penitentiary system³⁷⁷ covers main principles related to professional conduct and individual responsibility as well as ethics of treatment of prisoners. The code is largely compatible with the recommendations of the Committee of Ministers of the Council of Europe. It is desirable that the ministry retrains employees regularly to ensure practical implementation of the provisions of the professional ethics code, which, according to the Public Defender's report of 2016 is problematic.³⁷⁸

³⁷³ Letter no. MoC 8 17 00775855, dated 04/10/2017.

³⁷⁴ 229 employees of the ministry's staff; 1,274 employees of the Penitentiary Department; 2,875 employees of penitentiary establishments; 663 employees of probation; and 19 representatives of other agencies.

³⁷⁵ Letter no. MoC 8 17 00775855, dated 04/10/2017.

³⁷⁶ 68 (current employees) in 2015; 2,483 (2,194 current employees + 289 new employees [learners]) in 2016; 139 (5 current employees + 134 new employees [learners]) in 2017.

³⁷⁷ Approved by Order no. 144 of the Minister of Corrections of 19 October 2015, available at: <https://matsne.gov.ge/ka/document/view/3017706>.

³⁷⁸ See the Public Defender's Parliamentary Report of 2016, p. 55, available at: <http://ombudsman.ge/uploads/other/4/4882.pdf>.

4.9. Rehabilitation and resocialisation of former prisoners.

For achieving the goal, it is necessary to determine the group of beneficiaries, namely, the duration for which the state undertakes to provide a person with healthcare, education and employment after he/she leaves an establishment.

4.9.1. Improve health of former prisoners, provide legal assistance, support their vocational training and job placement.

The assessment of the work of the LEPL Crime Prevention Centre of the Ministry of Justice was carried out based on the ratio in between the submitted and satisfied applications as at this stage the instrument for identifying the circle of beneficiaries is not available.

4.9.1.1. Identify available healthcare services and take measures to make them available to former prisoners – 100%.

According to the information of the Crime Prevention Centre,³⁷⁹ 251 beneficiaries received healthcare with the centre's help. Out of them, healthcare was fully covered for 38 beneficiaries within the grant programme of the Ministry of Justice and 213 beneficiaries received medical assistance with the help of partner organisations.

4.9.1.2. Provide legal counselling to former prisoners, assist them in putting together legal documents, ensure their representation in courts with the support of partner organisations – 100%.

According to the information of the Crime Prevention Centre,³⁸⁰ 240 beneficiaries applied for legal aid in 2016-2017. Out of them, 211 beneficiaries received legal aid and 39 were referred to partner organisations.

4.9.1.3. Enrolment in vocational collages at the Ministry of Education and Science – 100%.

According to the information of the Crime Prevention Centre,³⁸¹ 128 beneficiaries expressed their wish to be enrolled in the vocational training. With the help of the Ministry of Education and Science, all of them were involved in the vocational retraining courses and 107 completed the course successfully.

4.9.1.4. Support employment through identifying employers and providing recommendations – 100%.

According to the information of the Crime Prevention Centre,³⁸² 249 beneficiaries were employed with the centre's help during the reporting period.

Recommendations:

Recommendations to the Ministry of Corrections

³⁷⁹ Letter no. 550 dated 28.09.2017.

³⁸⁰ *Idem.*

³⁸¹ *Idem.*

³⁸² *Idem.*

- To ensure that the legislative framework in force and practice are analysed in the process of elaboration and implementation of legislative amendments or programmes for identifying shortcomings, as well as assessment of needs of target groups, including gender specific needs;
- Develop and submit draft amendments to the Imprisonment Code to the parliament on the following issues:
 - Each prisoner's equal access to activities, labour, education and rehabilitation programmes, contact with the outside world and restrictions allowed in individual cases only, considering personality and behaviour of a particular convict;
 - Similar living space for accused and convicted persons;
 - Disciplinary detention counted against sentence term; and
 - Short leaves for every convicted female prisoner with an underage child; restriction of this right in individual cases, considering personality, behaviour and other objective circumstances of a convict.
- To ensure access for prisoners to various special publications, including reports of monitoring mechanisms, international or local human rights protection organisations as well as news on case-law; to ensure that a list of rights is posted in visible places, exercise yards, etc;
- To elaborate a detailed plan for consistent improvement of living conditions and infrastructure in all penitentiary establishments;
- To plan, in coordination with other agencies, strategies for employment of convicted persons, *inter alia*, in terms of introducing incentive mechanisms for private sector and changing convicted persons' attitudes towards employment;
- To conduct comprehensive research of discriminatory practices established in the system because of the influence of criminal underworld; to outline ways of its gradual eradication;
- To ensure systemic approach to training/retraining of employees, *inter alia*, in the use of special procedures and to outline strategy for retaining retrained personnel or attracting new qualified resources; and
- To ensure regular retraining of personnel for the practical implementation of the provisions of the code of professional ethics.

Recommendations to the Ministry of Corrections concerning amending relevant normative acts

- To take into consideration minimum living space per each prisoner when determining capacity limits for penitentiary establishments;
- To ensure unification of the risk assessment mechanism and involvement of a convicted person in the process;

- To restore the right to communication among prisoners in individual cases, where relatives are placed in different establishments;
- To review the list of officials specially authorised to study personal files of an accused/convicted person so that accessibility to personal data without consent of the subject of the data is allowed only in case of necessity; and
- To elaborate protocols/instructions for conducting each special procedure.

Recommendations to the Medical Department of the Ministry of Corrections

- To ensure revision of the system of accountability and statistical accounting system, and elaborate a uniform format allowing the public to access adequate and relevant information concerning healthcare reforms and routine services on results and solutions; this recommendation concerns particularly the services determined by penitentiary healthcare standard;
- To develop and implement the strategy of improvement measures in terms of mental healthcare, as well as the action plan with corresponding budget and responsible human resources;
- To ensure that preventive services planned within the penitentiary system cover all employees comprehensively;
- To ensure development of programmes (including programme budget, monitoring and assessment plans and accountability format) for services such as suicide prevention and treatment/rehabilitation of substance-dependent persons so that objective information on the results of the implementation of these programmes is accessible;
- To ensure development of the continuous medical education system for medical personnel and regular retraining of non-medical personnel in issues such as first aid, PPE, healthcare rights, etc.; and
- To ensure identification of vulnerable groups and provision of target services and protection of rights.

Recommendations to the Ministry of Labour, Health and Social Affairs

- To ensure adequate control over the quality of medical services provided in penitentiary establishments; to intensify the process of integration of services; to plan public healthcare services and their provision for the entire prison population (prisoners and personnel); and extension of the activities covered by the concept of mental health to prison population.

Recommendations to the Head of National Probation Agency

- To elaborate strategy for assisting probationers with professional education and employment, covering proactive measures of informing and motivating probationers, as well as attracting private sector; and
- To ensure systematic retraining of employees in modern non-custodial sentences and proper implementation of relevant mechanisms.

Recommendations to the Penitentiary and Probation Training Centre

- To ensure that the programmes that were introduced with donor support are implemented within budgeted funds; and
- To conduct regular assessment of programmes for identifying and correcting shortcomings.

Recommendations to the National Probation Agency

- To conduct regular activity analysis for identifying needs and planning future activities taking these needs into account.

Recommendations to the Crime Prevention Centre

- Conduct regular needs assessment and determine the list of offered services, considering the outcomes of needs assessment; and
- To offer services tailored to the needs of beneficiaries.

Elimination of Torture and Ill-Treatment

Executive Summary

This section of the report presents the findings of the monitoring conducted on Chapter 5 of Georgia's Governmental Action Plan of Human Rights Protection (for 2016 –2017). The activities envisaged by Chapter 5 aim at fulfilling one of the priorities of Georgia's National Strategy of Human Rights Protection (for 2014 – 2020), which is to carry out effective measures against torture and ill-treatment, including conducting transparent and independent investigation.

Even though a number of activities were carried out in the reporting period, the goal of eradication and prevention of ill-treatment remains unachieved due to uncoordinated and unsystematic performance of relevant agencies, low involvement of the civil society and several other reasons. The duplication of the issues in the Governmental Action Plan of Human Rights and the plan approved by the Interagency Coordinating Council Against Torture makes this problem worse.

It is to be positively mentioned that, in the reporting period, an order of the Minister of Internal Affairs approved the instruction for medical assistance for persons placed in temporary detention isolators, which complies with universal and European standards.

It is commendable that the Ministry of Corrections and the Ministry of Internal Affairs developed forms for documenting ill-treatment, complying with the Istanbul Protocol. It will be necessary in future to train/retrain all current and future employees in documenting incidents of ill-treatment, using the said forms and to introduce the documenting methodology in practice efficiently.

It is also commendable that, with the involvement of international organisations, the legal basis for internal monitoring mechanisms has been improved in the Ministry of Corrections and the Ministry of Internal Affairs. It is desirable that these improvements are reflected in practice as well.

Chapter 5 of the Governmental Action Plan does not cover, or covers insufficiently, a number of crucial issues, such as setting up a public monitoring mechanism, maintaining comprehensive statistics, ensuring protection of the rights of persons held in various closed institutions, etc.

In the reporting period, analysis of the legal basis governing the fight against ill-treatment has not been conducted. Work to elaborate the status of a victim of ill-treatment, which is imperative for the elaboration of the victim rehabilitation programme, is not underway. It would also be desirable to elaborate detailed instructions/protocols for employees of closed establishments on applying special procedures.

The Governmental Action Plan does not envisage and the relevant agencies do not ensure adequate regular retraining of closed establishments' personnel in the use of special procedures (use of force, arms and special means, search, etc).

The concept of an independent investigative mechanism, that the Ministry of Justice presented after a drafting process that was conducted behind the doors, closed for the civil

society, is institutionally faulty and does not envisage prosecution powers. Accordingly, it is less likely that investigation of incidents of ill-treatment will improve when this system becomes operational.

Ensuring adequate sanitation, hygiene, nutrition and personal data protection remains a problem for the persons deprived of their liberty. Though there are certain improvements in all agencies, the progress made so far is insufficient.

Presently, the Public Defender's National Preventive Mechanism is the only external monitoring body for closed institutions in the country. Its powers have been extended to taking photographs. However, the change is presented in such a defective manner that implementation of this right leaves the doors open to misgivings.

General Review

Fight against ill-treatment remains one of the major challenges in Georgia in terms of human rights protection. Ill-treatment of persons held in closed institutions, manifested in unbearable living conditions of mental in-patients; violence by prison personnel; also, violence among prisoners, with administration's instigation or acquiescence; use of excessive force by police; unjustified use of means of restraint and dire living conditions of prisoners with mental health problems in penitentiary establishments, remain a systemic problem. No activities have been conducted in the reporting period that would change the situation in this regard and bring the country closer to the achievement of the goal of eradicating and preventing ill-treatment. The reason behind this failure is uncoordinated action of the agencies on the one hand, and, on the other hand, formalistic approach towards the activities envisaged in the Human Rights Action Plan (HRAP). In most of the cases, needs and shortcomings are not assessed when a new legislation, policy or programme is elaborated; procedures are mostly opaque and do not allow for adequate involvement of civil society.

Resolving the problem is not helped by the fact that the government's Action Plan and its chapter 5 on Fight against Torture only has one goal, i.e., fight against torture and ill-treatment, and comprises eight objectives with relevant activities. This chapter reflects the four major objectives given in the Action Plan for 2015 – 2016, approved by the Interagency Coordinating Council Against Torture and other Cruel, Inhumane and Degrading Treatment or punishment. Accordingly, in our opinion, the parallel existence of these two plans is an unnecessary impediment for responsible agencies having to carry out in parallel virtually identical activities determined by two different documents and to report on their progress to various bodies.

The HRAP under the section of the activities aimed at fighting ill-treatment omits the following important issues:

1. Even though the National Strategy of Human Rights Protection of Georgia for 2014-20³⁸³ envisages setting up a public monitoring mechanism for closed institutions, this is mentioned nowhere in the chapter on fighting ill-treatment (or in the HRAP);³⁸⁴

³⁸³ Approved by Resolution no. 2315-II of the Parliament of Georgia of 30 April 2014, available at: <http://myrights.gov.ge/ka/documents/documents/strategy>.

³⁸⁴ While objective 5.1.8 of the HRAP (for 2014-2015) envisaged setting up effective public monitoring by the Ministry of Justice, existence of such mechanism under the umbrella of the ministry is less likely to ensure its independence and impartiality.

2. Despite being a pressing issue, the HRAP does not mention the results of increased influence of criminal underworld in terms of ill-treatment and the activities to be implemented for eradicating them;³⁸⁵
3. Chapter 5 does cover the rehabilitation of torture victims. However, the rationale for the status of a torture victim and procedures for granting the status have not been determined to date and the present plan does not provide for its adoption either; and
4. The chapter does not mention the elaboration of a detailed protocol and regular training of personnel in all the procedures that involve potential risk of ill-treatment, namely, use of force, use of special means, incident management, search, etc.

Chapter 5 of the Government's Action Plan contains several other shortcomings too:

1. Under the two identical objectives of chapter 5, there are different activities enumerated, which could be a mechanical error. However, it is impermissible that the government's Action Plan contained such errors.
2. Also, it is not correct to indicate the Ministry of Justice as the responsible agency, since under the changes made to the presidential decree of 27 November 2009, the Ministry of Justice of Georgia ensures coordination of implementation of the action plan in the fight against torture and is in charge of coordinating the council's organisational and technical aspects, which does not imply being responsible for the implementation of tasks envisaged in chapter 5 of the HRAP.
3. The third significant shortcoming is incompatibility of the definition of torture in the Criminal Code with Article 1 of the CAT; there is neither a reference to a public official as a special subject nor to instigation/consent/acquiescence. It is noteworthy that this issue very likely will be envisaged in the Action Plan for 2017 – 2018.

Regarding the quality of the implementation of the only goal under this chapter, certain activities were carried out in this regard in the reporting period. However, they are insufficient for achieving the goal.

5.1. Fight against other forms of torture and ill-treatment.

The only goal under chapter 5 practically repeats the chapter title and is excessively abstract. It would be desirable to have goals that are more specific in the context of fight against ill-treatment. The determined objectives are relevant. The deficiency related to distribution of the activities among responsible agencies is again apparent in chapter 5. This chapter concentrates on closed institutions under the Ministry of Internal Affairs and the Ministry of Healthcare as the main objectives and activities related to the penitentiary system are planned in chapter 4.

There are numerous problems remaining in terms of eradication of ill-treatment, e.g., establishing an independent and effective investigative mechanism is one of the most important issues.

³⁸⁵ This problem is discussed in detail in the Public Defender's annual report of 2016, pp. 34-35; available at: <http://ombudsman.ge/uploads/other/4/4882.pdf%20>.

5.1.1. Analyse the legal framework concerning ill-treatment and take measures for its approximation with international standards – 0%.

The objective and the activities determined for its implementation are relevant. Bringing domestic legislation in compliance with international standards through analysis and amendment of legal framework is a step forward in the fight against ill-treatment. Unfortunately, this objective was not implemented in the reporting period.

5.1.1.1. Analyse the legal framework related to ill-treatment and submit proposed legal amendments to the parliament when/if required to ensure approximation of the legal framework with international standards.

According to the information of the Justice Ministry,³⁸⁶ there were legislative amendments concerning setting up an independent investigative mechanism drafted within the Interagency Council against Torture. However, despite the great interest of the civil society, the process was completely devoid of transparency. At the stage of drafting this report, the content of legislative amendments was unknown.

The analysis of the legislative framework, envisaged within the activities at stake, has not been conducted. Similarly, the Public Defender's recommendation about bringing the definition of torture under the Georgian legislation, in compatibility with the definition under the CAT, has not been followed.³⁸⁷

5.1.2. Strengthen procedural and institutional guarantees to safeguard the protection of prisoners and detainees from ill-treatment.

The objective and four activities set for the fulfilment of the former are relevant. However, the Law on Legal Aid does not envisage representing the interests of torture victims, which significantly hampers the fulfilment of the goal.

It is positively assessed that instructions for medical treatment of persons placed in TDIs and forms for documenting injuries in accordance with the Istanbul Protocol have been developed. However, it is necessary to retrain medical and non-medical personnel in these forms regularly. It is unfortunate that the Ministry of Healthcare is rather passive in terms of improving medical services for patients with mental problems. As for the improvement of audio and video surveillance, only the Ministry of Corrections undertook certain measures during the reporting period.

5.1.2.1. Implementation of international standards and recommendations developed by national and international monitoring mechanisms regarding timely availability of a lawyer, confidentiality of meetings and quality service delivery – 0%.

According to the statement made by the Ministry of Justice,³⁸⁸ it is not the responsible agency at this stage and limits its activity to interagency coordination about relevant matters (the ministry has not communicated about the implication of this function).

³⁸⁶ Letter no. 7426, dated 04/12/2-17.

³⁸⁷ In particular, a reference to a special subject of an act – public official, as well as an act committed with the latter's instigation, consent or acquiescence. See the Public Defender's Parliamentary Reports since 2009 to date, e.g., the parliamentary report of the first half of 2009, pp. 123-124.

³⁸⁸ Letter no. 7426, dated 04/12/2-17.

The Ministry of Internal Affairs and the Ministry of Corrections, which are also indicated in the table of responsible agencies, did not respond to our written request.

Only the LEPL Legal Aid Service informed us³⁸⁹ that, “It should provide legal consultation and legal aid to victims of torture and ill-treatment.” Even though, the Law on Legal Aid does not envisage assistance to torture victims.

5.1.2.2. Ensure timely access to medical staff, protection of confidentiality, access to a doctor/forensic examination and medical examination at his/her own expenses for individuals placed in pre-detention facilities, places of administrative arrest, other penitentiary establishments and mental health facilities – 50%.

The Ministry of Internal Affairs is in the lead in terms of implementing the activities. Order no. 691³⁹⁰ of the Minister of Internal Affairs of 8 December 2016 approved instructions for medical services for persons placed in temporary detention isolators. The instructions practically compressively cover all the aspects of treatment of those placed in isolators and complies with relevant international standards established in this regard. According to the written communication from the Ministry of Internal Affairs,³⁹¹ on 13 – 17 December 2016, 26 employees of the Office of Medical Services were retrained.

Despite the reforms implemented in the penitentiary system, external monitoring reports still describe problems related to immediate access to medical services, independence of medical personnel and the issue of confidentiality.³⁹²

According to the Information of the Ministry of Labour, Health and Social Affairs,³⁹³ tangible measures towards implementing this activity were not taken in this period.

5.1.2.3. Ensure the improvement of audio and video monitoring system with protection of personal data legislation (increased technical capacity, synchronisation of CCTV system, improved protection and prolonged shelf-life of personal data) in temporary detention facilities, police buildings and establishments under the penitentiary departments based on the needs identified as a result of research in best respective practices – 50%.

According to the information submitted by the Ministry of Internal Affairs,³⁹⁴ video surveillance systems are installed on the internal and external perimeters of the ministry’s administrative buildings and most of the police stations. The system is being updated as well. The reasonable term for storage of recordings is determined based on the storage capacity of memory drives (which are different for different cameras) and should not exceed 3 years.

It is noteworthy that no researches on best practices were conducted within the Ministry of Internal Affairs in this period.

³⁸⁹ Letter no. LA 0 17 0017292.

³⁹⁰ Available at: <http://police.ge/files/DMI/691.pdf>.

³⁹¹ Letter no. MIA 4 17 02334315, dated 28/09/2017.

³⁹² Public Defender’s parliamentary report for 2016, p. 17, Public Defender’s parliamentary report for 2017, pp. 33, 37; State audit report for 2017 “Audit of ensuring efficient medical service for the remand and convicted prisoners”, no. 64/36“, pp. 4-5, available in Georgian at: <https://sao.ge/files/auditi/auditis-angarishebi/2017/braldebulta-msjavdebulta-samedicino-momsaxureba.pdf>.

³⁹³ Letter no. 01/55501, dated 30/08/2017.

³⁹⁴ Letter no. MIA 0 17 02529027, dated 19/10/2017.

Storage period for keeping the video recordings in the penitentiary system was defined as 120 hours instead of 24 hours.³⁹⁵ The same changes were made in the Temporary Detention Isolators (TDI) of the Ministry of Internal Affairs, though after the reporting period³⁹⁶.

Increasing the storage period of video recordings will facilitate getting the video-evidences to some extent, although, we think that it is necessary to increase the period at least to one month.³⁹⁷ Because, a victim of ill-treatment (or his/her legal representative), due to reasons not dependent upon him/her, might not have the possibility to submit a complaint and request for relevant evidences within the period of 5 days.

The Ministry of Corrections has not submitted any information concerning the implementation of the said activity.

5.1.2.4. Approve a form for documenting cases involving torture and ill-treatment in pursuant to Istanbul Protocol – 100%.

Order no. 131 of 26 October 2016 of the Ministry of Corrections approved the Procedure for Registering Injuries Inflicted as the Result of Torture and Ill-Treatment in Penitentiary Establishments of Georgia; the same order approved the registering forms.³⁹⁸

The order of the Ministry of Internal Affairs of 8 December 2016 is also annexed to the forms of registering injuries. They have been developed based on the Istanbul Protocol. According to the ministry's information,³⁹⁹ these forms were developed by an expert contracted by the EU/CoE joint programme Human Rights in Prisons and Other Closed Institutions.⁴⁰⁰

5.1.2.5. Train medical staff in documenting and preventing cases involving torture and ill-treatment - 50%.

According to the information of the Ministry of Internal Affairs, in 2016-2017, 57 medical employees were retrained in the use of medical examination forms developed in accordance with the Istanbul Protocol.⁴⁰¹ According to the ministry's information, as of September 2017, these forms are only introduced in 8 TDIs, where medical services are provided by local personnel.⁴⁰² It is desirable that these forms are implemented in all TDIs and both medical and non-medical personnel are retrained in their use.

³⁹⁵ Changes made on 20 March 2017 to Article 15 (2) of Order no. 35 of the Minister of Corrections of 19 June 2015; available in Georgian at: <https://matsne.gov.ge/ka/document/view/2823755?publication=3>.

³⁹⁶ Under the changes made on 3 February 2018 to the Statute of the Temporary Detention Isolators of the Ministry of Internal Affairs, Order no. 423 issued by the Minister of Internal Affairs on 2 August 2016, the video recordings will be kept for 5 days instead of 24 hours; available in Georgian at: <https://matsne.gov.ge/ka/document/view/4044496>.

³⁹⁷ In case of TDIs, the Public Defender of Georgia in the report for 2017, recommended to increase the storage period up to 20 days, (p. 22), whereas in case of penitentiary establishments – up to 1 month (p. 39).

³⁹⁸ Available at: <https://matsne.gov.ge/ka/document/view/3402759>.

³⁹⁹ Letter no. MIA 4 17 02334315, dated 28/09/2017.

⁴⁰⁰ According to the ministry's information, "On 4-6 February, in the Academy of the Ministry of Internal Affairs, similarly in cooperation with the EU/CoE joint programme, a training session was held for 31 employees of the Service of Medical Services of the Temporary Detention Department of the Ministry of Internal Affairs. The training session concerned documenting and photographing injuries in accordance with the Istanbul Protocol."

⁴⁰¹ Letter no. MIA 4 17 02334315, dated 28/09/2017.

⁴⁰² In the context of fight against torture through eradication of legislative shortcomings, it is desirable to amend Order no. 423 of the Minister of Internal Affairs of 2 August 2016 and medical personnel be allowed to apply

Similarly, 145 medical employees of 15 establishments were retrained in the PPTC.⁴⁰³ However, there have been only 4 cases where their use was identified.⁴⁰⁴ As explained by the MoC representatives, the prisoners refuse to have their injuries documented according to the Istanbul Protocol. In future, the ministry shall undertake certain steps to ensure the security of prisoners admitted with injuries and to arrange that the prisoners are explained explicitly that documenting their injuries in line with Istanbul Protocol does not put them at risk.

5.1.3. Create adequate living, sanitary and other conditions for detainees/ prisoners.

Adequate living and sanitary conditions for persons held in custody is a minimum requirement according to national and international standards. It would be desirable to elaborate more on the activities envisaged for the fulfilment of this objective, which would ensure the effective accomplishment of the objective better. Furthermore, in the reporting period, the conducted activities failed to ensure adequate fulfilment of the objective. This is mentioned in the assessment by the Public Defender as well and in the information submitted by the Ministry of Internal Affairs as well.

5.1.3.1. Improve sanitary, hygienic, nutritional and other physical conditions at establishments under the Ministry of Corrections and Legal Assistance, temporary detention facilities – 60%.

According to the information of the Ministry of Corrections,⁴⁰⁵ the monitoring process of sanitary and hygiene conditions and their improvement takes place regularly in penitentiary establishments. Unfortunately, the Public Defender does not share the ministry's positive disposition and assesses rather negatively the sanitary and hygiene conditions in majority of penitentiary establishments in the parliamentary report of 2016.⁴⁰⁶ According to the Public Defender, despite the improvement in physical environment, sanitation and hygiene, "the conditions existing in penitentiary establishments still require significant improvement and need to be brought in compliance with international standards."⁴⁰⁷

According to the information submitted by the Ministry of Internal Affairs,⁴⁰⁸ the work in this regard is still underway in temporary detention isolators. The building refurbishment processes are not finalised yet. The ventilation system is being renewed. In many establishments, complete overhaul has been conducted; however, the condition of large parts of the buildings is not still satisfactory. Furthermore, Order no. 423 of 2 August 2016 determined the rights of arrested persons to food, shower, visit, phone call as well as the list of items of hygiene to be provided to an arrestee.

directly to the prosecutor's office without involving the head of a TDI upon finding a body injury (Article 6.3 of the Statute of a TDI).

⁴⁰³ Letter no. MoC 0 17 00683200, dated 04/09/2017; in the fourth quarters of 2016, 94 medical employees were retrained in registering injuries; and 51 were retrained in the first quarter of 2017.

⁴⁰⁴ A serious shortcoming of the approved procedure is noteworthy in this context – when finding a trace of ill-treatment, a doctor is obliged to inform the Investigative Department of the Ministry of Corrections, which cannot be considered an independent agency. This shortcoming should be redeemed in the context of fight against ill-treatment, through legislative change.

⁴⁰⁵ Letter MoC 7 17 00682055, dated 04/09/2017.

⁴⁰⁶ See Public Defender's parliamentary report for 2017, pp. 22, 39, 48, and 61; pp. 59-67, available at: <http://ombudsman.ge/uploads/other/4/4882.pdf>.

⁴⁰⁷ See p. 106.

⁴⁰⁸ Letter no. SSG 0 17 02118193, dated 04/09/2017.

5.1.4. Ensure healthcare, treatment and rehabilitation for individuals placed in penitentiary establishments and mental health facilities.

The objective is too broad and covers the issues discussed under chapter 4 of the Action Plan. The following are added to these issues: healthcare of persons held in psychiatric institutions in civil sector, their treatment and rehabilitation. It is desirable to formulate this objective in more specific terms.

The objective does not cover: (1) persons with mental health problems, who are not inpatients in relevant medical institutions; however, the degree of their vulnerability in terms of ill-treatment is high; and (2) persons held in restricted environment of various profiles (shelter for disabled persons, victims of violence and homes for children).

The proper fulfilment of the objective is crucial for achieving the set goal. However, the given activities cannot ensure this. Activity 5.1.4.2⁴⁰⁹ is irrelevant for the objective and, furthermore, it coincides with activity 4.1.1.1.⁴¹⁰ Although activity 5.1.4.1⁴¹¹ is important, it is completely insufficient for ensuring healthcare, treatment and rehabilitation. Furthermore, the quality of planned activities is rather low. The Ministry of Healthcare could not ensure assessment of local needs and shortcomings for planning relevant future activities.

5.1.4.1. Assessment of regulations and established rules of using restraining methods against patients in psychiatric care facilities and develop recommendations based on best international practices – 20%.

According to the information submitted by the Ministry of Labour, Health and Social Affairs,⁴¹² a research was conducted to analyse the practices existing in selected countries. This is undoubtedly an important step in terms of developing recommendations based on international practice. However, a local research that was envisaged as a part of the activities has not been conducted and no recommendations have been made, even though this problem is regularly reiterated in the Public Defender's reports.

5.1.4.2 Analyse international experience and practices to develop a holistic approach to imposing disciplinary penalties against detainees/prisoners in all penitentiary establishments – 0%.

See the assessment of activity 4.1.1.1 concerning imposition of disciplinary penalties of different severity for the same act in different types of penitentiary establishments.

The Ministry of Corrections has not submitted any information whether the planned survey was conducted.

⁴⁰⁹ Analyse international experience and practices to develop a holistic approach to imposing disciplinary penalties against detainees/prisoners in all penitentiary establishments.

⁴¹⁰ Prepare and initiate appropriate legal changes and internal regulations based on the analysis of existing legal framework for the protection of rights of the convicts and recommendations provided by international organisations.

⁴¹¹ Assessment of regulations and established rules for using restraining methods against patients in psychiatric care facilities and develop recommendations based on best international practices.

⁴¹² Letter no. 01/55501, dated 30/08/2017.

5.1.5. Timely, full, effective and impartial investigation of crimes of torture and other forms of ill-treatment; criminal prosecution of perpetrators, improvement of internal inspection and external monitoring practices, fight against impunity.

The objective is identical to 5.1.6. However, the activities elaborated under them are different. It would be desirable to separate the objectives so that one covered setting up an independent investigative system as well as issues of external monitoring and the second focused on the improvement of internal control system. It would be desirable to integrate the elaboration of the concept of public monitoring mechanism under the umbrella of this objective. This issue is determined in the National Strategy of Human Rights Protection of Georgia for 2014–20.⁴¹³ This objective has not been adequately implemented. The model of an independent investigative mechanism – as offered by the Ministry of Justice – does not ensure independence and effectiveness of the institution. At this stage, there is no information concerning practical measures taken about improving the performance of internal monitoring bodies, apart from legislative amendments

5.1.5.1. Develop a concept of comprehensive, independent and effective mechanism to investigate crimes of torture and other forms of ill-treatment - 30%.

As mentioned when assessing activity 5.1.1.1, according to the information of the Ministry of Justice,⁴¹⁴ within the Interagency Coordination Council, legislative amendments concerning an independent investigative body have been drafted regarding which governmental consultations are currently in progress.

Despite great interest expressed by civil society and its desire to cooperate, the latter was not involved in drafting the legislative amendments.

When the work on the present report was nearing completion, information came out that the Inspector of Personal Data Protection would assume the function of an independent investigative mechanism. It is hard to discuss the rationale and effectiveness of the mechanism based on this information alone. However, the fact that the investigative power is going to be delegated to an agency of a completely different nature, does not give ground for much hope. Furthermore, it can be assumed that even in case of allocation of relevant human, financial and other resources, this change might lead to certain paralysis of the inspector's performance. It is a significant shortcoming that the newly established office will be vested with investigative competence only. Furthermore, the crimes the competence can investigate are limited and it does not extend, for instance, to the cases involving so-called evidence "planting". The civil society assesses that such conditions cast doubt on the effectiveness of the mechanism.⁴¹⁵ It is unclear what considerations were behind the refusal to adopt the model developed by the civil society, which was offered to the competent state bodies a long time ago.

⁴¹³ Creation of a public mechanism was envisaged by the HRAP for 2014-2015 (objective 5.1.8). However, the plan referred to a mechanism operating by the ministry, which, in our opinion, cannot ensure the requisite independence and impartiality of the former.

⁴¹⁴ Letter no. 7426, dated 04/12/2/17.

⁴¹⁵ Available at: http://coalition.ge/index.php?article_id=176&clang=0.

5.1.5.2. Develop and implement methodological and tactical instructions reflecting international experience for investigating crimes of torture and other forms of ill-treatment – 0%.

The letter of the Ministry of Justice⁴¹⁶ mentions nothing about the fulfilment of the indicated activities.

5.1.6. Timely, full, effective and impartial investigation of crimes of torture and other forms of ill-treatment; criminal prosecution of perpetrators; improvement of internal inspection and external monitoring, fight against impunity.

It was already discussed under objective 5.1.5, how inadequate the title of the objective is. Furthermore, not all the activities required for its fulfilment were carried out in the reporting period. Therefore, the accomplishment of the objective is unsatisfactory. It is only planned to revise regulations in terms of improving the control system within agencies. In practice, it is insufficient for ensuring effective functioning of this kind of mechanisms.

5.1.6.1. Prioritisation of criminal prosecution of crimes involving torture and other forms of ill-treatment and incorporation of respective policy within the guiding principles for criminal prosecution; revision of recommendations for prosecutors – 50%.

According to the information submitted by the prosecutor's office,⁴¹⁷ in 2016, recommendations were drafted concerning investigation of incidents of ill-treatment committed by an official or a person in an official capacity. The recommendation was distributed and used in practice. However, there is no public information and the content of the document cannot be assessed.

Based on monitoring conducted by the competent organisations (e.g. the Public Defender's reports) significant improvement of the system is not reflected in the practice so far.⁴¹⁸

5.1.6.2. Improve the effectiveness of internal monitoring measures through legal and interagency regulations (including proactive inspection, fostering the independence of the General Inspectorate, implementation of effective accountability and response mechanisms for responding to complaints) – 70%.

According to the information submitted by the Ministry of Corrections,⁴¹⁹ within the programmes implemented by the Council of Europe, a survey of European countries' best practices was conducted in 2016 and corresponding recommendations were made. The statute of the ministry's Inspectorate General was positively assessed. A new structural unit, namely, the Division of Quality Control of Medical Services was added to the ministry.⁴²⁰ Controlling the quality of medical services provided in penitentiary establishments is the major function of the division.

⁴¹⁶ Letter no. 7426, dated 04/12/2017.

⁴¹⁷ Letter no. 13/57372, dated 04/09/2017.

⁴¹⁸ See the Public Defender's parliamentary report of 2016, p. 7.

⁴¹⁹ Letter no. MoC 5 17 00681964, dated 04/09/2017.

⁴²⁰ Order no. 160 of the Minister of Corrections of 23 December 2016 moved corresponding changes to the statute of the ministry's Inspectorate General, available at: <https://matsne.gov.ge/ka/document/view/2886056>.

According to the information of the Ministry of Internal Affairs,⁴²¹ “For improving the internal monitoring mechanism, a draft of standard operational procedures was developed for the Migration Department’s Division of Protecting and Monitoring Foreigners’ Rights. The draft was assessed by an international expert invited by the International Centre for Migration of Policy Development (ICMPD).”⁴²² The process of streamlining regulations for improving the internal monitoring system is clearly commendable. It is premature to discuss the impact of the legislative changes on practical activities performed by the above agencies. At this stage, what portion of recommendations given by international experts were incorporated in the legislative changes is also unknown.

5.1.6.3. Keeping comprehensive statistics and implementing systemic analysis to reinforce measures for eliminating ill-treatment – 0%.

In terms of collecting statistical information and conducting its analysis, no changes were made by the prosecutor’s office in this period. The statistical information is still posted on the website of the prosecutor’s office. However, it has not been analysed in any fashion.

A similar situation exists about the statistics collected by the Ministry of Corrections; no updates or analysis has been made since 2016.

5.1.6.4. Strengthen external mechanisms (including the Public Defender and the National Preventive Mechanism) for monitoring conditions of prisoners and their treatment; prepare and submit legal acts to improve the legal framework further; and mechanisms for institutional cooperation – 10%.

The ministry has not provided any information concerning the fulfilment of this activity. In 2013 – 2014, consultations were held with NGO sector concerning setting up a public monitoring mechanism. No agreement has been reached on this issue to date. As a result, except for the NPM operating under the Public Defender, there is no external monitoring mechanism in the country.

For implementing the amendment made to the Code of Imprisonment on 1 May 2015, the Minister of Corrections determined the procedure for taking photographs in penitentiary establishments by a member of the Public Defender’s preventive group in Order no. 123 of 1 September 2016. At first glance, this is a positive development. However, since the Public Defender is supposed to submit detailed information for taking photographs five days in advance, this new measure is devoid of any practical implication in terms of fighting ill-treatment as an injury depicted in a photo might altogether disappear in five days. Moreover, the NPM’s right to take a photo should be governed by the Organic Law of Georgia on the Public Defender of Georgia and not by the Code of Imprisonment.⁴²³

⁴²¹ Letter no. MIA 6 17 02271407, dated 21/09/2017.

⁴²² According to the same letter, “this document was approved by Order no. 342 of the Minister of Internal Affairs of Georgia of 28 June 2016 on Amending Order no. 231 of the Minister of Internal Affairs of Georgia on Approving Standard Operational Procedures for Certain Structural Units of the Migration Department of the Ministry of Internal Affairs of Georgia. The Monitoring Division carries out preventive monitoring aimed at securing human right standards and responds to breaches of foreigners’ rights. The said document also covers the principles of developing reports and recommendations, the list of activities to be carried out by the division in terms of protecting juveniles’ rights and other standard operational procedures.”

⁴²³ It would be desirable to take this into account when preparing future legislative amendments.

5.1.7. Elimination of effects of torture and ill-treatments, protection and rehabilitation of victims.

For the fulfilment of this objective, it is necessary to have the status of a victim of ill-treatment determined, without which it is impossible to develop a state programme and conduct other activities. Unfortunately, in the reporting period, nothing has been done towards achieving this objective. The fulfilment of the objective is also hampered by the fact that the activities planned in the reporting period have not been carried out.

5.1.7.1. Analyse and further improve the legislation (if necessary) to ensure effective legal assistance and protection of victims – 0%.

According to the information of the Ministry of Justice,⁴²⁴ consultations on these issues are ongoing within the Interagency Coordinating Council Against Torture. However, the agencies have not agreed upon any position at this stage.

5.1.7.2. Develop a state policy for the rehabilitation of victims – 0%.

The programme has not been developed.

5.1.8. Train and strengthen capacity of public officials for the prevention of torture and other forms of ill-treatment, effective response and investigation as well as effective protection of victims.

The activities planned for achieving the above objective are relevant. However, the quality of their implementation is unsatisfactory. Each agency's training centre conducts retraining of its employees on prohibition of ill-treatment. However, there is still no predetermined plan of retraining programme that would be based on needs assessment and the respective approach.

5.1.8.1. Empower training facilities to develop their potential regarding training sessions on the prohibition of ill-treatment; improve coordination between agencies; further improve standards, materials and methods as per international standards – 70%.

According to the information of the Chief Prosecutor's Office,⁴²⁵ the programme on effective investigation and accurate qualification of incidents of ill-treatment has been developed within the training centre. Five training sessions on accurate qualification of the incidents of ill-treatment were conducted for the employees of the prosecutor's office and 124 employees were retrained in 2016. Similarly, 39 employees were additionally retrained in 2017.

According to the information of the PPTC,⁴²⁶ the centre elaborated, in 2016, a programme for medical personnel, namely, Registering Injuries Inflicted to Accused/Convicted Persons as the Result of Alleged Torture and Other Cruel, Inhuman or Degrading Treatment in Penitentiary Establishments. Furthermore, an educational film was made. Study programmes have been developed for non-medical personnel and in these programmes, 8 academic hours are assigned to the topic of inhuman and degrading treatment. Up to 3,000 employees were retrained in these programmes.

⁴²⁴ Letter no. 7426, dated 04/12/2-17.

⁴²⁵ Letter no. 13/57372, dated 04/09/2017.

⁴²⁶ Letter no. MoC 7 17 00657224, dated 23/08/2017.

According to the information of HSoJ,⁴²⁷ in cooperation with representatives of the OHCHR, it finalises working on the curriculum on Prohibition of Torture, Inhuman, Cruel or Degrading Treatment of Individuals. Before the programme was finished, six training sessions were conducted in 2016 (81 participants) and two more training sessions are planned to be conducted based on the revised programme by the end of the year.

It is commendable that every training centre is committed to retraining personnel from relevant agencies in prohibition of ill-treatment. However, it is desirable to determine in advance a list of employees to be retrained and select relevant topics according to their functions.

In many cases, the same donor (e.g. the EU/CoE joint programme) supports retraining and elaboration of programmes, which might be ensuring the relevance of the content of the training programmes. However, we do not have any information at our disposal about the systemic coordination of any kind.

5.1.8.2. Develop training modules on the prohibition of ill-treatment (as per existing needs), train the trainers of the Training Centre and provide continuous learning opportunities for the staff. Train/ retrain acting and future staff of temporary detention facilities and penitentiary establishments within the scope of basic training course and organise specialised training sessions – 60%.

According to the PPTC,⁴²⁸ 145 doctors were retrained in the injury registration programme in 2016. In total, up to 3,000 employees were retrained in the programme designed for non-medical personnel.

According to the information provided by MIA, the training course of the MIA Academy for the personnel of the Ministry, including those of the TDIs, contain the topics on prohibition of torture including the case-law of the ECtHR, obligations of law-enforcement bodies during the investigation, etc. In 2016, 18 staff-members of the TDIs, and in 2017 – up to 40 staff-members of the TDIs, underwent distant learning course launched at the MIA Academy. In 2017, a training on prohibition of discrimination and elimination of ill-treatment was held with the participation of 13 staff-members of the TDIs.

In case of the MIA, it is important that both medical and non-medical personnel of the TDIs are retrained regularly in the issues of fight against ill-treatment, including, documenting injuries. This is not done adequately at this stage.

Recommendations:

To the Government of Georgia

- To reflect the following in the future HRAP:
 - Development of an effective public monitoring mechanism for closed institutions, which will be independent from governmental bodies;

⁴²⁷ Letter no. 02/1595, dated 24/08/2017.

⁴²⁸ Letter no. MoC 7 17 00657224, dated 23/08/2017.

- The activities to be carried out in terms of fight against ill-treatment and eradicating influence of criminal underworld;
 - The activities aimed at protecting outpatients with mental health problems, persons held in closed institutions (homes for disabled persons, elderly, shelters for victims of violence, children's homes, etc); and
 - The necessity to conduct research on relevant legislation, practice and needs assessment before adopting any legislative amendment or state program and to refer to the identified shortcomings/needs in the drafted documents.
- To prepare and submit to the parliament the draft of relevant legislative amendments on determining the status of a victim of ill-treatment and the state obligations related to this status.

To the Ministry of Justice

- To prepare and submit to the parliament the draft of relevant amendment to the Criminal Code for bringing the definition of torture under Article 144¹ in compliance with the UN Convention Against Torture; the amendment should refer to a public official as a special subject of the crime and, furthermore, categorise the commission of a relevant act with the instigation, consent, or acquiescence as torture;
- When drafting the legislative amendment, ensure transparency of the process and involvement of civil society; and
- When coordinating the implementation of activities planned among various agencies, be proactive in terms of obtaining and processing information on the activities carried out.

To the Interagency Coordinating Council Against Torture

- To facilitate interagency agreement on developing a uniform and comprehensive system of collection of statistical data that would reflect full information about ill-treatment. Specifically, it should note all incidents and which agencies' employees are involved. Furthermore, statistics should be maintained not only according to qualification of crimes but also stemming from the facts/complaints of ill-treatment itself (including the number of complaints about incidents of ill-treatment lodged with a certain agency, including the details of the agency to which the employees belong; in how many cases investigation was instituted/discontinued; under which article(s) of the Criminal Code; against how many individuals criminal prosecution was instituted; how many cases, against how many accused persons, were referred to court; in how many cases plea agreement was concluded, etc); and
- To ensure coordination among training centres in terms of content and volume of training/retraining programmes planned on the topic of fight against ill-treatment.

To the Ministry of Internal Affairs and the Ministry of Corrections

- To ensure detailed protocols for special procedures (use of force, use of arms/special means, search and incident management) are elaborated which, *inter alia*, also lay down the relevant registration and accountability system;

- To ensure training/retraining of current and future personnel in the application of special procedures; and
- To study best practices of audio and video monitoring systems and ensure improvement of the latter according to identified needs, including determination of reasonable terms for storing webcam video recording.

To the Minister of Internal Affairs

- To ensure, under the change made to Order no. 423 of 2 August 2016, that medical personnel can refer cases directly to a prosecutor's office when they find injuries, without involving a Head of TDI (Article 6.3 of TDI statute).

To the Ministry of Internal Affairs

- To ensure that the injury documentation forms developed in accordance with the Istanbul Protocol are implemented in every TDI; and
- To ensure regular retraining of non-medical personnel in issues related to documenting injuries in accordance with the Istanbul Protocol.

To the Ministry of Labour, Health and Social Affairs

- To ensure that appropriate healthcare activities are conducted for persons in closed-type establishments and institutions (medical establishments of psychiatric profile, shelters, establishments of deprivation of liberty, etc); to ensure that appropriate activities are conducted in terms of improving accessibility and quality of services, especially in mental healthcare; and
- To ensure that state programme for rehabilitation of torture victims is elaborated and enforced.

To Training Centres

- To study regularly shortcomings of study programmes and work towards redeeming them; furthermore, to determine in advance a list of employees to be retrained and select relevant topics according to their functions.

ANNEX I

Comments of the Prosecutor's Office on Chapter I of the monitoring report on the implementation of the National Strategy of Human Rights Protection and the Governmental Action Plan and the GDI answers on them

Comments of the Prosecutor's Office are related to the following assessments made in the report:

Activity 1.1.4.2. Increase the sensitivity of judges and law enforcement officers towards domestic violence through awareness raising measures

Assessment #1

“The quantity and length of the training on the issues of domestic violence conducted for prosecutors is unknown. Therefore, it is impossible to assess whether they were sufficient to cover all the subjects. Moreover, bearing in mind the width of the subject and number of prosecutors trained in Tbilisi and other regions, we can conclude that the activities carried out by the Prosecutor's Office more or less meet the criteria for implementing the actions”.

Assessment #2

“According to the information received in the framework of the given monitoring, the portion of prosecutors that attended the training out of a total number of prosecutors working in regions varies between 20% and 35%. This should be assessed positively bearing in mind the coverage of regions and the substantial amount of employees”.

Assessment #3

“In the cases of MIA and the Prosecutor's Office, as opposed to the courts, the subject of the training was adequate for learning the issues and was compatible with the time allocated”.

Assessment #4

“The number of prosecutors that have attended the training more or less meets the requirement of fulfilling the action bearing in mind the regional coverage”.

Recommendation

“To increase the number of prosecutors retrained on the issues of domestic violence across the Country (regional coverage) and development of special modules”.

As you have already known, activity 1.1.4.2. envisages raising awareness of the judges and representatives of law-enforcement bodies on the issues of domestic violence.

The assessment #1 written in the present report related to the actions of the Prosecutor's Office undertaken within the framework of activity 1.1.4.2. are rather vague and we do not agree with it because of the following:

- Assessment #1 focuses only on the prosecutors; in particular, it states that “the quantity and length of the training on the issues of domestic violence conducted for prosecutors is unknown. Therefore, it is impossible to assess whether they were sufficient to cover all the subjects [...]”. As far as activity 1.1.4.2. was related to awareness raising not only of prosecutors but generally of the law-enforcement bodies, we could not agree with this assessment. Among the representatives of the Prosecutor's Office trained in 2016-2017, there were prosecutors, interns, managers and coordinators of witnesses and victims.

- Assessment #1 states that “the quantity and length of the training on the issues of domestic violence conducted for prosecutors is unknown. Therefore, it is impossible to assess whether they were sufficient to cover all the subjects [...]”. This assessment is vague for us as far as we provided the information on the length and number of trainings to the monitoring group in the following format:
 - In response to the letter sent on 7 November 2017 from GDI and IDSD, signed by Giorgi Mshvenieradze, we sent the agendas of the educational activities implemented in 2016-2017 within the framework of the activity 1.1.4.2 of the Action Plan. The agendas contained detailed information on the topics covered and the length of the trainings as well as the time envisaged for covering each of the topic;
 - The electronic mail sent by Ms Tamar Zubashvili to Ms Mari Kapanadze on the e-mail mkapanadze@gdi.ge on 11 April 2018, contained as annexes the agendas of the educational activities undertaken for the implementation of the activity 1.1.4.2. The mentioned documents also contained detailed information on the covered topics and the length of the trainings.

Moreover, the assessment #1 made in the report on the implementation of the Action Plan does not comply with the assessments #2 and #3 made by the experts’ group. Assessment #1 states that “Moreover, bearing in mind the width of the subject and number of prosecutors trained in Tbilisi and other regions, we can conclude that, the activities carried out by the Prosecutor’s Office **more or less** meet the criteria for implementing the actions” whereas assessment #2 says the following: “According to the information received in the framework of the given monitoring, the portion of prosecutors that attended the training out of a total number of prosecutors working in regions varies between 20% and 35%. This should be assessed **positively** bearing in mind the coverage of regions and the substantial amount of employees.” Also, as it was mentioned in the e-mail sent by Ms Tamar Zubashvili to Ms Mari Kapanadze on the e-mail address mkapanadze@gdi.ge on 11 April 2018, the prosecutors/investigations of the system underwent specialisation on domestic violence cases. Specialisation by its content and aim does not mean the specialisation of all the prosecutors/investigators of the system. Contrary, coming out from the sensitivity of the crime and the priority of fight against it, specialisation implies defining special number of persons, their specialisation and professional development.

Also, it is mentioned in the assessment #1 that the information on the length of trainings envisaged under the activity 1.1.4.2 and their topics is not available, while in the assessment #3 we read that “In cases of MIA and the Prosecutor’s Office, as opposed to the courts, the subject of the training was **adequate** for learning the issues and was **in compliance** with the time allocated”.

Besides, in the given chapter there is one more assessment #4, “The number of prosecutors that have attended the training more or less meets the requirement of fulfilling the action bearing in mind the regional coverage”; and the recommendation “to increase the number of prosecutors retrained on the issues of domestic violence across the Country (regional coverage) and development of special modules”.

With regards to the mentioned we have the following comments:

1. Since 2016, a special training program on “fight against violence against women and domestic violence” was introduced at the Prosecutor’s Office. Starting from 1 May 2018, the cases on domestic violence are assigned only to the prosecutors and investigators trained by this program. The selected representatives of all the relevant units and territorial bodies undergo the specialisation.

2. As it has already been mentioned above, the aim of the specialisation is not training of all the prosecutor of the system. Therefore, increasing the numbers could not be the aim of the organization. Increasing the number of specialised prosecutors on domestic violence issues will depend on the needs revealed by practice. Therefore, the main emphasis is made on the training of the prosecutors within the framework of the specialisation program and improving the qualifications and professional development of already trained prosecutors.

GDI comment: the remark will be taken into consideration.

ANNEX II

Comments of the High Council of Justice on monitoring report on the implementation of Chapter II (Rights to a Fair Trial) of the National Strategy of Human Rights Protection and the Governmental Action Plan

Activity - 2.1.1.1. A long-term and holistic strategy and action plan for the reform of judicial system

Ensuring the involvement of judges in the process of elaboration of Strategy of Judiciary the its implementation Action Plan:

In order to prevent the delay in time of the improvement of the Long-term Strategy of the Judiciary and its Action Plan, the document was sent to the judges via intranet. It should be underlined that the intranet of the system provides the possibility not only to get acquainted with the document but also to discuss it together with other judges. Therefore, the judges were given the possibility of providing their comments on the content of the document and have discussions around it. Thus, we consider this issue be worth to mention in the given report.

GDI comment: The document was shared with the judges only after it had been elaborated and they have not been involved in its elaboration process, although the above-mentioned fact will be included in the report.

Activity - 2.2.1.1. Establishment of an electronic case distribution system in courts based on random distribution principle

Implementation the changes to the “Rules of automatic, electronic case management system in common courts of Georgia”:

The rule of automatic, electronic case distribution system has been launched in the common courts of Georgia since 21 December 2017. Therefore, at the first stage of launching the electronic case distribution system, it became necessary to introduce some changes to the “Rules on automatic electronic case distribution system in common courts of Georgia” approved by the HCoJ on 1 May 2017. It was caused by the necessity to solve those problems revealed during practical implementation and which could not have been foreseen objectively during the elaboration process of the rules. Therefore, making changes to the electronic program at the first stage of its launching process is natural and does not necessarily indicate to the deficiencies in legal regulations of the system functioning.

Defining the composition of judges according to the narrow field of expertise and the changes in the composition due to one’s personal decision:

According to Article 30(2) of the Organic Law of Georgia “on Common Courts”, in District (City) courts of heavy workload where there are only two judges, the HCoJ has the authority to decide on narrowing the field of expertise of judges or on setting up a special Board of Judges in narrow field of expertise (hereinafter: Board of Judges); whereas, according to the Paragraph 3 of the same article, the HCoJ defines the number of judges in Board of Judges and decides on its composition. According to the given norm, unlike the cases of Board of Judges, the HCoJ does not have the competence to define the composition of judges according to groups of narrow field of expertise. This authority is granted to the Chairman of the court according to the preferences of judges. Moreover, it should be noted that there are several judges performing their duties in each of the field of expertise and the cases are assigned to them based on random distribution principle, which does not allow the allocation

of a certain case to one particular judge. For example, in Tbilisi City Court, there are 19 judges have been dealing with the law of obligations disputes; 6 judges – with property law disputes and 6 judges - with family law disputes. In the administrative cases Board, 3-8 judges perform their duties in each of the narrow field of expertise and in criminal cases Board – 2-9 judges perform their duties in narrow field of expertise. Besides, as a rule, the narrow field of expertise of a judge does not change, which also excludes the possibility of assigning the certain case to a certain judge. Thus, from the objective point of view, the arbitrariness of judges in terms of interfering into the composition of judges in narrow field of expertise is not possible.

Setting up the composition of Board:

The Procedural law ensures the authority of the Chairman of court to decide the composition of Board in District (City) courts if the collegial review of a case is needed. In particular, according to I and II parts of article 26 of the Civil Procedural Code of Georgia, in case when there are enough number of judges to review the case by board composition in District (City) courts, the judge which was reviewing the case unilaterally has a right to request the collegial review of a case by Board consisting of three judges; in such case, the judge issues the motivated judgment, which is sent to the Chairman of Court and the latter decides the Board composition together with the participation of the judge who was dealing with the case initially. Therefore, the regulations in the random distribution rules are in line with the procedural legal requirements.

Setting up a shift for judges:

The authority to set up a shift for the judges by the Chairman of a Court is not a ground for assigning the cases to so called “preferable judges” as far as the shift is set up not during the distribution of cases, but for a certain period of time in advance before the case is submitted to the court for distribution. Therefore, the case is assigned to a judge, which is on duty during the distribution process.

Defining the sequence of cases:

By establishing the automatic electronic case distribution system in the judiciary, a number of questions concerning the risks of interference of the Chairman of a Court in the case distribution process were avoided. It should be mentioned that the Organic Law of Georgia “on Common Courts” envisaged the distribution of cases without the electronic system only in case of temporary disruption of work of the automatic electronic case distribution system. Although, even in such case, in order to avoid all the doubts, the law defines the distribution of cases according rule which is based on the sequence of cases submitted to the court and alphabetical order of the judges. Besides, in order to neutralize all the doubts, the distribution rule in detail regulated the interference cases and in case of disruption of a system envisages the obligation of notification and only afterwards the possibility of the controlling the distribution of cases without the electronic system, which totally excludes the possibility of external interference; therefore, the Chairman of a Court is fully distanced from the case distribution process.

GDI comment: The program was functioning in a pilot regime for 6 months and before its final launching it was possible to eradicate the existing problems in the rules related to the risks of interference of chairmen of courts in the case distribution process:

- a) As far as the law does not stipulate the rule of defining the composition of judges in narrow field of expertise by a chairmen of courts, there is a risk that this authority could be used as an influence mechanism in the process and the relevant result;
- b) The main goal of the electronic case distribution program is to distance the chairman of a court from the case distribution process. Therefore, by the defining the composition of a Board, he/she retains the important leverage for influencing the final outcome of a case;
- c) Since the law does not envisage the rule of setting up a shift, in this case (like the defining the composition of judges with narrow field of expertise) the risks of composing the shift order with the preferable judges according to one's personal attitude still exists.

Activity - 2.2.1.2 Effectively implement the criteria for the selection of judges, further improve the system of periodical performance evaluation of judges, elaborate and implement criteria for the promotion of judges. Review recommendations developed by the Public Defender in order to initiate disciplinary proceedings.

The right of the candidate to appeal the dismissal from the competition due to the failure to meet the good faith criterion:

The report states that the “candidate who cannot meet the good faith criterion cannot reach the voting stage and is dismissed from the competition without the right to appeal”. In this case, the candidate cannot address the Qualification Chamber; otherwise, he/she could appeal the decision in the first instant court. Therefore, we think that it should be mentioned in the report.

GDI comment: After interview stage the candidates for judges does not have a possibility to appeal against rejection of appointment as a judge, because the Council does not make a written decision on rejection to the candidates who are not allowed at voting stage.

Activity - 2.2.1.6. Provide relevant trainings for a group responsible for developing tests and case studies for qualification exams of judges and improve the standards of the qualification exam

See the decision of the High Council of Judges on the improvement of Rules of qualification examinations for judges and the qualification examination program: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/152-2018.pdf>

GDI comment: the remark will be taken into consideration.

ANNEX III

Comments of the Ministry of Corrections on Chapters IV and V of the monitoring report on the implementation of the National Strategy of Human Rights Protection and the Governmental Action Plan and the IDSD answers on them

The Ministry: The Ministry of Corrections responded to GDI by its letter “MoC 3 17 00794624” clarifying that all the penitentiary establishments of the ministry meet the standard of 4 m² of living space set by the legislation. Moreover, the problem of overcrowding has not been revealed in the penitentiary establishments in 2016-2017.

IDSD Comments: *the report cited the reports of the Public Defender of Georgia, which contain information on failure to meet the standard of 4 sq meters in the specific establishment and on overcrowding in one of the establishments.*

The Ministry: The Ministry of Corrections responded to GDI by its letter “MoC 3 17 00794624” clarified that was guided by the study reflected in the Special Report of the Special Prevention Group of the Public Defender of Georgia on “Request/Complaints Mechanism in Penitentiary System of Georgia”. It was also pointed out that according to the existing practice, based on the analysis of the deficiencies revealed during the examination process of the requests/complaints submitted by the accused/convicted persons and of the legal proceedings, the Ministry identifies the problems, thoroughly studies the issues and makes the relevant changes and/or prepares the legislative initiative.

Considering the above-mentioned, on 1 June 2017, changes were made to the Imprisonment Code and the relevant bylaws, which improved the complaint mechanism – the changes were made to improve the complaint rules for the decision made by the local councils on early conditional release as well as the procedures of sending the request/complaint confidentially.

IDSD: *The report names the certain recommendations given in the Special report of the Public Defender, which have not been taken into consideration: the indicator for the fulfillment of the Activity 4.1.5.1. was the document prepared on the complaint mechanism and the relevant follow up changes made according this document. As it could be seen in the letter of the Ministry, such document has not been drafted during the reporting period. Moreover, none of the actions have been undertaken in order to implement the recommendations given by the Public Defender in the report for 2015.*

The Ministry: It is mentioned in the report that the Ministry has not fully ensured keeping the individual files, medical files and other documents in compliance with the Georgian Law “on the Protection of Personal Data” and the Georgian Law “on Patient’s Rights.” The Ministry answered regarding this issue in the letter MoC 9 17 00783811. The assessment written in the text is formulated in a way to give the impression as if the Ministry ignored the requirements of the both above-mentioned laws, whereas one could talk only about the certain shortcomings.

The above-mentioned issues are regulated by the following legal documents:

- a) Order #90 of the Minister of Penitentiary, Probation and Legal Aid of Georgia “on approving the special list of persons granted with the authority to be informed about the individual files of the accused/convicted prisoners, signed on 25 May 2011;

- b) Order #82 of the Minister of Penitentiary, Probation and Legal Aid of Georgia “on approving the rules of maintaining the registry and individual files of the accused/convicted prisoners”, signed on 11 May 2011;
- c) Order #180 of the Minister of Corrections “on approving the rules of maintaining the registry and individual files of the accused/convicted juvenile prisoners”, signed on 31 December 2015;
- d) Order #31 of the Minister of Corrections “on approving the Penitentiary healthcare standards, additional healthcare standards for the persons with special needs, package for preventive healthcare in penitentiary establishments and the list of basic medicines defined for penitentiary healthcare, signed on 22 April 2015.

IDSD: *The existing regulations do not come into compliance neither with the Georgian Laws “on the Protection of Personal Data” and “on the Patient’s rights” nor with the international standards. Moreover, only a doctor of a prisoner has the right to decide and be responsible about his/her healthcare, whereas the existing practice of involvement of non-medical personnel as well as in some cases even the representatives of the penitentiary department and the Ministry in decision making on healthcare of certain patients is rather far from being in compliance with the national and international standards. These regulations caused the loss of credibility of prisoners towards the medical personnel that at the end is negatively reflected on the quality of the medical service.*

The Ministry: According to the report, the challenges in terms of the rights of the vulnerable groups still exist. The needs assessment envisaged under the Action Plan has not been implemented. The rights of the foreign prisoners have not been protected adequately. No activities have been planned for improving the rights of the ethnic, religious and sexual minorities. Regarding all these issues the Ministry answered in the Letter MoC 6 17 00783601 stating that in spite of the fact that the study has not been conducted on any specific issues, the pack of legislative changes was elaborated based on the analysis of the practice of the Ministry employees as well as the complaints and claims of the accused/convicted prisoners. The legislative changes were related to the postponing of the sentence or release mechanism of the convicts due to the health deterioration. Besides, with the involvement of the Ministry employees and external experts the standards of treatment the persons with disabilities in penitentiary establishments have been elaborated based on the Convention on the Rights of the Persons with Disabilities.

By its letter MoC 3 17 00781114, the Ministry answered to the Georgian Democracy Initiative” that “Since January 2016, special lifting mechanisms and rampants were constructed at the entrance of regime buildings at the Penitentiary establishment #5; the classrooms and cells have been refurbished as well”.

The information about the planned or already undertaken measures related to the needs of the persons with disabilities was also provided in the letter “MOC 7 17 00785763”, received from the Ministry. It was underlined in the letter that without the analysis and assessment of the specific issues, the Ministry would not have been able to ensure these kind of changes.

IDSD: *As mentioned in the report, the studies envisaged by the Action plan have not been conducted. Moreover, it is noted that the activities envisaged under the Action Plan either inadequately or do not cover at all the measures to ensure the rights of the vulnerable groups.*

The Ministry: The priorities defined by the Human Rights Strategy of the Government of Georgia for 2014-2010 are in compliance with the aims and objectives envisaged by the budgetary program (which is elaborated according to the Georgian Law “on the State Budget for 2016”).

As for the information on expenditures, the **Program Budget** consists of three programs, subprograms and activities which encompass the total budget of the Ministry whereas the objectives of the **Human Rights Strategy and Action Plan for 2016-2017 of the Government of Georgia** are defined for the specific direction and do not cover the total budget of the Ministry. Therefore, it is impossible to have the compliance between these two budgets. Moreover, budgetary program and budget of the ongoing year could be corrected and refined during a year.

Taking into consideration that Action Plan of the Government of Georgia for 2016-2017 was approved on 21 July 2016 by the Decree #330 of the Government of Georgia, it was impossible to reflect in the document the renewed and corrected budget program for 2017.

Although when we talk about the expenditure, one should probably mean the expenditures spent on the already completed certain activities. Unfortunately, such format was not presented while drafting the report and we lacked the possibility to indicate the expenditures that the Ministry undertook in order to implement the activities for 2016-2017.

IDSD: *According to the Georgian legislation the state budget is planned in the format of program budgeting. The programmatic part of the program budget should reflect those priorities, which the program serves:*

- 1) *Budget priority and the aims/objectives envisaged by the Action Plan (as well as by the Action Plan of the Ministry) do not comply with each other;*
- 2) *Each program should consist of the activities, which serve the final result and the goal. Therefore, if the aim is to improve the health of a person, the salary of the doctor who would treat him/her and therefore implements the activity, should be reflected in this program and not in the administrative program, or it should be presented in the administrative program at least as a sub-component in order to provide transparency for the planned budget and its expenditure. The ministry in its comments stated that in the present format of the existing budget such budgetary analysis is “impossible”, which is true and therefore, we recommend the Ministry to elaborate program budget for future in order to increase its transparency and improve the quality of reporting process. Regarding this recommendation, the ministry expressed readiness in its comment to have consultations with the Ministry of Finance.*
- 3) *Implementation of most of the activities envisaged under the Action Plan needed financial expenses. Because of the current format of the program budgets, the relevant expenditure report of the Ministry is not transparent and does not give the possibility for conducting any analysis. For example, there is no answer on the question whether how much were spent on the prevention of the infectious and non-infectious diseases or the suicide program. Therefore, again, our recommendation is that the future program budget should be more detailed and should contain sub-programs according to the priorities. Also, one program should encompass all the resources, which are spent on the implementation of the program activities (see below the comment on the salaries of the medical personnel under the administrative program).*

The Ministry: According to the report, the restrictions set for the high risk prisoners in fact amount to the additional punishment, which is not in line with international standards of management the dangerous offenders. In spite of the of the fact these standards have not been reviewed within the framework of the legislative changes and their revision has not been planned for the future either.

Categorization of the prisoners according to risks is way to reduce the risks, which implies that low risk convicts have much more rights/ possibilities. Higher is the risk the prisoner poses to, the less rights he/she has.

Division of the prisoners according to the risks they pose is aimed at motivating a prisoner towards the changes so as to give the prisoners with the good behavior who pose less threat to the surrounding a possibility to enjoy more rights than those convicts who used to violate the statute of the establishment or the daily regime.

IDSD: *The International standards imply that all the convicted prisoners nevertheless the risk, should be given the equal regime for serving their sentences. The recommendations of the Committee of the Ministers of the Council of Europe as well as the ECtHR case law state that any kind of restrictions, especially concerning the contact with the family and outside world should be exceptional and be used only in cases when they are justified by objective criteria such as public security, national security and prevention of crime. Considering the above-mentioned, the Imprisonment Code itself is not in line with international standards while envisaging automatic restrictions of rights on higher risks. This issue has also been underlined in the parliamentary reports of the Public Defender of Georgia for 2016 and 2017 (see “assessment of the activity 4.1.1.1”).*

The Ministry: According to the assessment of activity 4.1.2.2. in the report, the functioning of the early conditional release mechanism was assessed by 50 %. With regards to this activity, the Ministry responded in the official letter MoC 5 17 00693358 stating that the report does not fully reflect the information sent by the Ministry and provides the ground for inadequate assessment of the implemented reforms.

On 1 June 2017, the changes were made to the Imprisonment Code, according to which (also Articles 72¹ and 73(7) of the Criminal Code of Georgia) the cases of those convicts who are sentenced to life imprisonment, the issues of early conditional release or change of the sentence into the lighter sentence (home arrest/community work) are decided by the court and not the local councils as it was before the changes.

According to changes made on 1 June 2017(article 27¹ of the Administrative Procedure Code of Georgia), the role of a court enhanced in relation to the early conditional release issue, in particular, the complaint mechanism of the decisions of the local councils has been improved and has become more effective.

In case the court considers that the convicted prisoners got unsubstantiated refusal from the local council on early conditional release or the change of the sentence into the lighter one (home arrest/community work), it is granted the authority to directly order the local council to make a positive decision. Court did not have such authority before. These changes will ensure the improvement of the quality of the substantiated decisions made by the local councils and will give the convicted prisoners the possibility to effectively use the complaint mechanism.

As a result of changes made to the Imprisonment Code on 1 June 2017, the local councils were granted the authority to define additional requests for the convicted prisoners who are granted early conditional release. Introduction of this mechanism became important in terms of necessity of

effective continuation of the rehabilitation programs, launched based on individual sentence planning, in the probation system after the early conditional release.

IDSD: *The changes mentioned by the Ministry were positively underlined in the assessment of the activity 4.1.2.2. in the report, although the initial indication of the activity implementation was the statistics for the conditional early release, which has not been improved. Therefore, considering the initial indicator, this activity has not been implemented. Although, because of the positive changes the implementation level of the activity has still been assessed as 50%. It should be noted hereby that the improvement of the statistics is an inadequate indicator for the assessment of the effectiveness of the mechanism. Although, unfortunately, we could not ignore already approved indicators.*

The Ministry: The electronic version of the brochure on the rights of accused/convicted prisoners in Georgian and other mostly demanded languages were sent to the social units of all the penitentiary establishments as soon as they were drafted.

Besides the mentioned brochures, the beneficiaries also receive the pages and issues from those brochures they are interested in. Their availability is ensured by the social workers, who were provided with the electronic version of the brochures when the latter were published.

IDSD: *as it was mentioned in the assessment of the activity 4.1.4.1., neither initial nor the additional indicators have been implemented during the reporting period. The mentioned brochures were published in 2015, before the reporting period and their number does not cover the existing needs.*

The Ministry: The public reception has been functioning in all the establishments except #9, #7 and #3. We do consider it irrelevant and impossible to arrange public reception in the mentioned establishments:

- Penitentiary establishment #3 is situated in a geographical area, where one could not find a space for the construction of the reception;
- The establishments #9 and #7 are situated in the densely populated area where it not possible to find any other additional space for the construction.

IDSD: *As It is mentioned in the report, the assessment of the implementation of activity 4.3.1.1 by 50% is due to the fact that according to the indicator, 2 public receptions had to be constructed whereas the Ministry ensured the construction of only 1 reception. We should also note hereby that we do not share the position of the Ministry that in the mentioned three establishments it was impossible to construct public receptions due infrastructural/environmental conditions. The mentioned establishments are envisaged for low-number of persons, thus, it is possible to find the location for the public reception in the administrative building where it would be possible to arrange the visits and receiving parcels in line with modern standards.*

The Ministry: The changes made into the Order #33 of the Minister of Corrections “on approving the instructions for the individual sentence planning” signed on 29 April 2015, defined the levels of services provided for high-risk convicted prisoners. According to them, while elaborating the individual sentence planning for high-risk convicted prisoners, the team defined the necessity of involving the prisoner in individual (first level) or group (second level) rehabilitation programs taking into consideration the individual risk and needs assessment of the prisoner.

IDSD: *It is indicated in the parliamentary reports of the Public Defender of Georgia for 2016 and 2017 that the prisoners placed in the high-risk establishments most of the day spend their time in cells and do not have an access to the adequate rehabilitation programs. The answer of the Ministry also makes it clear that in high-risk establishments there is a shortage of the availability of the programs and activities. Hereby we would like to mention again the restrictions on the contact with the outside world envisaged by the legislation. All the above-mentioned once more supports our assessment if the implementation of activity 4.4. of the Action Plan.*

The Ministry: In 2017, the regulation appeared on the rules and conditions for the admission of the convicted prisoner on the first level of the high education (baccalaureate) together with the list of specialties in case of which the convicted prisoner had the right to distance learning.

The first precedent of correspondent learning in the penitentiary system which was reached after the one and a half years of negotiation with the high school took place in 2016-2017 year

Receiving high education by correspondent method has been ensured for the convicted prisoners nevertheless the risks they pose to others if the high school is ready for arranging the examinations, provision of the learning materials or the contact with the academic personnel with the help of social workers and etc.

Electronic learning method gives the low-risk convicted prisoners a comfortable way of getting the education as well as full guarantee that in spite of the attitude of the high school towards the prisoner, the student will have the possibility to study and complete the baccalaureate.

There is no such a precedent that a **high-risk prisoners requested the high education** and were refused to receive such service. Therefore, the approach could not be assessed as discriminative. In case of such request, the social unit will undertake all the necessary steps like in other cases, in order to reach the agreement with the high school.

IDSD: *We believe that the assessment of the implementation of activity 4.4.2.3 by 50% is even too generous taking into considering that the legislation allows receiving a high education only starting from January 2018. The reason of such assessment is an effort of the Ministry of Corrections to improve the shortcomings of the legislation in practice. As for the absence of the request of receiving high education by high-risk convicts, the reason could be search in the legislation: subparagraph “c” of article 14(2) of the Imprisonment Code, only the convicted prisoners placed in the establishment for low-risk and preparation for release could enjoy the right to get the first level of the academic high education (baccalaureate) and according to article 115¹ (1) , the juvenile prisoners do have this right as well. According to international standards, in order to ensure the right for education (as well as in all other cases, the risk assessment of the prisoner should be performed individually, taking into consideration the personality, behavior and etc and not according to the type of establishment.*

The Ministry: As it is mentioned in the report, according to the information provided by the Ministry by e-mail, in 2016, 5% of the convicted prisoners and in 2017 – 9% of them were involved in the psychosocial programs and therapies. Taking into consideration that the main objective of the activity was to elaborate the package of programs based on uniform standards and needs, the functioning of individual programs in some of the establishments is more the indicator of the support of the civil

sector and non-governmental organizations, then of the existence of unified and systemic approach towards the rehabilitation services provided by the State.

All the rehabilitation programs were elaborated by the order of the Ministry and each of the programs contain module of rehabilitation program, which clearly and in detail contains the objectives of each of the sessions, implementation structure and the expected results. Initiation of the rehabilitation programs in the penitentiary establishments envisages training of the local social workers and psychologists as facilitators in the relevant programs and afterwards, the implementation of these programs according to the existing modules. The implementation process is supervised by the monitors of the Social Division who started the elaboration of the logical framework, overview and assessment matrix together with the international experts in 2017 in order to ensure the elaboration of sophisticated package of unified and standardized rehabilitation programs.

The logical framework, monitoring and interim assessment matrixes were completed in 2017. Immediate and final assessment matrixes will be finalized in 2018.

IDSD: *As it is mentioned in the assessment of activity 4.4.3.1, the Ministry had admitted itself that the unified standards of the programs have not been elaborated during the reporting period. Moreover, the programs were not functioning in all the establishments and where they were functioning, the involvement of the prisoners during the reporting period was rather low (5-9%). As for the processes with the involvement of the international experts, this issue has been described in detail in the footnote of the relevant chapter assessing the given activity. We would like to admit once more that the assessment is conducted only for the activities implemented during the reporting period whereas the information about the ongoing process is only for follow-up news and they do not have an impact on the assessment index.*

The Ministry: Activity 4.5.1. (Improvement of services based on health prevention and promotion) envisages only one activity – establishment of the Penitentiary Healthcare Standards).

The employees of the penitentiary establishment have health insurance, monthly payment for which is ensured by the system. It should be noted here that the agreement signed with service providers take into consideration the specifics of the work of the system employees and in all the regions the medical facilities providing the outpatient service are available on non-working day – Saturday.

IDSD: *The authors of the document are sure, that the relevant employees of the Ministry of Corrections are fully informed about those international practice and recommendations (and, also about the sources of the proof) whether why the “prison population” covers both, the prisoners and the prison employees and why it is important to have the unified prevention standards within the system. Prison population is a group under high risk, therefore, these prevention activities should respond to the relevant specific “high” risks; see the following guidelines of the World Health Organization (WHO):*

- *Guideline for 2014: Prison and Health, Chapter 22*
(http://www.euro.who.int/_data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf)
- *Guideline for 2007: Health in Prisons, Chapter 14*
(http://www.euro.who.int/_data/assets/pdf_file/0009/99018/E90174.pdf)

The Ministry: The indicator for activity 4.5.3.3. is the approval of the program and the increased number of the establishments, where the suicide prevention program is functioning. Therefore, according to the indicator, the mentioned activity has been implemented.

The main aim of the Suicide Prevention Program is to identify the risks in order to ensure afterwards the provision of relevant services individually and their promotion.

Piloting of the program in the penitentiary system started in 2013 and only one establishment was involved in it. Since then, in order to improve the program the Ministry has been undertaking the number of consecutive steps. Today, the Program approved by the Order #13 of the Minister of Corrections on 11 February 2016 is functioning in all the establishments. For the effective implementation of the program, the medical as well as non-medical personnel of the penitentiary establishments underwent trainings (The training module on the prevention of suicide was elaborated in 2014. In 2014-2015, 22 employees of the penitentiary system underwent training of trainers; Up to 900 employees underwent cascade of trainings in 2015-2016. In February-May 2017, within the framework of the second wave of cascade trainings, up to 150 employees were trained. Within the period of June-August 2017, up to 450 employees attended the information meetings on the issues of the prevention of suicide).

The risk assessment tool of suicide, elaborated on the basis of the best practice has been introduced in the penitentiary system. The Standards (Protocol) for suicide prevention program were elaborated in 2017 and were approved in 2018 for the effective implementation of which, the number of educational activities have been planned for the May this year.

The Council for the Suicide Prevention Program provides planned and based on the needs, additional coordinating activities for the local coordinators and multidisciplinary groups and plans the relevant activities for further improvement of the program.

IDSD: *The assessment of activity 4.5.3.3 explains in detail the reason why its implementation was assessed by 90 % and not by 100%.*

The Ministry: According to the report, the implementation of activity 4.5.4.1 – development of methadone replacement and maintenance program for opium dependency was assessed by 30%.

From 1 July 2017, the methadone replacement program during the opium dependency has been implemented by the LTD “Center for Mental Health and Prevention of drugs Dependency” within the framework of the state program “Treatment of drug dependent patients”. At this stage, only short- and long-term detoxification by means of pharmacological products is available in the penitentiary system. Such detoxification implies the treatment by reducing doses of the pharmacological products maximum for on month and/or for more than one month. Within the framework of this program, the services are available in three establishments of the penitentiary system (penitentiary establishments #2 and #8 and at the medical facility for the accused and convicted prisoners #18). The issue of provision the beneficiaries with the long-term replacement program has been postponed for 2020. Regarding the statistical data, as far as the long-term methadone replacement program has not been functioning in the system, we could not provide any statistical data on it. As for the information about the beneficiaries of the methadone replacement program in public sector, one could find it out from the program implementation staff.

IDSD: *The assessment of the implementation of activity 4.5.4.1 explains in detail why this activity has not been considered to be fully completed.*

The Ministry: The activity 4.5.4.2 envisaging the treatment of non-opium drug addicted prisoners has been assessed by 0%.

The service of the expert of narcology is available in the penitentiary system. In case of need and with the consent of the patient, by means of disciplinary approach, it is possible to provide the treatment of the beneficiary according to the individual plan. Moreover, those patients with the non-opium drug addiction, who as a result of drug addiction has got the health problems such as osteomyelitis, motoric disfunction or encephalopathy and others are fully provided with the relevant medical service.

IDSD: *In the assessment of activity 4.5.4.2, it is indicated why it's not possible to assess the scope and the quality of the treatment of the non-opium drug addicted prisoners. In particular, there was no document (program, standards and other) elaborated, which would confirm the existence of the relevant service and its outcomes. Moreover, since 2017, the ministry does not maintain statistics on the non-opium drug addicted prisoners, therefore, it turned out to be impossible to receive the information whether anyone has used the service in the above-mentioned comment or not.*

The Ministry: According to the report, implementation of activity 4.5.5.1 envisaging elaboration of the training programs and relevant materials for the medical personnel and improvement of the existing programs was assessed by 50%.

In response we would like to state that in 2016-2017:

- The medical personnel of the penitentiary system (23 doctors/nurses) participated in the training on “revealing and management of tuberculosis, new approaches” arranged by the National Center on Tuberculosis and Lungs Diseases arranged training;
- In 2017-2018, the medical personnel of the penitentiary system (44 doctors/nurses) participated in the trainings on “stigma related to drug abuse, modern approaches in closed type institutions” and on “HIV/AIDS – Epidemiology, process of disease, prevention, modern approaches of treatment and care” organized by Medical-psychological Information Center “Tanadgoma”;
- 15 doctors underwent training of trainers on “First Aid” (organized at the training center of the medical corporation EVEX in September 2016);
- 15 nurses participated in the training on “Hepatitis, viral infection, diagnostics with the use of instant revealing tests (Clinics “Neolab”, October 2016);
- 78 doctors participated in the training on the maintenance of pharmacological products and medical materials;
- 15 nurses participated in the training on strengthening the skills on the work with the patients with mental health problems (the training program was elaborated by the initiative of the Ministry and therefore, 15 nurses of psychiatric institutions were trained as trainers);
- 29 doctors/nurses participated in the training on management of the prisoners with mental health problems.

IDSD: *Continuous medical education is a professional development component, which implies elaboration or educational/training programs; assessment of the quality of existing training programs as well as ensuring participation of the personnel in congresses, conferences, publication of papers, education, etc). Aim of the continuous education of to ensure that the doctor maintains, acquires and/or develops the knowledge and skills as well as professional practice which he/she uses while providing medical services to the patients.*

Therefore, it is fine that the trainings are planned and organized but the text implies creation of a system and not the separate trainings (i.e, the program should exist, the special mandatory volumes should be defined for each of the specialties, the calculation of the credits should be ensured and it should be decided what happens any of the doctor does not collect enough credits and etc).

The Ministry: According to the report, by the changes made to the Order #118 of the Minister of Corrections approved on 27 August 2015, the juvenile convicts were granted with the right to get first level education (baccalaureate) ; although, at the same, the correspondence in between the accused/convicted prisoners in penitentiary establishments.

According to the Ministry, the mentioned restriction does not refer only to the juveniles. Taking into consideration the security problems revealed in practice, the necessity to regulate the restriction by the legislative norm emerged. Similar changes were made to the Imprisonment Code, which also covers the adult prisoners.

IDSD: *Under the conditions of proper control and monitoring, the communication in-between family members and close relatives places in different penitentiary establishments, especially in case if one of them is a juvenile is necessary for keeping the family ties. The restriction existed in the Imprisonment Code does not comply with the criteria in case of which such restriction could have been justified.*

The Ministry: According to one of the recommendations related to the Ministry of Internal Affairs and the Ministry of Corrections, it is written that they should ensure that “detailed protocols for special procedures (use of force, use of arms/special means, search and incident management) are elaborated which, *inter alia* also lay down the relevant registration and accountability system”.

The Order #145 of the Minister of Corrections signed on 12 September 2014 approves the types of the special means existing in armament of the penitentiary service, the rules on keeping, carrying, their use and conditions, also defining the rules on elaborating the list of persons who are granted with the authority to use special means”, which in detail regulated the types of special means, rules on the keeping, carrying and their use.

IDSD: *The recommendation talks about the detailed protocol for all the special procedures, for example Order #145 is not detailed enough to define the conditions when the special means should be used. As for the Imprisonment Code and the typed of special means, some of them were considered by the CPT as unacceptable to use, although the relevant changes were not made.*