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PAROLE AND SPECIAL CATEGORIES OF PRISONERS IN GEORGIA

This paper discusses the Georgian practice of parole concerning special categories of prisoners. With «special categories of prisoners» life-sentenced, juvenile, female and foreign prisoners are meant. Although this is not an exhaustive list, the groups mentioned here represent the main special categories of prisoners in Georgian penitentiary practice. It states that the procedures for parole are of particular importance because of their role in limiting the use and reducing the negative effects of imprisonment and supporting the re-integration of prisoners. Treatment of different categories of prisoners (e.g. juvenile prisoners, foreign prisoners and lifers) in Georgia and in some European countries is demonstrated. The legislative basis and practice of the parole system concerning special categories of prisoners in Georgia is reviewed. It is stressed that Georgia, as a member of the Council of Europe, should review the present legislation on supervision of parolees who are the foreign nationals, in line with the 1964 European Convention.

Keywords: *penitentiary practice, special categories, life-sentenced, juvenile, foreign prisoners, behavior, jurisdiction.*

Проанализирована грузинская практика условно-досрочного освобождения специальных категорий заключенных, в том числе осужденных к пожизненному лишению свободы, несовершеннолетних, женщин и иностранцев. Эти категории являются основными специальными категориями заключенных в Грузии. Рассмотрены процедуры освобождения таких заключенных, имеющих особое значение из-за их роли в ограничении тюремного населения и снижения негативных последствий заключения и поддержки реинтеграции заключенных. Рассмотрены модели работы со специальными категориями заключенных в Грузии и некоторых европейских странах. Предоставлено данные о законодательной базе и практике применения условно-досрочного освобождения для особых категорий осужденных в Грузии и в некоторых странах Европы. Особое внимание обращается на ситуации в отношении осужденных к пожизненному лишению свободы и требования Совета Европы по защите прав человека в отношении этой категории заключенных, в частности относительно их условно-досрочного освобождения. Отмечено, что Грузия как член Совета Европы обязана также пересмотреть свое законодательство, касающееся условно-досрочного освобождения иностранных граждан, согласно Европейской конвенции 1964 года. Даны рекоменда-

ции государственным органам власти Грузии касательно осуществления соответствующих мероприятий и внесения изменений в действующее законодательство страны.

Ключевые слова: *пенитенциарная практика, специальные категории, осужденные к пожизненному лишению свободы, несовершеннолетние, иностранные заключенные, поведение, юрисдикция.*

Background. For sentenced prisoners, the decision on whether or when they are going to be released is of primary, even existential importance. From their perspective, it is easy to understand why since release, even if this is conditional, means regaining liberty, which is a fundamental part of their human rights [1].

The criteria set by the Council of Europe Recommendation (2003)22 on Conditional Release (Parole) should be applied in all cases. Special attention should be paid to Rule 20, which emphasizes that parole should be granted to all sentenced prisoners who meet the minimum level of safeguards for becoming law abiding members of society.

Procedures for parole are of particular importance because of their role in limiting the use and reducing the negative effects of imprisonment and supporting the re-integration of prisoners [1].

This paper discusses the Georgian practice of parole concerning special categories of prisoners. With «special categories of prisoners» life-sentenced, juvenile, female and foreign prisoners are meant. Although this is not an exhaustive list, the groups mentioned here represent the main special categories of prisoners in Georgian penitentiary practice.

Life-sentenced prisoners. Life imprisonment is the most severe penal sanction which can be imposed in those jurisdictions which either do not have, or choose not to apply, the death penalty. In the absence of the death penalty, life imprisonment takes on a symbolic significance and may be seen as the ultimate retributive sentence. Although the term life imprisonment may have different meanings in different countries, one common feature is that such sentences are indeterminate. In reality, in most European jurisdictions only a few life sentence prisoners will be imprisoned for the remainder of their lives. The overwhelming majority will be released back into society, often under some form of supervision, and the sentence will need to be planned with this in mind [2, p. 151].

For the European Committee for Prevention of Torture (CPT), a life sentence is an indeterminate sentence which requires the prisoner to be kept in prison either for the remainder of his or her natural life or until release by a judicial, quasi-judicial, executive or administrative process which assesses the prisoner to no longer present a risk to the public at large. The minimum period required to be served before a prisoner may first benefit from parole varies from country to country, the lowest being 12 years (e.g. Denmark and Finland) and 15 years (e.g. Austria, Belgium, Germany, Switzerland) and the highest being 40 years (e.g. Turkey, in the case of certain multiple crimes). The majority of countries imposing life sentences have a minimum period of between 20 and 30 years. In the United Kingdom, the

minimum period to be served in prison (the «tariff») is determined at the time of sentence by the trial judge; the law does not provide for an absolute minimum period in this regard. Several other countries (e.g. Bulgaria, Lithuania, Malta, the Netherlands and, for certain crimes, Hungary, the Slovak Republic and Turkey) do not have a system of parole with regard to life-sentenced prisoners, so that life literally means life. On the other hand, it is noteworthy that a number of Council of Europe member states (Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Portugal, San Marino, Serbia, Slovenia and Spain) do not have life sentences on their statute books at all. Instead, for the most serious crimes they have long determinate sentences usually ranging from 20 to 40 years [3, p. 33–34]. Georgia, like the majority of European countries, had a term of 25, later based on amendments changed to 20 years to be served by life-sentenced prisoners before reviewing their cases for parole. Recent changes to the Georgian Criminal Code designated the courts (instead of the Parole Boards as was the case before) as competent for reviewing the cases of life-sentenced prisoners for parole after having served 20 years and placing them under probation for a term of minimum two and maximum seven years [4, art. 72^1(1)]. In Georgia life-sentences cannot be applied to juveniles (persons younger than 18 years) [5, art. 66], nor to those who have reached the age of 60 years on the day of the court's verdict [4, art. 51 (2)]; however, it can be imposed to both men and women. Where in some national jurisdictions a life sentence is not applicable to women in general [6] or to pregnant women [7], such exceptions do not exist in Georgian law.

Areas to be considered by the court in Georgia while reviewing a case on granting parole to a life-sentenced prisoner are type of offence committed, record of behavior during imprisonment, information on previously committed offence/s, record on previous conviction/s, the criminal record, information regarding risks of re-offending, family relations condition and personal information regarding the person of the prisoner [4, art. 72^1(1)].

The list of items for assessing the level of risk posed by a life-sentenced prisoner in England and Wales for paroling him/her is – for the sake of comparison – far more specific than in Georgia. Before ordering the parole of a life-sentenced prisoner, the UK Parole Boards must consider the following items:

– The life-sentenced prisoner's background, including the nature, circumstances and pattern of any previous offending;

– The nature and circumstances of the index offence, including any information provided in relation to its impact on the victim or victim's family;

– The trial judge's sentencing comments or report to the Secretary of State, and any probation, medical or other relevant reports or material prepared for the court;

– Whether the life-sentenced prisoner has made positive and successful efforts to address the attitudes and behavioral problems which led to the commission of the index offence;

– The nature of any offence against prison discipline committed by life-sentenced prisoner;

– The life-sentenced prisoner's attitude and behavior to other prisoners and staff;

– The category of security in which the life-sentenced person is held and any reasons or reports provided by the Prison Service for such categorization;

– The extent of any demonstrable insight into life-sentenced prisoner's attitudes and behavioral problems and whether he/she has taken steps to reduce risks through the achievement of life sentence plan targets;

– Any medical, psychiatric or psychological considerations;

– The life-sentenced prisoner's response when placed in position of trust, including any absconds, escapes, past breaches of temporary release or life license conditions and life license revocations;

– Any indication of predicted risks as determined by a validated actuarial risk predictor model, or any other structured assessments of the life-sentenced prisoner's risk and treatment needs;

– Whether the life-sentenced prisoner is likely to comply with the conditions attached to his/her life license and the requirements of supervision, including any additional non-standard conditions;

– Any risk to other persons, including the victim, their family and friends;

– The life-sentenced prisoner's relationship with probation staff (in particular the supervising probation officer), and other outside support such as family and friends;

– The content of the resettlement plan and the suitability of the release address;

– The attitude of the local community in case where it may have a detrimental effect upon compliance;

– The point of view of the victim or victim's relatives in regarding the conditions of release [8, p. 121-122].

Majority of listed items for assessing the level of risk posed by a life-sentenced prisoner in England and Wales for paroling him/her are not the part of legislation and practice in Georgia; therefore, developing extended assessment items can provide more comprehensive approach while deciding to grant parole to a life-sentenced prisoner or not.

That the number of life-sentenced prisoners is increasing in many European countries is the result of a combination of factors including (in certain countries) the abolition of the death penalty and its replacement by the life sentence, and more generally, the trend (more pronounced in some countries than in others) to inflate sentences of imprisonment [9, p. 232]. The latest available statistics show that in 2014, there were 25.193 life-sentenced prisoners in Council of Europe member states [10]. In 22 countries where relevant data were available over a longer period, the number of life-sentenced prisoners increased by 66 % from 2004 to 2014 [3, p. 35]. In Georgia, however, the number of life-sentenced persons is decreasing from year to year [11]. The reason of such a decrease is the frequently practiced pardoning by the President; and only in one case the court re-examined the case based on newly found circumstances and found a person who served 12 years of his life imprisonment, not guilty after all [11].

Table 1 – Number of life-sentenced prisoners in Georgia in 2010–2016

YEAR	TOTAL	% OF TOTAL PRISON POPULATION
2010	94	0,4 %
2011	91	0,4 %
2012	92	0,5 %
2013	82	0,9 %
2014	81	0,8 %
2015	77	0,8 %
2016	74	0,8 %

As indicated above, in several Council of Europe member states, a person may be sentenced to life imprisonment without any prospect of parole. This is known as an «actual or whole life sentence» [3, p. 37]. The CPT has criticized the very principle of such sentences in several country visit reports, expressing serious reservations regarding the fact that a person sentenced to life imprisonment is considered once and for all to be dangerous and is deprived of any hope of parole (except on compassionate grounds or by pardon). The CPT maintains that incarcerate a person for life without any real prospect of release is, in its view, inhuman. It is also noteworthy that even persons who are convicted by the International Criminal Court (or special international tribunals) of the most serious crimes such as genocide, war crimes and crimes against humanity may in principle benefit at a certain stage from parole [3, p. 37].

This is not to say that all life-sentenced prisoners should be released sooner or later; public protection is a crucial issue. However, all such sentences should be subject to a serious review at some stage, based on individualized sentence-planning, objectives defined at the outset of the sentence, and if a first review did not lead to (conditional) release, the life-sentence should be reviewed regularly thereafter. This would provide not only hope for the prisoner, but also a target to aim for which should motivate positive behavior. It would thus also assist prison administrations in dealing with individuals who would otherwise have no hope and nothing to lose [3, p. 37].

In recent years, the European Court of Human Rights has examined a number of cases where domestic courts had imposed life sentences on prisoners with no possibility for parole and where, barring compassionate or highly exceptional circumstances, a whole life sentence meant precisely that. The most authoritative judgment of the Court to date, delivered by the Grand Chamber in Vinter and Others v. the United Kingdom [12], states that it is incompatible with human dignity, and therefore contrary to Article 3 of the European Convention on Human Rights, for a state to deprive a person of their freedom without at least giving

them a chance one day to regain that freedom.

Georgian practice shows that since life-sentences were introduced in the Criminal Code, no life-sentenced prisoners have been granted parole yet.

Georgian legislation provides for the possibility for re-examination of the eligibility of a life-sentenced prisoner for parole every six months [13, article 42(6)]. Presentation of a case to the court is an obligation of the penitentiary institution where the life sentenced person is held [13, article 42(1)]. In case the prison administration delays presentation of the case to the court, this can be done by prisoner himself/herself, family member or by a legal representative; and the delay can be appealed to the upper administrative body (Head of Prison Service or Minister of Corrections) or to the court [13, art. 96].

Life-sentenced prisoners in Georgia can also be released after 15 years of imprisonment. This can only happen if a court reviews a case and decides to replace the present sanction by a less grave one. Such lesser punishments can be either home detention or a community sanction supervised by the National Probation Agency. In both cases, the term of the sanctions cannot be less than five and more than ten years [4, art. 73(7)]. In case of community sanctions one day of imprisonment is equal to five hours of community work [4, art. 62(3)].

Juvenile prisoners. The minimum age of criminal responsibility is the age at which acts committed by children can be prosecuted under the criminal law. This age varies greatly between countries. Equally, there are differing definitions in law of the age at which a child may be imprisoned in the prison system [2, p. 137].

The UN Convention on the Rights of a Child promotes that the states parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law [14]. The UN Committee on the Rights of a Child (CRC) understands this provision as an obligation for states parties to set a minimum age of criminal responsibility (MACR). This minimum age means the following: (1) Children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even (very) young children do have the capacity to infringe the penal law but if they commit an offence when below MACR the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children special protective measures can be taken if necessary in their best interests; (2) Children at or above the MACR at the time of the commission of an offence (or: infringement of the penal law) but younger than 18 years can be formally charged and subject to penal law procedures [15, par. 31].

Rule 4 of the Beijing Rules recommends that the beginning of MACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the CRC has recommended states parties not to set a MACR at a too low level and to increase the existing low MACR to an internationally acceptable

level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the CRC not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level [15, par. 32].

At the same time, the CRC urges states parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of Convention, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected [15, par. 33].

Criminal responsibility in Georgia starts (as in many other former jurisdictions modeled after soviet law) at the age of 14 [5, art. 3(3)]. Legislation provides the possibility to remain in a juvenile prison from 18 to 21 years age [5, art. 90(4)]. This somehow resembles the approach to young offenders, which is the case in many European countries, but persons belonging to this age bracket are not recognized as a special group of prisoners in Georgia.

The juvenile prison population in 2016 amounted to 0,1 % of the overall prison population (January 2017) [16], which can be attributed to the reform of the juvenile justice system reform carried out in Georgia from 2007 to 2015. The final result of the reform was the adoption of a Juvenile Justice Code, which – in conformity with article 37b of the UN Convention on the Rights of a Child – has for a leading principle that detention or imprisonment of a child shall be used only as a measure of resort. Data of previous years highlights that the average rate of juvenile prisoners among the overall prison population from 2012–2014 was 0,5 % (below Table provides with relevant figures) [11]. Diversion, parole and pardoning have been actively used in relation with juveniles in conflict, which adequately reflected in significant decrease of number of juvenile prisoners in Georgia.

Table 2 – Number of juvenile prisoners in Georgia in 2010–2016

YEAR	MALE	FEMALE	TOTAL	% OF TOTAL # OF PRISON POPULATION
2010	158	2	160	0,7 %
2011	144	2	146	0,6 %
2012	88	1	89	0,5 %
2013	50	0	50	0,5 %
2014	47	0	47	0,5 %
2015	20	0	20	0,2 %
2016	13	0	13	0,1 %

The period to be served before becoming eligible for parole is different for juveniles, then for adult offenders. Particularly, parole of a juvenile convict shall be granted only if he/she has served: (1) One third of the sentence for infractions; (2) Half of the sentence for misdemeanors; (3) Two thirds of the sentence for felonies [11].

A special Parole Board to review the cases of juvenile prisoners has been established by law [17]. At least one member of the Juvenile Prisoners Parole Board should have relevant experience in working with juveniles and/or special training of pedagogical and psychological skills [17]. Data provided by the Ministry of Corrections of Georgia shows the number of juveniles paroled during last years (please see table below) [11].

Table 3 – Number of paroled juvenile prisoners in Georgia in 2011–2016

YEAR	MALE	FEMALE	TOTAL	%OF TOTAL # OF PAROLEES
2011	6	0	6	1,5 %
2012	8	1	9	0,7 %
2013	34	0	34	2,2 %
2014	21	0	21	2,3 %
2015	28	0	28	2,6 %
2016	10	0	10	1 %

In comparison with the adult prisoners, the Juvenile Prisoners Parole Board reviews cases every three months, instead of six months for other categories of prisoners [5, art. 95(9)]. Obligation to present the case to the Parole Board lies with the prison administration, however, a prisoner, or his family member or legal representative are eligible to present the case as well (similar to the procedures described above regarding life-sentenced prisoners).

Female prisoners. In majority prison systems the proportion of women in prison is generally between 2 % and 10 %. However, there are few exceptions, which provide higher numbers (i.e. Andorra – 21,2 %, Laos – 18,3 %, Qatar – 14,7 %, Liechtenstein – 12,5 %, United Arab Emirates – 11,7 %, etc.) [18].

The situation of female prisoners is very different from that of male prisoners. Many women have suffered physical or sexual abuse and they often have a variety of untreated health problems. For women the consequences of imprisonment and its effect on their lives may be very different [2, p. 143].

Female prisoners in Georgia have never exceeded the level of 5 % of the overall prison population, similar to the average number elsewhere in the world. As from 2010 official statistics show a decrease of women prisoners in comparison to the total prison population [11].

Table 4 – Number of women prisoners in Georgia in 2010–2016

YEAR	#	% OF TOTAL # OF PRISON POPULATION
2010	1171	5 %
2011	1213	5 %
2012	926	4,8 %
2013	250	2,7 %
2014	281	2,7 %
2015	309	3,2 %
2016	265	2,8 %

The Georgian Parole system for female prisoners is similar to that for male prisoners. However, there are a number of differences that is based on the special needs of women prisoners. The following differences for female prisoners are practiced in the parole system of Georgia compared to that of male prisoners:

– A Special Parole Board is operating to review the cases of women prisoners [17, art. 3(e)];

– At least one member of the Parole Board on women prisoners shall have special training and/or practical experience on gender issues and rights of women prisoners [17, art. 4(8)];

– While examining the women prisoner case, members of the Parole Board should take attention on specific needs of women, among them to the role of a woman as a mother in a family [17, art. 20(3)].

The absolute number of paroled female prisoners, as well as the percentage towards overall parolees varies from year to year. Table below shows that in most years the average percentage of paroled women prisoners is 5 % of all parolees (please see table 5 below). In comparison with the decreased number of women prisoners in Georgian prisons (please see table 4 above) the number of parolees show that in recent years 16–18 % of all women prisoners have been paroled (every sixth women prisoner).

Table 5 – Number of paroled women prisoners in Georgia in 2011–2016

YEAR	#	% OF TOTAL # OF PAROLEES
2011	19	4,6 %
2012	122	9,5 %
2013	188	11,9 %
2014	45	5 %
2015	25	2,4 %
2016	46	4,8 %

UN Bangkok Rules state that decisions regarding parole shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social reintegration needs [19]. This Rule is based on the premise that imprisonment is particularly harmful to the social reintegration of women, as well as to their children and other members of their families. Therefore, prison authorities are encouraged to make maximum possible use of post-sentencing dispositions, such as parole, in the case of women, and especially women who have caring responsibilities or who have special support needs (such as treatment/continuum of care in the com?-munity), in order to assist with their social reintegration to the maximum possible extent. Additional measures that can be taken by authorities, is to consider women prisoners for pardoning, as a priority, taking into account their caring responsibilities, when appropriate [20]. Georgian legislation complies with requirements of the Bangkok Rule 63: (1) a special parole board dealing only with the cases of female parolees operates in Georgia; (2) risk assessment, individual sentence planning and implementation is introduced to the female prisoners; (3) close cooperation between prison and probation services especially in preparation for release is established.

Foreign prisoners. Prison systems all over the world accommodate varying numbers of foreign prisoners (i.e. 100 % in San Marino and 0 % in Tonga)[21]. With increased geographical mobility the number is increasing in many countries. The term «foreign national prisoners» covers a wide range of people. It applies to those who come from their home country and are then convicted and imprisoned in another country. It can apply to those who have had a long relationship with the country in which they are imprisoned; they may be a permanent resident without having citizenship of that country [2, p. 107]. A working definition of «foreign prisoners» has been provided by a Council of Europe (CoE) recommendation concerning Foreign Prisoners of 1984, defining them as «prisoners of different nationality who on account of such factors as language, customs, cultural background or religion may face specific problems» [22]. A more recent definition was provided by the new CoE recommendation on Foreign Prisoners of 2012, stating that «foreign prisoner means any foreign person held in prison and a foreign suspect or a foreign offender detained elsewhere»; under the term of «foreign person» the recommendation arranges for «any person who does not have the nationality of and is not considered to be a resident by the State where he or she is» [23, rule1]. This group of prisoners has special needs which should be taken into account by the prison service, and there may be some advantage in facilitating arrangements to allow a convicted prisoner to serve all or part of the sentence in his/her home country [9, p. 324]. It should be noted that the following text does not cover issues related to foreign prisoners that will be extradited or deported nor does it deal with illegal immigrants in administrative detention.

Foreign prisoners, like other prisoners, are to be considered for parole as soon as they are eligible and shall not be discriminated against in this respect [23, rule 36.1]. In order to establish substantial equality of treat-

ment, positive steps should be taken to ensure that foreign prisoners are considered for parole when they become eligible for such release [24]. In particular, steps shall be taken to ensure that detention is not unduly prolonged by delays relating to the finalization of the immigration status of the foreign prisoner. Given that foreign prisoners may be embroiled in immigration or other proceedings, care should be taken to avoid unnecessary bureaucratic delays to release decisions and to ensure co ordination between relevant governmental agencies [24].

The decision making in respect of parole should not discriminate against foreign prisoners, but should be taken on the basis of the merits of each individual case. A lack of property or familial links should not alone be sufficient grounds to deny release. A refusal to grant parole should be based on additional factors; such as the possession of a false passport, the use of a false name, previous attempts to evade being taken into custody. Decisions on the risk of absconding should be made on a case by case basis [24].

In some countries it may be possible to grant parole even where a foreign prisoner is subject to expulsion after release, but where the possibility exists that such an order may be reversed at a later stage in case the prisoner has abided by the conditions set for his/her release. Moreover, foreign prisoners should be considered for all possible early release schemes, particularly where they are parents with young children. In order to enable them to understand and participate in the decision making process relating to their release, foreign prisoners should have access to legal advice and assistance [24].

In the Netherlands distinctions are drawn between various categories of foreign prisoners. First are foreign prisoners who have been categorized by the Minister of Safety and Justice or by an Administrative Court as «undesirable aliens». These prisoners are unlawful residents of the Netherlands who have repeatedly committed punishable acts or lawful residents who have been convicted of an offence punishable by a sentence of three or more years. Following their parole they are to be deported. The second category are those who have been convicted for less serious offences. In those cases the Minister of Safety and Justice or the Administrative Court may, but must not, decide that they are illegal aliens and that they should leave the country. Lastly, there are those foreign prisoners who do not lose their right of abode in the Netherlands when they are granted. Such prisoners are eligible for the same specific conditions as Dutch national prisoners [8, p. 306–307].

At the end of 2016, 338 foreign prisoners were accommodated in Georgian prisons (86 defendants and 252 finally sentenced; 303 male and 35 female prisoners), representing 49 foreign countries; four of them were stateless [25]. The majority of these prisoners (63 %) were citizens of countries bordering with Georgia (Armenia, Azerbaijan, Russia and Turkey) [25].

Table 6 – Number of foreign prisoners in penitentiary institutions of Georgia in 2013–2016

YEAR	MALE	FEMALE	TOTAL	% OF TOTAL # OF PRISON POPULATION
2013	165	14	179	2 %
2014	231	27	258	2,5 %
2015	315	53	368	3,8 %
2016	303	35	338	3,6 %

In accordance with information provided by the Ministry of Corrections of Georgia, in 2015–2016 only four foreign national prisoners were released on parole (around 1 % of total number of foreign prisoners) [11]. This indicates that parole is granted to a very small number of foreign prisoners.

Foreign prisoners who have been paroled, are obliged to stay under supervision of the Georgian National Probation Agency for the remaining period of their sentence [26, art.12(1)]. Foreign nationals on parole can leave Georgia only with permission of the Head of the relevant probation bureau [26, art. 14(1)]. In such a case he/she is obliged to pay one of the following fixed fees: 600 GEL (approx. €225) for leaving Georgia for up to one month, 1200 GEL (approx. €450) for leaving Georgia for up to three months, 2000 GEL (approx. €755) for leaving Georgia for up to six months, 2700 GEL (approx. €1020) for leaving Georgia for up to nine months and 3400 GEL (approx. €1285) for leaving Georgia for up to one year [26, art. 14(3)]. During a parolee's stay abroad, the period of permission for staying abroad can be extended if the document that confirms payment of the fee envisaged above, with an indication of a parolee's personal number and purpose, is submitted to the probation bureau [26, art.14(4^1)].

Recent amendments to the Georgian Probation Law established grounds to extend a stay abroad by a parolee if he/she is capable to pay. For example, if a parolee should serve his/her sentence under probation supervision for one year and a half, he/she can apply to the head of bureau with the application regarding going abroad and paying amount for one year; after a year, he/she can pay amount for the rest six months non-presence in a country and continue being abroad. This example makes understandable that acting Georgian legislation allows parolee to pay for not being under probation supervision; therefore, it directly contradicts to the basic principles of the sentence goals. The latter is defined by the Criminal Code of Georgia: «The goal of a sentence is to restore justice, prevent repetition of a crime and resocialize the offender» [4, art. 39].

In view of the fact that the number of foreign national prisoners include women, and taking into account the particularly vulnerable status, especially of non-resident foreign national women in prison settings, UN Bangkok Rules aim to provide further guidance

to prison authorities in their treatment of foreign national women prisoners.

Where possible, and if the prisoner so wishes, a foreign national woman prisoner (similar to a man) should be given the opportunity to be transferred to her home country to serve her prison sentence. It should be noted that «transfer» aims at assisting the social reintegration of offenders and reduce the harmful effects of imprisonment. Transfer of prisoners is possible when both countries have signed the relevant prisoner transfer treaty. In order for a transfer to take place and for it to serve the purposes of social reintegration, the prisoner must express a desire to serve the sentence in her home country. However, on 15 February 2007, the EU Justice and Home Affairs ministers agreed to allow transferring convicted EU prisoners to serve their sentences in their home countries, without their consent, contravening this principle [27, p. 41].

Conclusion. The above assessment of the present situation of special categories of prisoners in Georgia regarding their de jure and de facto chances to be paroled leads to the following recommendations:

– Georgian authorities must ensure, notably through developing special pre-release programmes, that the perspective of parole for life-sentenced prisoners is real and effective.

– The list of items to be assessed before granting parole to the life-sentenced prisoners needs to be extended and oriented on imposing of personalized conditions, taking into account the risks a person may pose to victims and/or their families.

– Considering the small number of cases reviewed annually by the Parole Board on women prisoners and Parole Board on juvenile prisoners, there is no need of keeping two separate parole boards. Due to the specials needs of both groups it would be reasonable to merge these two parole boards into one.

– Bearing in mind the special needs of women and juveniles, all members of the present parole boards should have appropriate knowledge and skills related to these target groups. Moreover, the members of these parole boards should be obliged by law to attend additional trainings on women and juvenile prisoners' rights.

– Serious misgivings must be expressed about the principle of payment on travelling abroad by the paroled foreigners. It raises the possibility that parolees may be dealt with differently solely on the basis of their ability to pay. Permission to leave the country should be determined by considerations of risk of re-offending, needs and the circumstances of the case and not by the ability to pay. Permission to leave the country and preferential supervision conditions should be determined by considerations of risk of reoffending, needs and circumstances of the case and not by the ability to pay. It is also in direct violation of principles of non-discrimination set out in the Law. Even though Article 15(2) of the Law exempts certain categories from payment, there remains the risk that affluent offenders might be able to achieve an unfairly preferential experience of supervision [28].

– Another issue on foreign parolees relates to the transfer under supervision of the country of nationality of parolees. Georgia, as a member of the Council of Europe, should review the present legislation on supervision of parolees who are the foreign nationals, in line with the 1964 European Convention. Accordingly, co-operation with oth-

er member states of the Council of Europe should be established to transfer probation supervision from one jurisdiction to another (to the country of nationality of the parolee). This should be examined in those cases, which meet certain circumstances prescribed by the 1964 European Convention.

Review of the legislative basis and practice of the parole system towards special categories of prisoners in Georgia, reveals that both legislation and practice need to be revised in line with the above proposed recommendations to establish standards concerning parole in accordance with international conventions and recommendations in this field.

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УМОВНО-ДОСТРОКОВЕ ЗВІЛЬНЕННЯ ТА ОСОБЛИВІ КАТЕГОРІЇ ЗАСУДЖЕНИХ У ГРУЗІЇ

Проаналізовано грузинську практику умовно-дострокового звільнення спеціальних категорій ув'язнених, зокрема засуджених до довічного позбавлення волі, неповнолітніх, жінок та іноземців. Ці категорії є основними спеціальними категоріями ув'язнених в Грузії. Розглянуто процедури звільнення таких ув'язнених, що мають особливе значення через їхню роль в обмеженні тюремного населення та зниженні негативних наслідків ув'язнення й підтримки реінтеграції ув'язнених. Розглянуто моделі роботи зі спеціальними категоріями ув'язнених у Грузії та деяких європейських країнах. Подано дані про

законодавчу базу та практику застосування умовно-дострокового звільнення для особливих категорій засуджених у Грузії та в деяких країнах Європи. Особлива увага звертається на ситуації щодо засуджених до довічного позбавлення волі та вимоги Ради Європи щодо захисту прав людини стосовно цієї категорії ув'язнених, зокрема щодо їх умовно-дострокового звільнення. Наголошено, що Грузія як член Ради Європи зобов'язана також переглянути своє законодавство, що стосується умовно-дострокового звільнення іноземних громадян, відповідно до Європейської конвенції 1964 р. Надано рекомендації державним органам влади Грузії щодо здійснення відповідних заходів та внесення змін у чинне законодавство країни.

Ключові слова: *пенітенціарна практика, спеціальні категорії, засуджені до довічного позбавлення волі, неповнолітні, іноземні ув'язнені, поведінка, юрисдикція*.

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