

An aerial night photograph of a city, likely Tbilisi, Georgia, showing a dense residential area with multi-story apartment buildings. In the foreground, a fenced-in sports court, possibly for basketball or volleyball, is visible. The scene is illuminated by streetlights and some windows are lit up, creating a blue-toned, atmospheric setting.

POLICY OF  
CRIME AND  
PUNISHMENT  
IN GEORGIA



# **Policy of Crime and Punishment in Georgia**

Based on the analysis of property crimes (theft/robbery) and  
individual drug offenses



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## Research Methodology

In the aftermath of the detrimental zero-tolerance policy, a new political force headed the state with the idea of liberalization of the criminal justice system. Many important reforms were planned and carried out during this period. However, undertaken inadequate efforts could not substantially change and improve the situation in the country. With varying intensity, criminal law remains the main instrument of repression in the hands of the state.

The present study assesses the existing criminal policy in the country, against the background of the social and economic factors contributing to crime. The study is mainly based on the sociological research data on two types of crimes – property crime (theft/robbery) and certain types of drug offenses.

The study briefly presents the problems of criminal policy formation and the stages of its transformation in the country. The paper seeks to reveal the extent to which the state has been able to replace the experience of zero tolerance with a human-centered approach; considers social and economic factors in the process of criminal policy formation in the country.

Based on the sociological research and different criminological theories, the study provides a legal analysis of social factors leading to property crimes (theft/robbery) and individual drug offenses, their prevention mechanisms, and the state sentencing policy for these two types of crime. The last part of the study is devoted to the analysis of the gaps in the reintegration process after post imprisonment.

## Sociological research

The Social Justice Center conducted a sociological survey in partnership with the Institute for Social Research and Analysis, as part of the project “Humane and Fair Drug Policy”, supported by the Open Society Foundation. This paper is a legal analysis of the results of a sociological (quantitative and qualitative) study of the social aspects of theft/robbery and certain types of drug offenses.

The objectives of the sociological research were divided as follows: the study of individual types of drug offenses and the level of awareness about property-related crimes (theft/robbery); the study of the social factors that contribute to crime and the person’s motivation to commit a criminal offense. One of the tasks of the study was to identify social groups that are more prone to criminal behavior – their characteristics. In addition, the survey examined

respondents' opinions about which crimes people commit most often, what factors influence them, etc.

### **Analysis of legislation**

As part of the study, all relevant legislative acts regulating the issues of criminal justice in general, and more specifically – the penitentiary system, were thoroughly analyzed. The research group also studied the by-laws of concrete institutions (Ministry of Internal Affairs, Prosecutor's Office of Georgia, Special Penitentiary Service of the Ministry of Justice, etc.) and policy documents, strategies, and action plans approved by these organs.

### **Analysis of analytical documents, national and international reports**

In the working process, the research team relied on the research carried out by the organization and other partner entities, analytical documents, secondary analysis of materials developed by the organization. Reports from various international and national organizations on the human rights situation in the country were also actively used.

The research team also studied the Public Defender's annual parliamentary and special reports on the human rights situation in the country.

### **Public information and court decisions**

At the initial stage, the research team addressed the various public institutions with the Public Information Request. Among them, the Parliament of Georgia, the Administration of the Government of Georgia, the Prosecutor's Office, the Ministries of Internal Affairs, Justice, Education and Science, IDPs from the Occupied Territories, Labour, Health and Social Affairs, the National Statistics Office of Georgia and others.

The research team requested court rulings from various city and district courts on property crimes (theft/robbery) and certain drug offenses, to determine the extent to which the courts take into account the social and economic situation of the person at the time of sentencing, in light of nature and the gravity of the criminal offense. Analysis of the court decisions is provided in the different chapters of the study.

## **Obstacles in the working process**

The organization started working on the study in early 2020. The main obstacle in this process was the severe epidemiological situation in the country, which somewhat hampered and delayed the sociological research component. Given that this document is also largely based on the results of sociological study, the pandemic also had a negative impact on the timely development of the document.

An important challenge for the research team was also the timely receipt of public information from various agencies. Although the research team approached the government organs to provide relevant information at the early stage, information from all agencies has not yet been fully received. Some agencies did not provide relevant information at all, which affected the completion of the research.



## Findings and Recommendations

### Findings Related to the Criminal Justice Policy

- The fight against crime is still narrowly considered to be only the field of activity of law enforcement agencies;
- A unified, criminological assessment of the situation in the country is not intensively carried out with the participation of all responsible agencies, to define policies, develop action strategies and plans based on the assessment results;
- The actions of the state are not effective in starting the fight against crime by reducing or eliminating its causes while focusing on social and economic factors;
- Parliament is yet to adopt a document defining criminal policy;
- The government is yet to approve a uniform rule for the coordination of the fight against crime;
- Studies carried out by the Prosecutor's Office and preventive measures mainly concern juveniles and juvenile justice issues. Less attention is paid to the study of other categories of crime;
- Enough preventive measures are not introduced in the country in different directions. To date, there is no single document on prevention policy;
- The responsibility for prevention does not go beyond the law enforcement system. This creates significant problems precisely in terms of the separation of police preventive and responsive capacity;
- Local needs are not studied and preventive mechanisms are not introduced according to the identified needs. The role of permanent local inter-agency councils on crime prevention and law enforcement also proved to be merely formal. To date, no council meeting has been held.

**Given the obstacles identified in the study, the research team has the following recommendations:**

- Intensive criminological research practice should be introduced in the country, with the participation of various stakeholders;
- With regard to crime-control strategies, more attention should be paid to assessing and eliminating its underlying causes, taking into account the social and economic aspects of crime;
- It is recommended the Parliament to approve a criminal policy document;
- The Government of Georgia should promptly approve the rule of coordination in the fight against crime;
- The state should develop a document on crime prevention promptly and introduce preventive mechanisms in the country. Prevention should not be understood narrowly, only as competence of law enforcement agencies;
- Local needs should be taken into account as much as possible in crime prevention, crime control strategies, and policy documents;
- The state should strengthen cooperation with local actors and ensure their participation in the formation of anti-crime policies;

**Findings in terms of the Crime Against Property (theft/robbery)**

- The poor financial situation of the family, bank credits/ loans, financial liabilities resulting from gambling, and unequal socio-economic environment (inability to realize oneself in society) particularly contribute to the commission of theft/robbery. In addition, an important factor is the presence and influence of persons with criminal background in the friend circle/ family environment;
- The current criminal policy in Georgia is less focused on eliminating the factors contributing to theft/robbery and, consequently, reducing crime. Its primary purpose is to punish the perpetrator, while the object of control and subordination is the lower social class (the unemployed, low-income families, otherwise socially vulnerable people);

- There are no strategic documents in Georgia that would set out complex approaches to the prevention of theft and robbery and take into account not only the criminal but also the social and economic dimensions of prevention;
- The sanctions provided by the Criminal Code for theft and robbery, the logic of grouping aggravating circumstances, and the component of “significant damage” are problematic. In some cases, the minimum and maximum limits of deprivation of liberty set by the Code are problematic;
- The criminal code does not provide for the use of community service as a punishment for the offenses outlined in Articles 177 and 178, while the existing model of house arrest is flawed and its use may, in some cases, have a similar effect to a fine;
- In many cases, the common courts and the prosecution do not properly analyze, take into account, and base their decisions on those factors that lead to theft/robbery;

**Given the obstacles identified in the study, the research team has the following recommendations:**

- It is important to create a uniform document on theft/robbery prevention with the involvement of different line ministries and agencies, which will outline long-term visions of prevention at the fundamental level and will be based on a new understanding of the role of social policy in addition to the mechanisms of democratic accountability;
- Existing legislation on aggravating circumstances in cases of theft/robbery, diversification of relevant sanctions and measures should be revised to make them more humane and oriented towards the criminal justice goals;
- In cases provided for in Articles 177 and 178, the Criminal Code should include the possibility of using community service as a sanction;
- The existing rules for imposing financial liability on a convicted person subject to house arrest should be changed. In particular, this may include expanding the categories of exceptions, allowing the judge more discretion, or, at best, cutting the payment of house arrest fees in the case of property crimes;
- The common courts and the prosecution should pay special attention to the proper analysis of the social and economic factors that led to the criminal action, and the decisions they make should take into account the effect of these factors on the behavior of the individual.

## Findings in terms of the Individual Drug Offenses

- Among the causes of drug offence, poor economic conditions, stress and severe psychological condition play a significant role;
- Important factors in drug consumption are interest and curiosity in illicit substances, desire to relax. Person's psychological state – loss of interest in life, easy access to drugs and lack of awareness of the harmful effects of drugs consumption are also contributing factors;
- Existing criminal policy does not focus on the causes of drug crime and is limited to criminal sanctions. The justice system is over-represented by the lower social level, a large proportion of convicts are burdened with everyday social and economic problems;
- Anti-drug preventive measures in the country are fragmented and unsystematic, which leads to a lack of awareness of the risks after committing a crime and does not contribute to the reduction of drug crime;
- Inconsistently high sanction measures for drug offenses, including severe criminal penalties for consumers, remain a significant problem;
- State policy is weak in terms of rehabilitation, psychological or medical programs;
- The social and economic causes of drug offenses remain beyond attention when deciding on imposition of sentence by a court and the prosecution. In this regard, the degree of substantiation of judgments is also problematic;
- Those released from penitentiary, as well as those on probation, are often subject to unsubstantiated police control and scrutiny, which reinforces the public stigma attached to these individuals;
- The state's policy is extremely weak in terms of re-socialization and reintegration of drug offenders. The status of a long-standing conviction status after serving a sentence exacerbates employment problems. The system of additional punishments for drug offences excludes convicts from society and significantly reduces their employment opportunities.

**Given the obstacles identified in the study, the research team has the following recommendations:**

- Systemic reform is required for the repressive drug policy. The state should refrain from criminalizing drug consumers and should use the available resources to introduce harm reduction approaches, strengthen treatment and rehabilitation programs;
- It is necessary for the responsible state agencies in the country to work together to implement systemic and evidence-based anti-drug prevention measures. An important step in this direction will be the practical implementation of the National Anti-Drug Strategy 2021-2026;
- When prosecuting a person for a drug crime, the prosecution and the court should focus on the socio-economic factors of the crime. In sentencing for a drug offense, the proportionality of the type and size of the sanction to the action, based on the convict's personal and economic circumstances, must be duly substantiated in each particular criminal case;
- It is recommended that convicted for drug offenders to have access to re-socialization and reintegration services, employment programs, psychosocial, medical and health care programs after their release from a penitentiary institution, as well as during their probation period.

### **Findings in terms of the Sentence Serving and Reintegration Process**

- In the prison setting the focus is shifted to the control of convicted persons and internal security issues, and the prison population has limited access to adequate medical and educational services;
- Lack of visits and keeping in contact with family members are significant challenges for convicted persons;
- The most important problem in terms of the prison regime is the duration, intensity, and confidentiality of the conjugal visits;
- Convicted persons in a closed institution may have only 2 extended conjugal visits per year, and those in a high-risk facility can have only 1 visit. Exercising the right to an

extended conjugal visit is related to finances, which may be a significant barrier for many convicted persons and their family members;

- A convicted person placed in a high-risk facility, who already has many rights limited, cannot make use of the video visit;
- The quality and quantity of health services available in the penitentiary system is limited;
- The issue of treatment of persons with drug addiction in the penitentiary system is especially problematic. Prison facilities do not support long-term substitution treatment programs;
- Individuals are under the intensive police control after release;
- The measures of re-socialization in the country are weak, which should facilitate the reintegration of individuals into society, after their release, and should ensure that their basic needs are met, decreasing the chances of re-offending;
- There is no social and employment policy in the country, which would facilitate the employment of ex-offenders after their release from incarceration;
- In addition to the problems at the policy level, there are significant barriers in the legislation; By law, a person will not be hired as a civil servant if he or she has been convicted of an intentional crime.

**Given the obstacles identified in the study, the research team has the following recommendations:**

- Penitentiary health and education systems should be aligned with the existing system in the country, as much as possible;
- Appropriate conditions should be created in penitentiary facilities for extended visits, to ensure confidentiality and communication with family;
- The duration of conjugal visits and phone calls in a closed penitentiary institution should be increased;
- The right to video visits should be granted to convicted persons in high-risk facilities;

- The state should create appropriate social and employment conditions for the of persons after their release from the penitentiary facility;
- Intensive police control after the release or during the probation period should be limited. State should work on the crime prevention and provide the security of society by the human rights based policy.

# Part I. Criminal Policy – Crime Control Strategies

## Introduction – Development of Criminal Policy in Georgia

From the restoration of independence until today, the biggest challenge for the country is mass unemployment and economic poverty. The basic social needs are not met. In these conditions, there is always a great temptation for states to actively resort to criminal law measures to establish or maintain order.

Against the backdrop of total corruption and state dysfunction, the policies of the government that came to power through the 2003 Rose Revolution are a clear example of this.<sup>1</sup> Restoring the state functions, establishing order, and practicing zero-tolerance policy in the fight against crime has shown how criminal law has become the most powerful tool for the state to achieve its goal. Inevitable punishment has turned into the means of combating poverty, corruption, unemployment, economic deprivation.

Aggressive anti-corruption, policing and crime-control reforms in that period had an instant effect. This also divided the public attitude towards the criminal policy. However, with criminal intervention and the consequent serious, massive human rights abuses, the public favorable attitude has not been maintained for a long. Eventually, the repressive criminal policy led to the instantaneous rise of the then political authorities, and later to their political decline.

With the initiated reforms, the strengthening of the prosecutor's office, and the seizure of the judiciary, the justice system has also failed to contain criminal repression to ensure adherence to human rights. Subsequent studies of the zero-tolerance policy revealed that the defendants were agreeing to the plea agreement only because they did not believe in the judicial system and the possibility of acquittal.<sup>2</sup> An extremely low percentage of acquittals (dropped to 0.1% in 2009) prompted the defendants to plead guilty.<sup>3</sup>

Large-scale arrests and, at the same time, the intensive use of legal mechanisms with obvious economic effects (unfair and aggressive plea bargaining practices, repressive prison sen-

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1 Agenda for Reform, Human Rights Priorities after the Georgian Revolution, A Human Rights Watch Briefing Paper, February 24, 2004, Available: <https://bit.ly/3wbXpX5> Accessed: 15.05.2021

2 Crime and Excessive Punishment: the Prevalence and Causes of Human Rights Abuse in Georgia's Prisons, Open Society Georgia Foundation, 2014.

3 Report by the European Commissioner for Human Rights, Thomas Hammerberg, following his visit to Georgia on 18-20 April 2011. available at: <https://bit.ly/2PvMuYS> accessed: 27.04.2021



tences, high fines, confiscations of assets, high fees for visits at a penitentiary) served as an alternative to social policy,<sup>4</sup> in a country where decent social protection as a mechanism for reducing deviant behavior was much more expensive and unattainable. The criminal policy, at the time, was a clear example of how the state can, in the name of the fight against crime, deny human primacy, and transform it into an instrument of economic empowerment.

Later, the policy of zero criminal tolerance was rightly regarded as a mechanism for restoring authority and order for a weak state, created on the foundation of a multi-year social crisis.<sup>5</sup>

Against the background of large-scale repression, it is clear that the steps taken since 2009 to mitigate criminal policy were not enough. However, the adoption of the new Criminal Procedure Code was an important step. The new code has completely changed the existing procedural system. The Code and its basic principles were positively assessed by the international community. However, it was also noted that this reform, alone, was not enough, and it was necessary to create a criminal justice system that would have the ability to re-socialize offenders.<sup>6</sup> The country soon adopted guidelines for criminal policy.<sup>7</sup> With this document, the principles and direction of criminal proceedings were announced; The obligation of human rights protection in this process, the grounds for adopting discretionary prosecution, etc. were introduced. These changes were important, however, the biggest shortcoming of this document to date is its focus on the prosecution system. This policy document has once again made it clear that the state does not fully understand the role of criminal policy.

This trend was maintained under the rule of the Georgian Dream. The new political force, in its election program in 2012, presented several issues in response to the consequences of a harsh, repressive criminal policy.<sup>8</sup> Since 2012, under the rule of the new political team (especially in the initial period), significant steps have been taken in this direction.<sup>9</sup> Legislation has changed, as has the use of strict criminal justice mechanisms in practice.<sup>10</sup> However, the

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4 Punishment and State-Building in Post-Soviet Georgia; Gavin Slade, translation available: <https://bit.ly/2SOkAbH> accessed: 27.04.2021

5 Punishment and State-Building in Post-Soviet Georgia; Gavin Slade, translation, available at: <https://bit.ly/2SOkAbH> Accessed: 15.05.2021

6 EU-Georgia, Civil Society Workshop on Human Rights, Tbilisi June 21-211, 2012, Summary Report, available at: <https://bit.ly/33JkpR5> Accessed: 15.05.2021

7 Order N181 of the Minister of Justice of Georgia of October 8, 2010 on the Approval of the Guiding Principles of Criminal Policy

8 For detailed information, see: <https://bit.ly/3fk8nDf> Accessed: 15.05.2021

9 For more information see: Thomas Hammarberg, Georgia in Transition, Report on the human rights dimension: background, steps taken and remaining challenges, 2013.

10 The rules for cumulating sentences have changed, the rate of use of imprisonment has significantly decreased in the first period.

crime control policy remained a narrow field of activity of law enforcement agencies, which could not fundamentally change the situation for the better.

Existing criminal policy is still largely responsive, acting only through the power of punishment. Adequate preventive mechanisms are not introduced in the country, in different directions. To date, there is no uniform document on prevention policy.<sup>11</sup> There is no intensive, unified, criminological assessment of the situation in the country with the participation of all responsible agencies, on the basis of which policies, action strategies and plans can be developed. The measures of re-socialization in the country are weak, which should facilitate the reintegration of ex-offenders into society, after their release from imprisonment. To ensure that their basic needs are and thus the risks of re-offending are minimized.

The state actions are not effective in combating crime, crime-contributing factors are not eliminated, social and economic context is not taken into consideration. In this situation, naturally, the burden of maintaining law and order remains solely in the realm of the law enforcement system. Ultimately, for the state, the main tool for maintaining order is still “management with punishment.”

### **Formation of Criminal Policy**

The criminal policy is an important determinant of state democracy. The criminal policy in the country not only determines the strategy of a particular state, the method of crime management but also reveals the priorities of the state, the place of individuals in the state value system.

The criminal policy can be thought of as a unified, complex strategy that, on the one hand, aims to respond to the factors that contribute to crime, and, on the other hand, determines the state's response to an already committed criminal act.

The role of criminology is defining in the process of shaping criminal policy. It can show the relationship between the situation of a particular group, society, or even the state as a whole and the deviant behavior of a person in conflict with the law. Criminological mechanisms are the basis for the formation of criminal policy based on analysis. Otherwise, the criminal policy will have only an immediate (crime-preventing, punitive) effect and will not be long-term outcome-oriented.

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<sup>11</sup> Crime Prevention, Police Control Risks, Human Rights Education and Monitoring Center (EMC) 2017, available at: <https://bit.ly/33Jj6li> Accessed: 18.03.2021

Short-term results-oriented policies usually ignore the circumstances that contribute to deviance. The purpose of such a policy is to create a one-time drastic effect (e.g., a rapid, dramatic reduction in crime.) In this context, the criminal policy operates only as an instrument of punishment, it does not go beyond the prevention and punishment for the crime and does not eliminate its contributing factors.

In the process of forming a criminal policy, two components must be combined: attitudes towards deviance (political) and knowledge about crime (criminological),<sup>12</sup> which includes the study of the main factors contributing to crime. This is crucial for criminal policy to be shaped by and focused on the existing social realities.<sup>13</sup>

It is imperative that if the state entrusts the formation of criminal policy only to law enforcement, police systems, it will not go beyond the punishment, the responsive approach to crime. Many different actors must be involved in the policy-making process, including government agencies, the media, academia, and other expert groups.

How a policy is formed technically depends on the form of state arrangement. In the context of decentralization, this capacity, like the mandate to define other areas of public policy, is vested in local governments. Along with other entities, high-ranking elected officials of the local government are involved in this process.<sup>14</sup>

In another system, the criminal policy is centrally defined. However, the active participation of local authorities in this process is essential, as the risk of neglecting individual, local needs are always high in centralized systems.

Overall, the policy-making group can be divided into two parts: departmental and public. The departmental group of policy-making includes mainly the law enforcement, judiciary, penitentiary, education, and social security systems. Agencies should be equally involved in the process, to maintain a uniform approach during the policy enforcement process to avoid the risks of fragmentation.<sup>15</sup> This is especially true of systems where the principle of discretion applies in the field of criminal law and agencies can refuse to apply criminal law instruments.<sup>16</sup>

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12 U.S. Criminal Justice Policy, A Contemporary Reader, Jones&Bartlett Learning, Edited by Karim Ismaili, P:14; Kennesaw State University, State of Georgia, the US

13 Contextualizing Criminal Justice Policy-Making Process, Karim Ismaili, St. John's University, New York, Criminal Justice Policy Review, September 2006, N3

14 U.S. Criminal Justice Policy, A Contemporary Reader, Jones&Bartlett Learning, Edited by Karim Ismaili, P:14; Kennesaw State University, State of Georgia, the US

15 Contextualizing Criminal Justice Policy-Making Process, Karim Ismaili, St. John's University, New York, Criminal Justice Policy Review, September 2006, N3

16 U.S. Criminal Justice Policy, A Contemporary Reader, Jones&Bartlett Learning, Edited by Karim Ismaili, P:14; Kennesaw State University, State of Georgia, the US

The public group consists of representatives of private institutions, the Bar Association, and legal aid. The involvement of professional, social, civic groups, persons working for victims and affected groups, ex-offenders, or their representatives is also important in this process.<sup>17</sup>

## **Crime Control Strategies – Departmental Responsibility**

### **(Crimes against property (theft/robbery) and certain types of drug crimes)**

As mentioned, the state first adopted the guidelines for criminal policy back in 2010. For more than ten years this document has been operating almost unchanged and has been a key document of criminal policy. It should be noted that only a general part of this document is public.

For a long time, the authority to approve guidelines for the criminal policy was delegated between the Prosecutor General and the Minister of Justice.<sup>18</sup> Later, with the changes in the legislation based on the 2017-2018 constitutional reform, the determination of criminal policy was entrusted to the Parliament,<sup>19</sup> while the Prosecutor General was left with the obligation to develop policy guidelines based on the policy defined by the Parliament.

Highlighting the role of Parliament in this process was an important step. The Parliament taking ownership of the determination of the criminal policy means that the body takes political responsibility for the criminological situation in the country. At the same time, this approach gives the parliament the capacity to control the crime situation and monitor the efficiency of the activities of the agencies in the framework of the oversight mandate.

It should be noted that the involvement of the government and parliament in the process of defining criminal policy was one of the recommendations of the civil sector in the framework of the reform of the prosecution system.<sup>20</sup> This recommendation was more or less shared by the Parliament.<sup>21</sup> In particular, Parliament was instructed to define criminal policy. According to the same law, the Government of Georgia was instructed to approve the rule of coordination of the fight against crime, and the Prosecutor General's Office – to directly

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17 *ibid.* P: 34

18 Law of Georgia on the Prosecutor's Office, in force until November 30, 2018

19 Organic Law of Georgia on the Prosecutor's Office, Article 28

20 Prosecution System Reform, Human Rights Education and Monitoring Center (EMC) 2018, p: 22, available at: <https://bit.ly/310kfDA> accessed: 19.03.2021

21 Organic Law of Georgia on the Prosecutor's Office, Article 28, Part 3.

coordinate the fight against crime and the systemized activities of law enforcement agencies in this regard.<sup>22</sup>

Since 2018, the Parliament has not adopted a document defining the criminal policy. Relevant changes were not made in the rules of the procedure either. The obligation imposed by this law has not been fulfilled by the Government of Georgia so far – there is no unified rule for the coordination of the fight against crime approved by the government.

In the process of working on the research, the organization addressed the Parliament of Georgia to clarify whether the Parliament has adopted the document defining the criminal policy. The response received from the Office of the Parliament states that the Parliament of Georgia has the authority to define criminal policy, although this does not imply the obligation of the Parliament of Georgia to define criminal policy in a separate, specially designed document. The Office of the Parliament also points out that the above-mentioned approach does not exclude the authority of the Parliamentary Committee on Legal Affairs, if needed, to draft the mentioned document.<sup>23</sup>

It is clear from this correspondence that the Parliament has not properly understood its role and responsibilities in determining criminal policy in the country. Moreover, for the Parliament, the adoption of the relevant policy document depends on its assessment of whether the adoption is appropriate.

Under current law, responsibility for combating crime is largely shared between the prosecutor's office and investigative bodies. In addition to the criminal prosecution function, the prosecutor's office must coordinate the fight against crime, ensure the coordinated actions of law enforcement agencies to detect, and prevent crime, investigate and open cases and improve the criminological situation.<sup>24</sup>

Although the Prosecutor's Office is responsible for the prevention and improvement of the criminogenic situation, the activities of the agency, its strategy, are largely focused on responding effectively to already committed crimes. Less attention is paid to the study of the causes of crime and the joint, coordinated response of the agencies. This is evidenced by the policy documents and guidance strategies in place in the system.<sup>25</sup>

According to the National Statistics Office, in the recent period (after 2014) the unem-

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22 *ibid.*

23 See: Letter N3188 / 2-7 / 21 of April 7, 2021 of the Parliament of Georgia

24 Organic Law of Georgia on the Prosecutor's Office, Article 27

25 The information is also based on the letter N13 / 1393 of January 13, 2021 of the General Prosecutor's Office

ployment rate in the country is the highest – 20.4%,<sup>26</sup> according to 2019 data, the yearly average number of sustenance recipients was 441,448 (share in the average annual population – 11.9%), according to 2020 data 174,612 persons were receiving social benefits.<sup>27</sup> Despite the dire social situation in the country and the risks associated with an increase in economic crime, the issues related to the prevention of property crimes are not addressed in the current strategy of the Prosecutor’s Office. The strategy mainly deals with organized crime (trafficking, cybercrime, corruption, terrorism) and the fight against drug crime.<sup>28</sup>

It should be noted that the strategy of the agency regarding drug crime also envisages the implementation of certain preventive mechanisms, which should be considered as a positive feature. These include conducting information campaigns on drug-related issues, the study of local needs, and responding to them appropriately.<sup>29</sup>

The same strategy envisaged the liberalization of drug policy towards users. The introduction of this plan in the agency’s strategy was an important and progressive step at the time, given the severe and repressive drug policies in the country. This issue will be discussed in detail later on in the document, but it should also be noted that the state has so far failed to fully assume responsibility for drug policy liberalization and tried to carve out liberalization tendencies through ad hoc changes in legislation. Which does not meet the challenges, the unfair practices of punishment, we have in the system.<sup>30</sup>

According to the information provided by the Prosecutor’s Office, the Prosecutor’s Office periodically conducts thematic criminological studies. However, it seems that the studies and preventive measures organized by the agency mainly concern juveniles and juvenile justice issues. The Prosecutor’s Office is implementing the project “Public Prosecutor’s Office” on the territory of 28 district prosecutor’s offices of Georgia, the main goal of which is to prevent crime, raise public awareness and trust in the agency.

The agency organized several meetings in recent years with pupils, students, and the local community on drug crime issues. In March 2017, the anti-narcotics campaign was organized by the Prosecutor’s Office, where the study on factors contributing to drug use was presented

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26 For more see: <https://www.geostat.ge/ka/modules/categories/683/dasakmeba-umushevropa>

27 The data is based on the information provided by the letter N7-732 of April 7, 2021 of the National Statistics Office of Georgia

28 See: strategy of the Prosecutor’s Office of Georgia for 2017-2021

29 *ibid.* p. 21.

30 Drug Policy in Georgia Tendency of 2020, Social Justice Center, 2021. Available at: <https://bit.ly/3v3klYN> Accessed: 15.05.2021

to the students. In 2020 and 2021, due to the pandemic, the agency did not hold any meetings.<sup>31</sup>

Such activities are important in terms of crime prevention and public awareness, but it should also be noted that these types of activities alone are not enough and do not address all the key factors that contribute to crime. The agency should expand the scope of preventive activities, the agency's preventive policy should not be limited to juvenile justice and drug crime issues. Especially in the context of repressive drug policy, ad hoc anti-drug campaigns will not be able to achieve long-term results without a fundamental reform of drug policy.

The fact that a permanent deliberative body – the Council for Strategic Development and Criminal Policy – has been established in the prosecution system should be positively assessed.<sup>32</sup> The main objective of the Council, among other things, is to develop guidelines, strategies, and action plans based on criminal policy. The existence of a collegial body in the agency is important in order to ensure that strategic decisions are not entrusted solely to the Prosecutor General. However, on the other hand, it is necessary to assess how effective the council is. The board does not have a pre-defined schedule of activities and meets as needed. The quota of district / regional prosecutor's offices is not sufficiently provided for in the council. This would be important, especially in terms of analyzing problems and needs at the local level, reflecting the local problems in the criminal policy. This imbalance is not covered by the 8 members of the Prosecutorial Council, which include representatives of the district / regional prosecutor's office, because this factor, in itself, is problematic even at the level of the Prosecutorial Council. The issue of election of prosecutor members in the Prosecutorial Council is not fairly regulated by law. They are selected by the Conference of Prosecutors from among candidates nominated by 30-member initiative groups, the model decreases the share of individual prosecutors in the Council recruitment process. The issue of geographical quotas is also problematic in this process.<sup>33</sup> The conference elects 3 members of the Prosecutorial Council from the district and regional prosecutor's offices in the territory of Eastern Georgia and only one member from the territory of Western Georgia.<sup>34</sup> Sadly, the minutes of the board meeting could not be made available to the organization. According to the official letter of the Prosecutor's Office, 3 meetings of the Council were held, where the Council discussed the strategy of the Prosecutor's Office for 2021-2025 and the draft criminal policy

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31 The information is based on the letter N13 / 22264 of April 16, 2021 of the General Prosecutor's Office of Georgia

32 Order N008 of the Prosecutor General of Georgia of March 17, 2020 on the Approval of the Statute of the Permanent Consultative Body of the Prosecutor General of Georgia on Strategic Development and Criminal Policy

33 A joint shadow report by the Social Justice Center and the Young Lawyers Association for UNHCR Periodic Review (3rd Period, 37th Session, 2020), available at: <https://bit.ly/3mXJAZ0> Accessed: 19.04.2021

34 Law of Georgia on the Prosecutor's Office, Article 20

document, the issue of improving the employee evaluation system, and the 2020 reports of the District and Autonomous Republic of Adjara Prosecutor's Offices.<sup>35</sup>

In terms of crime control, the Ministry of Internal Affairs has an important responsibility in the country. According to the current legislation, the Ministry of Internal Affairs has the obligation to take preventive and response measures to protect public safety and law and order.<sup>36</sup>

An important determinant for assessing crime control and criminal policy, in general, is the state's approach to crime prevention. While the state does not have proper prevention mechanisms in place, the only way to maintain order and security is resorting to prevention/punishment. Unfortunately, the issue of prevention remains to be the biggest challenge.

Understanding crime prevention is the biggest challenge for our country. Today the responsibility of prevention does not go beyond the law enforcement system. This creates significant problems precisely in terms of the separation of police preventive and response capacity. Such an approach to crime has a direct impact on criminal policy in the country. In the context of prevention, the criminal policy is also restricted and is limited to responding to the already committed deviant action.

Recently, the Ministry of Internal Affairs has been actively working to establish a community-oriented police system – the institution of community officers. The main goal of the new program was to establish closer contact with the public, to gain public trust, which, for the first time, would envisage prevention function in the police system.<sup>37</sup> Unfortunately, the mandate of this unit is being formed in the country in such a way that it is not significantly different from the existing police units, it has almost the same – classic policing functions. This approach cannot fundamentally change the situation for the better. On the contrary, in the name of public trust, it further strengthens the police system and the existing, vicious model of activity.

The agency has developed several different strategies to combat crime. Most of them, however, was in effect until 2020.<sup>38</sup> The strategy for combatting crime for upcoming years is yet

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35 The information is based on the letter N13 / 22264 of April 16, 2021 of the General Prosecutor's Office of Georgia

36 Resolution of the Government of Georgia N 337 of December 13, 2013 on the Approval of the Statute of the Ministry of Internal Affairs

37 For the further information see the assessment of Social Justice Center, Available: <https://bit.ly/33Nwipa> Accessed: 15.05.2021

38 For example: the National Strategy for Combating Organized Crime of the Ministry of Internal Affairs for 2017-2020



to be developed by the Ministry of Internal Affairs. However, the analysis of the government program<sup>39</sup> provides an opportunity to identify several key areas.

The government program addresses many important institutional issues that are essential for the functioning of the organ. Moreover, as in the case of the Prosecutor's Office, for the Ministry of Internal Affairs, the main focus is on the fight against cybercrime, organized crime, and drug crime. At this stage, when the strategy for activities in each direction is not available, it is difficult to assess the extent to which the existing plan in each direction meets the core needs of the country. However, it is clear that the country has shifted its focus to organized crime control and the categories of crime that result from the difficult social and economic situation are disregarded.

To some extent, the Ministry of Justice has departmental responsibilities for drug crimes. The Ministry chairs the Interagency Coordinating Council for Combating Drug Addiction.<sup>40</sup> A National Center for Drug Monitoring was established in 2020 under the same council.<sup>41</sup> The center collects, evaluates, and introduces evidence-based scientific-practical methodology on the use of substances under special control.<sup>42</sup>

Under the auspices of the Interagency Council under the Ministry, the Action Plan for Combating Drug Addiction for 2021-2022 was approved.<sup>43</sup> It should be positively assessed that this plan envisages the involvement of health and education systems in the process for primary prevention purposes. The plan provides for the retraining of police officers, although it is not clear which ranks and directions the training will cover. It would be important to strengthen the police system in prevention, including the strengthening of a new link in these processes – community law enforcement officers, to impose on them the function of a mediator between the police and health systems. However, it seems that the state is not going to delegate different police functions to this entity and the community officers will only formally replace the existing district inspectors in the system. The plan includes the refinement of the legal framework, the development of a new strategy, which may be an important mechanism to improve the existing situation.<sup>44</sup>

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39 See: Government Program 2021-2024 "Building a European State" Available: <https://bit.ly/33O31e1> Accessed: 15.05.2021

40 Resolution N342 of the Government of Georgia of May 7, 2014 on the Approval of the Statute of the Interagency Coordinating Council for Combating Drug Addiction

41 Order N494 of the Minister of Justice of Georgia of January 16, 2020 on the approval of the Statute of the National Center for Drug Monitoring

42 *ibid.* Article 1

43 See: 2021-2022 Anti-Narcotics Action Plan, available: <https://bit.ly/3f3nanq>, Accessed: 15.05.2021

44 Interagency Coordination Council for Criminal Reform and its strategy-action plans are important tools in the fight against crime under the Ministry of Justice. It should be noted that the strategy was last developed for 2019. The agency has not yet developed a new strategy and action plan

Under the Ministry of Justice, the National Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation has significant responsibilities in terms of combating crime and crime prevention. Among other key activities, the agency aims to implement crime prevention measures, ensure public safety through the re-socialization and rehabilitation of convicted persons and ex-prisoners.<sup>45</sup>

## **Taking into account local Needs in the Process of Criminal Policy Formation**

The fight against crime, the implementation of criminal justice, under our legislation, is the exclusive authority of the central government.<sup>46</sup> Considering the existing state structure, strict centralization of the agencies, the effectiveness of crime control at the local level needs special attention. In order for the criminal policy to reach the local level, it is first necessary for each entity to be equally involved in the policy-making process. The strategy of the agencies should also cover the local needs as much as possible. Local-level involvement in the prevention policy planning and implementation process is particularly important, as each unit may need to take different measures, depending on its characteristics.

While the parliament has not yet defined a criminal policy, the country does not have a unified prevention strategy, discussion on the consideration of the local needs is superficial. All attempts made by the state in this direction were formal and in vain.

In 2018, in accordance with the principle of territoriality, by the decree of the Government of Georgia, permanent local inter-agency councils were established for the promotion of crime prevention and law and order.<sup>47</sup> This resolution was, at that time, an important step taken by the state. This was the first policy document aimed at defining crime prevention and law enforcement policies, developing recommendations, and taking appropriate measures based on the criminogenic situation in the territorial units.

The council was composed of several agencies. The leadership of the council was entrusted to the Ministry of Internal Affairs. And the municipalities were asked to participate in the activities of the council. It was a format that not only included law enforcement agencies, but also the Ministry of Education and Science, which should play an important role in the process of preventive policy planning and implementation in general.

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45 Law of Georgia on Crime Prevention, Execution of Non-Custodial Sentences and Probation

46 Constitution of Georgia, Article 7

47 Resolution No. 416 of the Government of Georgia of 13 August 2018 on the Permanent Interagency Councils for the Promotion of Crime Prevention and the Maintenance of Law and Order

Unfortunately, the state's attempt to strengthen the formation of criminal policy based on local needs and the introduction of preventive mechanisms have turned out to be merely formal. The council has been working since 2018. However, despite numerous addresses, the superior organ of the council – the Ministry of Internal Affairs – does not provide information on the functioning of the council. As the council has not formally convened so far and has not developed any recommendations on crime prevention and maintenance of law and order for any of the municipalities.

## Part II. Criminal Justice Policy in terms of the Property (theft/robbery) Crimes

### Introduction – Crime Against Property and Legal Analysis of its Underlying Social Factors

In social sciences, there are two prevailing propositions – functional and dialectical – concerning the causes of crime and their significance.<sup>48</sup> While the difference between these approaches is substantial, it is important to pinpoint the key issues regarding which the dominant criminal justice theories develop similar or complementary views. It is then possible to provide a thorough legal analysis of the social factors contributing to theft/robbery.

Sociological research shows that underlying causes of property crimes (theft/robbery) do vary. In general, an individual may be motivated to engage in this type of illegal conduct by a difficult social background (economic hardship and associated financial liabilities), or by the content of their interaction and integration with the community in a specific social setting.

The study found that social and economic factors such as poor family finances, bank loans/credit, financial liabilities due to gambling, and an unequal socio-economic environment (inability of self-realization in the society) contribute to anti-social behavior such as theft/robbery.<sup>49</sup> According to the study, another important contributing factor is the presence and the influence of individuals with a criminal record in the immediate (family) environment of the person concerned.<sup>50</sup> Thus, the groups that are at high risk of committing property crimes are persons addicted to gambling; the unemployed; those living in poverty; persons with loans from banks or other credit institutions; persons living in a criminal social environment, and having a criminal past.<sup>51</sup>

In this context, it is interesting to consider the demographic characteristics of the study participants (prior to crime commission). In terms of their education level, it was found that the vast majority of perpetrators of property crimes (71.7%) had secondary education before incarceration, while some (6.9%) had only basic education.<sup>52</sup> Overall, the share of those who

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48 William J. Chambliss, *The political economy of crime: a comparative study of Nigeria and the USA*, in *Critical Criminology* edited by Ian Taylor, Paul Walton and Jock Young, London, 1975, p. 167.

49 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, *Social aspects of Crime and Punishment – Study report*, 2021, p. 35.

50 *ibid.*

51 *ibid.*, p. 56.

52 *ibid.*, p. 100.

had completed vocational or higher education before committing theft/robbery was comparatively low (8.1% and 6.4%, respectively).<sup>53</sup>

Monthly income and employment rates, before the commission of a crime, are particularly symptomatic. According to the results of the study, less than 10% reported income in the range of 700-1000 GEL.<sup>54</sup> Consequently, the vast majority of respondents, before committing the property crime, either did not have a stable income or it was extremely low.<sup>55</sup> At the same time, more than half (51.4%) stated that they had enough money for food before imprisonment/probation, but had to save up or borrow to purchase clothes and shoes.<sup>56</sup> More than a fifth stated that they had difficulty buying food.<sup>57</sup> Only 1.7% of respondents indicated that they could buy anything they wanted at any time.<sup>58</sup> As for the employment situation, as it turned out, before imprisonment/probation, the majority (58.4%) were unemployed, while almost a third (30.1%) were unofficially employed.<sup>59</sup>

One of the most common functional approaches to explaining the causes of property crime is the strain theory, according to which access to socially acceptable goals determines the extent to which a person engages in deviant (unlawful) behavior.<sup>60</sup> A person may have socially justified goals for financial gain/income, but may not have access to the socially acceptable resources, means, and ways to achieve them.<sup>61</sup> According to Robert Merton (the one who formulated this theory), the discrepancy between the actual reality of structural inequality and the socio-cultural value of economic benefits creates a 'strain' for people to overcome in some way. And one way to do so is engaging in deviant behavior.<sup>62</sup> Although according to many scholars, while Merton's theory may be useful for analyzing any type of strain, its original and foremost purpose was to explain economic strains.<sup>63</sup> It should be noted that the main provisions proposed by the 'strain theory' correlate with the views expressed by the respondents in the sociological survey as to what factors contributed to the commission of a particular crime. Central to this issue is the

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53 *ibid.*

54 *ibid.*, p. 104.

55 *Ibid.*, p. 105.

56 *ibid.*

57 *ibid.*

58 *ibid.*

59 *ibid.*, p. 107.

60 William Little, *Introduction to Sociology – 1st Canadian Edition*, 2013, p. 209, available at: <https://bit.ly/3x7gyel>; accessed: 11.03.2021.

61 *ibid.*

62 *ibid.*, p. 210.

63 Alison S. Burke, David E. Carter and others, *Introduction to the American Criminal Justice System*, p. 177, available at: <https://bit.ly/3gtyjia>; accessed: 03.10.2021.

relationship that existed between the social status and financial burden of convicted persons on the one hand, and their economic opportunities on the other. According to the study, for most convicted persons, the pressure arising from the inability to meet basic social needs and financial obligations contributed to their deviant behavior.

The analysis of this issue is also particularly important in dialectical theories. Critical sociology, for example, views social and economic factors as major sources of crime and deviation.<sup>64</sup> In contrast to the functional explanation, critical (conflict) theories view these factors and deviant behavior not as essential components for the normal functioning of society but as evidence of systemic inequality.<sup>65</sup> In this sense, crimes against property are often a way of dealing with socio-economic oppression or simply a strategy of economic survival.<sup>66</sup> Overall, the critical and social-democratic criminal perspective “sees crime as a result of social alienation and inequality.”<sup>67</sup>

Another functional approach common among criminological theories studies the relationship of convicted persons to the particular social circle, and their integration into the relevant social environment, as contributing factors to criminal behavior. In particular, according to social disorganization theory, persons who grow up and live in poor neighborhoods/areas with high crime rates are more likely to engage in illegal activities.<sup>68</sup> According to this theory, the causes of deviant behavior must be related to weakened social ties, lack of well-being, improper functioning of social structures (eg school), and, in general, an unhealthy social environment (“ecosystem”).<sup>69</sup> However, social disorganization theorists see crime prevention in the context of shared moral values and strengthened social ties, while ignoring issues of economic inequality, other forms of oppression, and power dynamics.<sup>70</sup>

Questions left unanswered by social disorganization theory can be filled in by critical theories. It is generally believed that “*low socioeconomic status is associated with higher risks of exposure to the criminal justice system, higher crime rates, and higher rates of victimization. The link between socio-economic deprivation, crime, and the criminal justice system is evident not only at the individual level but also at the level of the neighborhood.*”<sup>71</sup> Material wealth is

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64 William Little, *Introduction to Sociology – 1st Canadian Edition*, 2013, p. 210.

65 *ibid.*

66 *ibid.*

67 Tim Newburn, *Social Disadvantage, Crime and Punishment*, translated by: Nino Karanadze, 2020, p. 5, available at: <https://bit.ly/3graLtY>; accessed: 11.03.2021.

68 William Little, *Introduction to Sociology – 1st Canadian Edition*, 2013, p. 209.

69 *ibid.*

70 *ibid.*

71 Tim Newburn, *Social Disadvantage, Crime and Punishment*, p. 20.

related to strengthening the security measures of one's residential space, be it physical security or collective services.<sup>72</sup> Low-income and otherwise marginalized areas are characterized by their situational vulnerability, which is caused by social and demographic poverty.<sup>73</sup>

It should be noted that neither the sociological nor the present legal research claims to analyze the differences caused by urban segregation. However, contributing socio-economic factors highlighted by the respondents show that person's criminal behavior is sometimes related to the interaction with individuals, living in a particular area, who have a similar criminal background. According to the results of the study, such a correlation is quite strong and is characteristic of these social spheres. Given that some of the respondents mentioned that the social (close/friendly) circle was one of the contributing factors in their commission of property crimes, it was interesting to assess the prevalence of theft and robbery in their community/living environment. In this regard, more than a third of the families of both former and current convicted persons believe that the rate of theft and robbery is high in their area.<sup>74</sup>

The results of the study suggest that the social factors contributing to theft/robbery can be explained in the light of the criminological theories discussed. Despite the fundamental differences between these theories themselves, the basic thesis of both schools of thought (functional and dialectical) is that socio-economic conditions are largely contributing to deviant behavior.<sup>75</sup> This connection is most evident in the crimes against property. Even the factors named by the study respondents, including the close relationship with persons who have a similar criminal background, are broadly linked to the social and economic vulnerability of individuals and groups in a particular social setting. In this sense, respondents talk about both the individual economic hardship and the overall social environment, which is characterized by an unhealthy social "ecosystem" and the lack of minimum guarantees of well-being.

Thus, the undeniable criminological fact that "the vast majority of crimes, that land at courts, are committed by people belonging to a relatively low social class"<sup>76</sup> is based on specific socio-economic grounds. There is indeed an opinion that state structures in the current system are naturally prone to repression of the lower social class,<sup>77</sup> however, this does not change the causes of the crimes against the property and the main social factors contributing to it.

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72 *ibid.*

73 *ibid.*, p. 14.

74 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, p. 54.

75 Ian Taylor, Paul Walton and Jock Young, Critical criminology in Britain: review and prospects, in *Critical Criminology edited by Ian Taylor, Paul Walton and Jock Young*, London, 1975, p. 42.

76 Tim Newburn, Social Disadvantage, Crime and Punishment, p. 8-9.

77 According to one of the authors, "Adults with low social status commit crimes that are more often investigated by the police than middle-class adults," *ibid.*, p. 9.

With this in mind, theft/robbery prevention mechanisms must also be complex and must be viewed not from a narrow legal perspective, but also a social and economic perspective.

## Mechanisms for the Prevention of Crimes Against Property

Crime is a complex social phenomenon.<sup>78</sup> The crime and thinking behind it can only be properly analyzed if the perpetrator and his/her motivation are analyzed in the context of other social relationships.<sup>79</sup> To this end, a separate theoretical framework has been developed in the scientific literature, called the “square of crime”<sup>80</sup>

The square of crime theory requires that the analysis of crime and its control be based on the interaction and interrelation of the four parties involved in the process: the perpetrator, the victim, the criminal justice system, and the public/ community.<sup>81</sup> In this sense, it is unjustifiable to talk about crime in general terms. The analysis of deviant behavior should involve the context of a particular type of crime, the interrelation of the parts of the “square”, and more complex social characteristics (such as class, gender, ethnicity, political and economic discourse, etc.).<sup>82</sup> Each type of crime has a different standing in relation to the mentioned axes of power dynamics, and at the same time, it generates different levels of trust and conflict between the participants of the “square” (depending on the relevant context).<sup>83</sup> Thus, the purpose of the “square of crime” framework is not to study crime only from a criminological perspective. Criminalization is indeed an important component of a crime-fighting strategy, but for its viability, it is essential to take into account issues of power and trust among the participants.<sup>84</sup>

This issue is closely related, on the one hand, to how we investigate crime and, on the other hand, how we outline its prevention and control mechanisms. In the first case, conservative, liberal, and critical (radical) approaches are important to note. The conservative approach is largely descriptive.<sup>85</sup> It is based on the fundamental belief in power and hierarchy, which is the basis of law and order.<sup>86</sup> Consequently, according to this approach, the problems related

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78 John Lea, Left Realism: A Radical Criminology for the Current Crisis, 2016, *International Journal for Crime, Justice and Social Democracy* 5(3): 53-65. DOI: 10.5204/ijcjsd.v5i3.329, p. 60.

79 *ibid.*

80 *ibid.*, p. 58.

81 *ibid.*

82 *ibid.*, p. 59.

83 *ibid.*

84 *ibid.*, p. 62.

85 Ian Taylor, Paul Walton and Jock Young, *Critical criminology in Britain: review and prospects*, 1975, p. 21.

86 *ibid.*



to crime and its control are seen in the context of a weakened hierarchical apparatus and relations, which creates the need to increase policing power and strengthen repressive policies.<sup>87</sup> In contrast, the liberal approach is based on prescription. It aims to develop research-based proposals for institutional reform or focus on cultural change based on research.<sup>88</sup> In this respect, the liberal approach does not call into question the generally existing system of social control. A critical (radical) perspective is a type of political practice that seeks to link the research process to the need for fundamental social transformations.<sup>89</sup> Theory and research should be seen as praxis, which should reveal the basics of crime as a social phenomenon.<sup>90</sup>

Discussion on crime control strategies usually proceeds from two different angles. The problem of crime lies in the framework where there co-exist proponents and opponents of “harsh” and “soft” punitive policies.<sup>91</sup> It is fair to say that seeing the issue from these lenses will disregard the many social variables and dimensions mentioned above. Therefore, there is an opinion that crime control strategies should be categorized differently, namely whether: 1) these strategies are aimed at changing the environment that determines the commission of a crime or 2) is aimed at changing the individual tendencies towards criminal behavior.<sup>92</sup>

As mentioned earlier, the results of the sociological survey showed that the main leading causes for property crimes are the difficult social background and financial liabilities of the perpetrators. The analysis of social factors contributing to theft/robbery reveals that the so-called “correctional” approach is not justified in this case. This is confirmed by the fact that the vast majority of respondents, when discussing crime prevention mechanisms, usually speak not of changes in individual behavior, but of the need to transform environmental factors and social policies.

In this regard, in the framework of the quantitative survey, respondents generally assessed whether the existing criminal policy is aimed at crime reduction. As it turned out, “the majority of ex-convicts (54.3%) do not agree with the opinion that the existing legal policy is focused on economic crime reduction. [...] Thus, many ex-offenders think that the legal framework on economic crimes needs to be revised and refined.”<sup>93</sup> It should be noted that

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87 John Lea, *Left Realism: A Radical Criminology for the Current Crisis*, 2016, p. 55.

88 Ian Taylor, Paul Walton and Jock Young, *Critical criminology in Britain: review and prospects*, 1975, p. 22.

89 *ibid*, p. 24.

90 *ibid*.

91 Philip J. Cook and Jens Ludwig, *Economical Crime Control*, in *Controlling Crime: Strategies and Tradeoffs* edited by Philip J. Cook, Jens Ludwig and Justin McCrary, 2011, p. 2, available at: <https://bit.ly/3symHg9>; accessed: 21.04.2021.

92 *ibid*, p. 3.

93 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, *Social aspects of Crime and Punishment – Study report*, 2021, p. 73.

the vast majority of offenders and their family members (92.5% and 92.1%, respectively), agree with the view that the protection of the rights and interests of both the victim and the perpetrator should be an equal priority for the state in the context of criminal policy.<sup>94</sup>

Theft/robbery prevention mechanisms were discussed in detail at focus group discussions of former convicted persons and families of those currently in prison. According to ex-offenders participating in focus group discussions, the prospect of arrest and punishment-oriented approaches will not guarantee the prevention of property crimes. Moreover, such approaches may not affect the behavior of others at all.<sup>95</sup> They explain this by stating that the commission of property crimes is largely due to the acute socio-economic needs of the family.<sup>96</sup> The ex-convicts noted that steps aimed at reducing theft and robbery are not effective as they focus on the consequences of the crime and the isolation of the perpetrator.<sup>97</sup> The same opinion prevails among the family members of current convicted persons. In their view, if the economic situation in the country does not improve and employment opportunities do not increase, the crime rate will not decrease.<sup>98</sup> Consequently, arresting people for petty crimes (theft/robbery) without eliminating the cause of the crime will not be an effective crime reduction strategy.<sup>99</sup>

The findings of the sociological research confirm that the current criminal policy in Georgia, in the context of property crimes, mainly targets the lower social class (the unemployed, low-income families, otherwise socially vulnerable) and subjects them to control and subordination. It is therefore important that theft and robbery prevention policies be complex and focus on the social empowerment of people. Thus, it is fair to say that “crime analysis requires an examination of a person’s position and place in society.”<sup>100</sup> The policy should focus on the social conditions that eventually contribute to criminal behavior.<sup>101</sup>

In this context, the pursuit of neoliberal economic policies is considered to be one of the crucial factors contributing to various types of crime.<sup>102</sup> Countering these approaches is fundamental in the fight against property crimes, as they are directly linked to the reproduction of inequality, its deepening, and concentration of resources in the hands of the few (which, in turn, exacerbate the social factors leading to theft and robbery). Accordingly, social, housing,

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94 *ibid.*, p. 29.

95 *ibid.*, p. 137.

96 *ibid.*

97 *ibid.*, p. 139.

98 *ibid.*, p. 137.

99 *ibid.*

100 Ian Taylor, Paul Walton and Jock Young, *Critical criminology in Britain: review and prospects*, 1975, p. 45.

101 Herman and Julia Schwendinger, *Defenders of order or guardians of human rights?* in *Critical Criminology* edited by Ian Taylor, Paul Walton and Jock Young, London, 1975, p. 136.

102 John Lea, *Left Realism: A Radical Criminology for the Current Crisis*, 2016, pp. 57-58.

employment-oriented, welfare programs, and state strategies to reduce inequality are considered to be an essential component of economic crime prevention.<sup>103</sup>

Property crime prevention mechanisms, if they are not aimed at eliminating inequality, will not escape the “corrective” approach<sup>104</sup> (which, according to sociological research, is, to say the least, unjustified in the context of property crimes). The “correction” approach becomes, in practice, a mechanism for disciplining and punishing the lower social class, involving the entire state and police apparatus. The most widespread and radical manifestation of this process is the policy of “zero tolerance”.

As mentioned earlier, it should be noted that there are no inter-agency strategic documents in Georgia on theft and robbery prevention that would take into account not only the criminal but also the social and economic dimensions of crime prevention.

Concerning crime control and prevention mechanisms, it is also important to address issues of access to information and police accountability. According to the results of the quantitative survey, a significant proportion of respondents who committed crimes of theft and robbery (31.8% and 42.8%, respectively) did not have information about the legal consequences/sentence.<sup>105</sup> In this context, it is also interesting to note that about 9% of the respondents found that the lack of awareness of the risks associated with robbery/theft was a contributing factor to property crimes.<sup>106</sup>

Focus group participants spoke in more detail about the issue of awareness. The ex-offenders noted that it is necessary to spread information about the crime and its accompanying negative consequences in society. The more people know about a particular crime and the punishment for it, the more they will look for alternative, law-friendly ways to solve their problems.<sup>107</sup> However, they also point out that the economic and social situation of the offender’s family is a more important factor. In particular, regardless of whether the offender has detailed information about the consequences of the crime, they may still commit the criminal act due to the difficult economic situation of their family.<sup>108</sup> Focus group participants say that the issue of awareness is of particular importance in the case of less serious

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103 Philip J. Cook and Jens Ludwig, *Economical Crime Control*, 2011, pp. 19-20.

104 Ian Taylor, Paul Walton and Jock Young, *Critical criminology in Britain: review and prospects*, 1975, p. 44.

105 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, *Social aspects of Crime and Punishment – Study report*, 2021, p. 30.

106 *ibid*, p. 53.

107 *ibid*, p. 114.

108 *ibid*.

crimes, as a person may either have no idea that they are committing a crime, or may not have a proper understanding of the expected legal consequences for their criminal actions. It is noteworthy that several respondents said that “if they had detailed information about the risks and consequences of the crime, they might have refrained from committing it.”<sup>109</sup>

The provision of information regarding criminal activities, as a mechanism for crime prevention, is closely linked, on the one hand, to the integration of relevant issues into the education system (and, more generally, access to and quality of education) and the interaction of the law enforcement with members of the public. Studying the issue in this regard primarily involves identifying the specificities of the concrete types of crime, their causes, context, and risk groups, and providing information to the public. Its goal is ultimately to bring crime prevention strategies under the local “democratic imperative” framework.<sup>110</sup> This involves three interrelated approaches, namely: an effective policing strategy requires a two-way exchange of crime-related information between the local community and the police; the exchange of information is a result of public / community trust in the police; trust can be built/restored only through democratic accountability of the police to the public/community.<sup>111</sup>

The public will have confidence in law enforcement agencies if the latter focuses on crimes that are significant to the public, and on mechanisms of prevention and control that are considered legitimate in the community.<sup>112</sup> Thus, it should be a collective, rather than a bureaucratic and narrow process of criminological assessment based on conservative principles.<sup>113</sup> It should be noted that the introduction of the institute of community officers in Georgia served the idea to some extent, however, as it has already been said, today it acquires classic policing functions and, consequently, fails to meet its original goals.

Overall, the above approaches to democratic accountability aim to bring law enforcement and community members closer together and to ensure their interaction. The democratic imperative framework addresses, *inter alia*, the concerns expressed by respondents of the sociological survey, that information deficit and the content of integration with members of the community are among the social factors contributing to crime. Indeed, these factors and the needed institutional reforms are secondary in preventing theft and robbery (since the prevention of property crimes is primarily linked to social policy change), but they are important components of a democratic and human rights-friendly law enforcement system.

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109 *ibid.*

110 John Lea, *Left Realism: A Radical Criminology for the Current Crisis*, 2016, p. 55.

111 *ibid.*

112 *ibid.*

113 *ibid.*, p. 56.

It is interesting that these problems in terms of democratic accountability, in the context of crime prevention, are highlighted in the strategy of the Prosecutor's Office of Georgia for 2017-2021.<sup>114</sup> However, the stated problem-solving methods are fragmented and not tailored to the specific crime prevention goals. The same trend is evident in the public information provided by the General Prosecutor's Office of Georgia on the work they carried out in relation to theft/robbery prevention in 2019-2020.<sup>115</sup> In addition, the functions of the Crime Prevention Center concerning the prevention of property crimes are not systematic. This agency focuses only on persons aged 14 to 21, its activities are limited to ad hoc cultural and sporting events and there is no specific strategy against theft/robbery.<sup>116</sup>

## Sentencing Policy on Property Crimes

Property crime is one of the most common in Georgia. Of the crimes registered in 2019-2020, about 40% were directed against property.<sup>117</sup> In addition, it is interesting to note that the prevalence of crimes against property is particularly high among juveniles. 75% of crimes committed by minors charged in 2020 were directed against property.<sup>118</sup> Regarding theft and robbery, it should be noted that in 2020, more than one-fifth of those convicted (20.26%) were serving sentences for theft/robbery. In 2019, this figure was slightly lower (18.46%).<sup>119</sup>

When it comes to crime policy and prevention, naturally, one possible solution is the introduction of measures aimed at strengthening criminalization and control.<sup>120</sup> However, as it turned out, identifying ways for eliminating the socio-economic factors is more significant than policing control mechanisms. In this context, sentencing policies should focus not on isolation and repression, but integration.<sup>121</sup> This, in turn, should take into account humane,

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114 Strategy of the Prosecutor's Office of Georgia (2017-2021), p. 48, available at: <https://bit.ly/3xceq50>; accessed: 21.04.2021.

115 In 2019-2020, training activities were conducted for the staff of the Prosecutor's Office, which included topics related to crime prevention. In 2019, 4 activities were carried out, which involved 33 trainees (employees of the Prosecutor's Office). In 2020, 1 course was held, within which 2 persons were trained. At the same time, according to the public information received from the General Prosecutor's Office, financial crimes, including theft and robbery, are constantly highlighted in the project "Public Prosecutor's Office" in order to raise the awareness of the public. Thematic brochures and booklets are also periodically printed. Public information provided by the Office of the General Prosecutor of Georgia N13 / 1393.

116 First Level Crime Prevention Programs, available at: <https://bit.ly/2QDXJyx>; accessed: 21.04.2021.

117 Number of registered crimes, data download XLS, available at: <https://bit.ly/3tF6KGI>; accessed: 21.04.2021.

118 Prosecutor's Office of Georgia, survey of the juveniles in conflict with the law, 2021, p. 10, available at: <https://bit.ly/3xgS1ng>; accessed: 21.04.2021.

119 Number of convicts by type of crime, data download XLS, available at: <https://bit.ly/3tF6KGI>; accessed: 21.04.2021.

120 John Lea, *Left Realism: A Radical Criminology for the Current Crisis*, 2016, p. 57.

121 *ibid.*

less repressive, and alternative sentencing approaches, given the circumstances and the local context.<sup>122</sup>

First of all, it is interesting to note that the respondents of the sociological survey (both the ex-offenders and family members of current inmates) expressed somewhat contradictory positions on the anti-crime policy. In particular, according to the results of the quantitative research, the majority believed that *“the state should be even more active in using alternative mechanisms of criminal liability (e.g. diversion, probation, etc.). On the other hand, the majority of both target groups share the view that the state is obliged to use zero compromise methods, not liberal policies, in the fight against crime.”*<sup>123</sup> Respondents also take a moderate approach when assessing whether the sanction they were sentenced was appropriate.<sup>124</sup> However, it is noteworthy that the majority of ex-offenders participating in the study consider the sentence to be unfair.<sup>125</sup>

More or less similar positions were voiced by the focus group participants. They say that there are cases when a crime against property (such as theft) should not be considered a criminal act at all (or conditional sanctions could be used as an alternative to the prison sentence), its scale, and, most importantly, motivation of the offender should be taken into account.<sup>126</sup> Overall, focus group participants see the need to further diversify sentences to enable a humane assessment of petty crimes and crimes of lesser public importance and to use alternative sanctions for these actions (e.g., community service).<sup>127</sup> Regarding theft, the focus group participants indicated the inconsistency and non-diversification of the prison sentences imposed (imprisonment from 4 to 7 years) under Article 177(3) of the Criminal Code.<sup>128</sup> Similarly, the vast majority of respondents of the quantitative survey believe that the cases of theft/burglary including illegal entry into the apartment or vehicle should not be classified as a serious crime.<sup>129</sup>

According to the survey, the vast majority of ex-offenders (83.1%) were sentenced to imprisonment and almost 10% were fined.<sup>130</sup> 6% were sentenced to house arrest and 1.1% to probation.<sup>131</sup> Both the perpetrators of theft/robbery (60.1%) and the majority of their family members (62.9%) indicate that in their view, the crime they committed was not characterized by violence, did not

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122 Philip J. Cook and Jens Ludwig, *Economical Crime Control*, 2011, p. 18.

123 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, *Social aspects of Crime and Punishment – Study report*, 2021, p. 29.

124 *ibid*, p. 36.

125 *ibid*, p. 40.

126 *ibid*, p. 119.

127 *ibid*, p. 138.

128 *ibid*, p. 110.

129 *ibid*, pp. 85-87.

130 *ibid*, pp. 32-33.

131 *ibid*, p. 34.

cause significant harm to the public, and was neither organized nor premeditated.<sup>132</sup> As it turned out, the vast majority of ex-offenders (82.1%) did not have experience of conviction until the last case.<sup>133</sup> It is true that in these cases it is difficult to draw accurate conclusions without knowing the specific circumstances, however, it is noteworthy that the study of court judgments and analysis of relevant norms of the Criminal Code reveals several problematic issues that are in line with the respondents' concerns about the sentencing policy.

The study analyzed the judgments of the Common Courts for 2019-2020 (43)<sup>134</sup> in relation to parts 1, 2, and 3 of Articles 177 and 178 of the Criminal Code, through random selection. The analysis reveals that the practice of common courts in terms of sentencing policy reveals two major problems: 1) legislation on aggravating circumstances in cases of theft/robbery, diversification of appropriate sanctions and measures need to be reviewed; 2) the courts and the prosecution often do not make sufficient efforts to ensure that the imposed sanctions are more humane and take into account the social and economic factors that contributed to the crime.

In some cases, despite the absence of aggravating circumstances and the triviality of the crime, the judge was constrained by the provisions set out in the Criminal Code. For crimes against property, this refers to the concept of "significant damages" established by the Code; Sanction for specific types of actions (under Article 177 para 3; Article 178 paras 2 and 3) is imprisonment, and imposition of alternative sanctions is largely limited (for example, in the case of theft/robbery, imposing community service as a sanction is not provided for); and minimum and maximum terms for deprivation of liberty for specific aggravating circumstances are defined.

In one of the cases, the action, which caused exceptionally minor damage (stealing of car battery, audiotape recorder, perfume, memory card, and souvenir stand of a cross – total damage of 110-115 GEL) was qualified under Article 177, part 3 (sub paras "a" and "d") of the Criminal Code (premeditated crime committed by the group against the vehicle).<sup>135</sup> The judge discussed the minor significance of the action, as well as other mitigating circumstances (family status, in particular, the child's illness; lack of a prior conviction; the victim's benevolent position) and sentenced the defendant to 4 years, which is a minimum term under Article 177, para 3.<sup>136</sup> The judge did not have the opportunity to discuss the application of a less severe measure. A similar problem was observed with repeated thefts and robberies,

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132 *ibid*, p. 36.

133 *ibid*, p. 37.

134 Judgments: Tbilisi City Court – 18; Batumi City Court – 15; Kutaisi City Court 6; Poti City Court – 3; Telavi District Court – 1.

135 Judgment of Tbilisi City Court, 2019, provided in the form of public information.

136 *ibid*.

when, despite particularly minor damage, the fact of repeated offenses in itself made it impossible for a judge to impose a lenient sentence.

The amount of damage itself (150 GEL) which is considered “significant damage” is also problematic. The insignificance of the amount and the disposition of the first parts of Articles 177/178 obscure the line where the action, due to its small importance, should not be considered a crime at all, and the judge has a limited scope of discretion.<sup>137</sup> Consequently, given the defined “substantial damage”, judging a person’s conduct in light of these aggravating circumstances may, in some cases, place an undue burden on the person concerned and may be incompatible with the goals of the sanction.

Another legislative problem in the case of house arrest is the financial burden placed on the offender. In particular, the law stipulates that a fee of GEL 100 per month is imposed for enforcement of the electronic house arrest.<sup>138</sup> This form of house arrest has a similar effect to a fine (in financial terms) on a person, which, given the specificity of the crime against property and even more so the small damage it has resulted in, cannot be considered a correct approach. There are indeed cases when a person is exempt from paying this fee (if he/she is minor or socially vulnerable),<sup>139</sup> however, given the current system of social protection, poverty, and high unemployment, it is unlikely that all socially and economically marginalized persons will be covered. Therefore, it is necessary to seek a more inclusive approach in this regard (this may include expanding the categories of exceptions, giving more discretion to the judge, or, at best, removing the house arrest fees for property crimes). In addition, it is advisable to allow the possibility of imposing alternative sanctions for the crimes provided for in Articles 177 and 178, such as community service.

There are cases when judges themselves do not take into account the social and economic factors that contribute to the criminal action and refrain from imposing more humane sanctions. This is particularly evident in the application of Article 177 paras 1 and 2 and Article 178 para 1. For example, in one case, a judge fined a person with GEL 3,000 for an act that caused GEL 140 damage (so-called pocket theft) while the person himself pleaded guilty and did not have a history of a prior conviction.<sup>140</sup> The judge did not discuss the social and economic contributing factors, which, as is clear from the analysis of other judgments, is a

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137 According to Article 7, part 2(2) of the Criminal Code, “An act that, although formally containing the signs of an act provided for by this Code, has not caused, due to its insignificance, such harm or has not created the risk of such harm that would require criminal prosecution of its perpetrator shall not be deemed a crime.”

138 Order of the Minister of Corrections and Probation of Georgia on the Approval of the Rule of Execution of House Arrest № 146, Article 11, Paragraph 1, available at: <https://bit.ly/3sfseYA>; accessed: 13.04.2021.

139 *ibid*, Article 11 (6).

140 Judgment of Tbilisi City Court, 2019, provided in the form of public information.



typical occurrence. The studied cases have shown that in many cases (though not always), judges either formally or not at all evaluate the socio-economic aspects of the action, which, should be one of the main factors determining the type and scope of the sanction. When in fact, according to the Criminal Code, this is the direct responsibility of the court.<sup>141</sup> Interestingly, in none of the judgments examined in 2019-2020 did the judge sentence the offender to house arrest, (although, as already mentioned, the use of the existing model of house arrest would, in some cases, have a similar effect to a fine).

In this context, the criminal monitoring reports of the Georgian Young Lawyers' Association are also interesting, according to which, in many cases, the courts do not take into account the social status of the person, neither in applying the measure of restraint nor in passing judgment. For example, according to the 2018-2019 monitoring report, "GYLA attended the first hearing of the 25 defendants, where economic hardship was a contributing factor. In all 25 cases, the court imposed bail or detention, in no case did it impose personal bond or no measure of restraint. Out of 25 cases, the prosecutor requested detention in 9 cases, which was upheld by the court in all cases."<sup>142</sup> According to the same report, out of 20 hearings on plea bargaining, where it was clear that the defendant's actions were motivated by social hardship, in 6 cases, the prosecutor could decide not to prosecute or could offer diversion.<sup>143</sup> At the same time, the court could have dismissed these cases, due to their minor importance.<sup>144</sup>

In addition, it is noteworthy that despite these significant problems, the analysis of theft/robbery convictions in 2010-2011 and its comparison with 2019-2020 reveal a clear improvement in the situation. This is mainly evident in two directions: 1) Because back in 2010-2011, the prison sentences were cumulated, in many cases, the sanctions were particularly severe and inhumane. For example, in one case, for two episodes of theft (first stealing of a shotgun, then of a camera), a person was sentenced to 8 years and 3 months in prison.<sup>145</sup> The person had not been convicted before and pleaded guilty.<sup>146</sup> In another case of theft (against a vehicle) and robbery (mobile phone and cash amount up to 180 GEL), a person (who had a prior

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141 According to Article 53, Paragraph 3 of the Criminal Code, "when imposing a sentence, the court shall take into consideration circumstances that mitigate or aggravate liability of the offender, in particular, the motive and goal of the crime, the unlawful intent demonstrated in the act, the character and degree of the breach of obligations, the modus operandi and unlawful consequence of the act, prior history of the offender, personal and financial circumstances, and conduct of the offender after the offence, in particular, the offender's desire to indemnify the damage and reconcile with the victim."

142 Merab Kartvelishvili, Criminal Trials Monitoring Report №13 (in the courts of Tbilisi, Kutaisi, Batumi, Gori and Telavi), 2019, p. 108, available at: <https://bit.ly/3mODNoO>; accessed: 14.04.2021.

143 *ibid*, p. 111.

144 *ibid*.

145 Judgment of Kutaisi City Court, 2011, provided in the form of public information.

146 *ibid*.

conviction, pleaded guilty to robbery) was sentenced to 12 years and 6 months imprisonment and was ordered the payment of GEL 4,000.<sup>147</sup> The cumulative sentence was replaced in 2013 by the principle of the concurrent sentence.<sup>148</sup> 2) In 2010-2011, cases of imposing fines in the form of additional sentences were widespread in court practice, which further aggravated the situation of offenders. Such an approach was observed in 8 of the 18 convictions in 2010-2011. In contrast, out of 35 convictions in 2019-2020, only 5 were such where a judge imposed a fine on the person as an additional punishment. In addition, the practice of applying minimum sentences is less noticeable in the 2010-2011 judgments.

Despite the above positive trends, it is important to note that the existing types of sentences provided by the Criminal Code for theft and robbery, the logic of cumulating aggravating circumstances, and the “significant harm” component are similar to 2010-2011 (despite some changes, such as adding house arrest, per Article 177, paras 1 and 2; Article 178, para 1). In some cases, the minimum and maximum limits of sentences proposed by the Code are still problematic. In addition, there has been no significant break through in the court’s consideration of the social and economic factors that led to the theft/robbery. The legislation and case law on robbery/theft should pave the way for a substantially new, more humane, and diversified punishment policy.

In addition to the above, the process of re-socialization and reintegration of persons convicted of theft and robbery remains to be a challenge. In particular, the majority of respondents of the sociological survey (almost every second person) stated that they felt vulnerable and oppressed during the resocialization process.<sup>149</sup> According to the study, reintegration of ex-offenders into society is particularly hampered by, on the one hand, the limitation of employment opportunities and, on the other hand, the frequent violations of the right to free movement, without police control, after serving a sentence/probation.<sup>150</sup> In sum, the results of the sociological research, as well as the analysis of the case law and the legal framework, show that the existing criminal policy on property crimes such as theft/robbery is mainly based on the practice of punishment (often through disproportionate sanctions) and neglect (the absence of care policies in the process of re-socialization and reintegration).

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147 Batumi City Court, 2010, provided in the form of public information.

148 Law of Georgia on Amendments to the Criminal Code of Georgia, available at: <https://bit.ly/3sJDz3G>; accessed: 21.04.2021.

149 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, p. 66.

150 *ibid*, p. 66, 69.

## Part III. Criminal Justice Policy in terms of the Individual Drug Crimes

### Introduction

The society has an ambivalent attitude towards drugs and related issues. The term “drug” itself evokes associations of danger, risk, addiction, often harm, and poverty. This, in itself, lays the basis for intervention through political activism and control over the community.

The problem of drugs can be understood in terms of crime and order, the problem of health, as well as its perception as a serious factor in marginalization and exclusion. Which aspect will be leading and what relationship each will have, are determined by the strategies of individual actors in society, social movements, media, political system.<sup>151</sup>

Since 1960s onwards, the discussion of drugs from any perspective is largely ongoing in the context of drugphobia and moral panic of the public or political actors in Georgia. Evidence-based decision-making is hampered by the paradigm of war on drugs, which is also deeply rooted at the institutional level. For example, the Joint Interagency council is acting with the name of “fight against drugs” in the state. A drug-related information campaign was also launched in 2005 by the Ministry of Internal Affairs with warning signs in the city – “Murderer walking in the city.” Such measures often, instead of preventing, intimidate the public and hinder the rational judgment of the issue. It comes from the war paradigm that demonize threat of drugs and drug users what is happening in the Georgian reality and what hinders not only the pursuit of human rights and scientific evidence-based problem-solving policies, but even the discussion of them.<sup>152</sup>

The reason for this may be the pre-existing processes of the emergence and public recognition of drug related norms, which is manifested in the practice of producing moral views (moral entrepreneurs). In the process, until a specific initiative is set and the desired result is achieved, the rule creators declare a moral crusade with the firm belief that the issue they want to achieve is of common public importance. Control over the observance of the established rules is considered to be the task of the responsible bodies – law enforcers, lawyers, teachers and others (rule enforcers). Who is able to determine which behavior will be deemed a deviation from the norm or, moreover, a criminal act, for example, whether mari-

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151 Axel Groenemeyer, *Drogen, Drogenkonsum und Drogenabhängigkeit*, in: *Handbuch soziale Probleme*, 2012, pg. 437.

152 Jana Javakhishvili, *Drug phobia in Georgia: Against Irrational Ration*, Available at [liberali.ge](http://liberali.ge), Accessed: 03.05.2021.

juana consumption should be criminalized, or whether marijuana production for industrial purposes is allowed if its personal consumption is criminalized,<sup>153</sup> depends on the goals of elite groups of the society and on their attitudes.<sup>154</sup>

In this context, the role of the United Nations as an important player in defining global drug policy is noteworthy. The 1961 Unified Convention on Narcotic Drugs is, to date, the first and most influential document adopted for the regulation of drugs,<sup>155</sup> establishing an international narrative and discourse on the issue. The document explicitly stated the obligation of the Contracting States to punish number of illegally considered actions against drugs under the Convention- buying, selling, preparation, producing, cultivating, possessing, offering, and to punish other activities in accordance with the purposes of the Convention at the state's discretion, if the same acts are committed in intentional and aggravated forms to use deprivation of liberty as a sanction.<sup>156</sup> Although it does not directly criminalize drug consumption, it sees repressive tools as the major method to solve drug problems.

In Georgia, where the Convention has been in force since February 23, 2000,<sup>157</sup> the legislative body relies on the argument of derogating from its obligations under the Convention when speaking of the need to change repressive drug policies and to take alternative measures in criminal legislation, including during the discussion of the unconstitutionality of drug offenses.

The narrative of the fight against drugs through repressive mechanisms around the world and thus the solution of problems related to drugs through repressive measures of states has been questioned by the recognition of the UN Secretary General himself, who considered this fight unsuccessful and raised the issue of decriminalization of drug consumption.<sup>158</sup> According to him, drugs have killed many people, but the strict measures of the authorities have caused even more suffering.<sup>159</sup> Numerous countries have changed their punishment-based

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153 See the Explanatory Notes on the draft law on „Control of plant Cannabis.“ The draft law was recalled on 2th of November 2019, by the Ministry of Internal Affairs, due to the resistance Society and Orthodox Church. Available: <https://bit.ly/2F3JuKG>, Accessed: 03.05.2021.

154 Dagmar Danko, *Becoming a Marihuana User – Symbolischer Interaktionismus*, in: *Handbuch Drogen in sozial- und kulturwissenschaftlicher Perspektive*, 2019, pg. 216-218.

155 In addition, the 1971 UN Convention on Psychotropic Substances and the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances were further adopted.

156 Axel Groenemeyer, *Drogen, Drogenkonsum und Drogenabhängigkeit*, in: *Handbuch soziale Probleme*, 2012, pg. 441.

157 Guram Imnadze, *International Drug Control*, in the book: *Drug Offences*, 2020, p.27.

158 Dagmar Danko, *Becoming a Marihuana User – Symbolischer Interaktionismus*, in: *Handbuch Drogen in sozial- und kulturwissenschaftlicher Perspektive*, 2019, pg. 209.

159 *Ibid*, pg 218.

approaches in drug policy, and Georgia, too, needs to critically assess the issue in order to tackle the drug problem in alternative ways.

## Criminal Control of Drugs

Criminal control of drug use through the special law is a leading form of control in the field of drug policy, which at the same time defines the framework for various interventions from psychosocial, medical, health aspects.<sup>160</sup>

The Criminal Code imposes penalties for specific actions in relation to drugs, including consumption, preparation, production, shipment, transportation, purchase, storage, and sale in small, large or particularly large quantities.<sup>161</sup> A separate law lists all the substances subject to special control, indicating the appropriate amounts, the consumption of which or any other act is subject to criminal liability.<sup>162</sup>

From the total rate of convictions in the criminal justice system of Georgia, the share of convicts for drug offences has ranged from 20 to 40 percent on average since 2010 and is the most common, along with economic offences. Of all types of crime statistics, the highest rate of convicted drug offenders in the last ten years, was found in 2013-2014, which covered about 40% of all convicts.<sup>163</sup> If 34% of those convicted for drug consumption (Article 273 of the Criminal Code) in 2010 were sentenced to imprisonment, this figure has decreased significantly in the last 4 years and does not exceed 2% of those charged with drug consumption.<sup>164</sup>

Despite the adjustments taken to the years of extremely rigorous criminal and penal policy for drug offences, this type of crime is characterized by a specific system of sanctions, post-sentence control mechanisms, and a variety of deterrent measures to integrate into the community, which naturally raises the question on the appropriateness of these approaches, the causes of drug offences, which will be analyzed based on the findings of sociological research.

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160 Axel Groenemeyer, *Drogen, Drogenkonsum und Drogenabhängigkeit*, in: *Handbuch soziale Probleme*, 2012, pg. 445.

161 Crimes defined under the Chapter XXXIII of the Criminal Code of Georgia.

162 Law of Georgia on Narcotic Drugs, Psychotropic Substances, Precursors and Narcotic Aid.

163 Supreme Court of Georgia, *Justice in Georgia – Statistics for 2010-2019*, available at: [www.supreme-court.ge](http://www.supreme-court.ge), accessed: 03.05.2021.

164 Supreme Court of Georgia, *Justice in Georgia – Statistics for 2010-2019*, available at: [www.supreme-court.ge](http://www.supreme-court.ge), accessed: 03.05.2021. According to the same data, in 2016, 4.9% of those convicted of drug consumption were sentenced to imprisonment.

The criminalization of drug consumption and other actions related to consumption is based on general and specific preventive goals and thus, is not directed only against individual deviant behavior, but also targets a wide audience. General prevention restrains the potential offender and symbolically illustrates the norm by imposing a sanction (positive general prevention). Special prevention expresses the restraint of a specific offender (manufacturer, seller, consumer) from committing further crimes. In addition, the purpose of the criminal offense is to protect a wide audience from the harm caused by the crime, which is manifested, for example, in isolation from the offender (imprisonment). However, in the context of drug consumption, great importance is given to the supply reduction by restricting the market for illicit drugs.<sup>165</sup>

The effectiveness of general criminal prevention in relation to potential drug users is difficult to assess, as the deterrent effect in this area is almost indistinguishable from other restrictive circumstances, such as knowledge (awareness) on drug risks or lack of interest in such substances. Nevertheless, it is assumed that, at least indirectly, the classification of drugs as illegal is associated with a great danger and, consequently, distances a person from it.<sup>166</sup>

The idea of deterrence by imposing criminal liability for drug consumption is based on the rational choice principle, or economic model of behavior. According to this approach, deviant behavior should have a deterrent effect if a high “price” is set for it. At the same time, the drug problem is being addressed here as a result of voluntary behavior – in a form of deviation from the acknowledged and legitimate norm. According to this theory, the expectation of punishment and the related stigma, as well as the reduction of complicity in future public (life) are considered as influential factors that will make a person decide in favor or against the use of illicit drugs.<sup>167</sup>

Empirical studies are not uniform on this issue, although there is an assumption that the expected volume of the (high) sentence has a low impact on the prevention of most offenses in general, while in case of norm deterrence, the expected deterioration of a person’s social status or other informal sanction plays a more important role in normalization.<sup>168</sup> It also means that the deterrent effect of criminal sanctions ceases if the deviant behavior in a relevant social environment is positively assessed.

In contrast, a negative reaction to deviant behavior is expected in a social environment where obedience to existing laws is already established and reinforced. Therefore, it can be assumed

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165 Axel Groenemeyer, *Drogen, Drogenkonsum und Drogenabhängigkeit*, in: *Handbuch soziale Probleme*, 2012, pg. 478.

166 *ibid*, pg. 478.

167 *ibid*.

168 *ibid*.

that general and specific prevention will have a selective effect on a group that is largely distanced from drug use even without criminal restraint.<sup>169</sup>

To this end, the results of a sociological study on drug offence are interesting, in which former convicts of drug offences, as well as family members of current convicts, refer to the opportunity of informed choices for the individual instead of the state focusing on the prohibition and punishment of drugs.<sup>170</sup>

According to the results of a qualitative study, the majority of people convicted for drug offences in the past consider the punishment of using soft drugs (for example, marijuana) to be unjustified and, moreover, support the production for medical purposes. Assessing the cases of illegal planting or cultivation of a drug-containing plant, every third of the convicted for drug offence, does not agree with the punishment. However, a significant proportion (more than one-fifth) think that punishment should exist in the form of a fine. A larger proportion (up to 40%) of family members of ex-convicts consider imprisonment to be the correct punishment for this offence.<sup>171</sup>

Survey respondents advocate the use of strict state control mechanisms in case of preparation, manufacture, production, transportation, sale of drugs, including psychotropic substances.<sup>172</sup>

## The Causes of Drug Offence

The importance of crime in society goes beyond the statistics of registered crimes, the specific experience of the victim or the perpetrator of the crime, and the decisive role in shaping it as a problem for the general public is given to the perception and interpretation of the deviation from the established norm, as well as its accompanying reaction. The importance of crime in society goes beyond the statistics of registered crimes, the specific experience of the victim or the perpetrator of the crime, and the decisive role in shaping it as a problem for the general public is to transcend and interpret the deviation from the established norm, as well as its accompanying reaction.

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169 Axel Groenemeyer, *Drogen, Drogenkonsum und Drogenabhängigkeit*, in: *Handbuch soziale Probleme*, 2012. pg. 479.

170 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, *Social aspects of Crime and Punishment – Study report*, 2021, pg. 146.

171 *ibid.*

172 *ibid.*

This means that the same act that is considered a crime may be perceived differently in different countries, or at different times, and in one case may not even be registered as a crime, in the other case it may be interpreted as an obvious threat. In this sense, crime is a symbolic phenomenon, related to other problems of the society and loaded with various concerns, which mostly reflects the problems accumulated in the society.<sup>173</sup>

Analyzing the causes of drug consumption or other related drug offenses from a sociological perspective rarely focuses on the individual motivation of the perpetrator, but rather evaluates drug consumption from a historical, spatial, socio-cultural and economic point of view.<sup>174</sup> Dominant in the theoretical discourse of criminal activity is the commission of crime largely under the influence of external factors, during which attention is paid to the biography of the perpetrator, the deficit of socialization, social or economic conditions, pre-conditions that explain the motivation of criminal activity. At the forefront of this perspective are upbringing in a difficult family environment, living in an unfavorable social area, experiencing poverty or unemployment.<sup>175</sup>

The contours of Georgian criminal policy in relation to drug offences are significantly reflected in the personal experiences of convicts, their demographic data, the results of justice administered to them, which is presented in the analysis of sociological research.

According to the study, **drug consumption** by ex-convicts is significantly associated with the presence of drug addicts in the immediate circle (17.9%). Interest in drugs (14.2%), also psychological state of the person – loss of interest in life, depression, stress (12.2%) are considered as consumption promoting factors by the respondents. The part of respondents name the easy accessibility of drugs as a facilitator for drug consumption (10.5%). Additionally, the family members of current convicts cite lack of information about drug offenses or the harmful effects of drugs as a reason for drug consumption, as well as loss of interest in life and weakening of state control over it (7.3%).<sup>176</sup>

More or less similar factors are indicated by respondents in relation to the purchase and storage of drugs. The mentioned factors are mostly repeated in relation to the **preparation/manufacture/production of drugs**.

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173 Axel Groenemeyer, Drogen, Drogenkonsum und Drogenabhängigkeit, in: Handbuch soziale Probleme, 2012, pg. 479.

174 Dietrich Oberwittler, Kriminalität und Delinquenz als soziales Problem, in: Handbuch soziale Probleme, 2012, pg. 830.

175 Dietrich Oberwittler, Kriminalität und Delinquenz als soziales Problem, in: Handbuch soziale Probleme, 2012, pg. 803.

176 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 172.



About one-fifth of respondents attribute the **trafficking** of drugs to poor financial status. Family members of current convicts (18.9%) as well as former convicts (12.8%) cite the influence of close circles as an additional factor in this activity.<sup>177</sup> It is noteworthy that various studies also name income and thus, the possibility of gaining social status as a reason for drug trafficking. This is especially true for the lower level living in the poor conditions, where income from legal work is associated with great difficulties.<sup>178</sup> The link between drug consumption and trafficking with the socioeconomic conditions has been confirmed by studies in various countries, which show, for example, a direct link between heroin use (partially, other drugs) and belonging to a lower social class, status or living environment.<sup>179</sup>

In the analytical report of the focus groups on drug offence, the respondents pointed out that the **difficult socio-economic situation** of the country is also an important issue to be considered. When a person does not feel support from the state, is not employed, is unable to support himself and his family, he is forced to think of alternative ways, be it to release himself from a depressive and difficult psychological state by using drugs or to maintain the family in a criminal, illegal way, for example with drug trafficking.<sup>180</sup>

Based on sociological research, it can be said that both former convicts and family members of current convicts have identified four main causes of various drug offences. First of all, having drug addicts in a close circle and easy access to drugs. Factors such as the weakening of state control over drug offence and poor financial situation are also relevant.

In addition to the factors named by the respondents regarding the causes of drug offence, the demographic characteristics of those convicted for this crime should also be taken into account. According to the study, at the time of committing the crime, more than half of the ex-convicts had secondary education (56.2%) and 11.4% had vocational education. 48% of the current convicts had secondary education (10-12 grades), 15.2% had vocational education, and 11.2% had incomplete higher education. Only 2.4% are those who have accomplished basic education level (grades 7-9).<sup>181</sup>

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177 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 173.

178 Axel Groenemeyer, Drogen, Drogenkonsum und Drogenabhängigkeit, in: Handbuch soziale Probleme, 2012, pg. 476.

179 Axel Groenemeyer, Drogen, Drogenkonsum und Drogenabhängigkeit, in: Handbuch soziale Probleme, 2012, pg. 476.

180 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 243-244.

181 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 221.

Along with the secondary education rate, the unemployment rate for the period of conviction for drug offence is also high. According to those convicted in the past, 44.3% were unemployed before imprisonment/probation. The majority of current inmates (56%) were unemployed at the time of the crime commitment.<sup>182</sup> Only 13% of those convicted in the past indicate a monthly income in the range of GEL 500-700.<sup>183</sup> It is also noteworthy that when assessing the economic situation of the family, more than half of those convicted in the past (53.5%) said that before imprisonment / probation, the family had enough money for food, but had to save or borrow for other needs. 39.2% of family members of current inmates also indicate the same.<sup>184</sup>

According to sociological research, the apparently high unemployment rate of former or current convicts for drug offenses, unfavorable financial conditions, as well as a high share of secondary education, do not come as a surprise against the background of the general picture of convicted felons. In particular, data from the last ten years show that annually 80% to 85% of the total number of convicts have secondary or incomplete secondary education. According to the same data, an average of 84% of convicts indicate unemployment at the time of the commitment.<sup>185</sup>

In criminology, unemployment is considered to be one of the causes of crime, although the questions can be reversed, that crime, as well as public or judicial response to it, especially criminal convictions or harsh sentences (such as imprisonment), in turn can lead to unemployment.

In this context, it is also important to what extent the unemployment aggravates the punishment – at the individual level – are unemployed persons committing criminal acts excessively under the control of the system, and at the collective level – those who have been unemployed for a long time are punished more severely than employed ones.<sup>186</sup> The positive correlation between inequality and the level of incarceration has been confirmed by various studies.<sup>187</sup> When asked who gets into the “punishment net”, Georgian justice statistics clearly indicate a low or high proportion of those without income/employment – about 80% of convicts in the last ten years indicate unemployment during conviction.<sup>188</sup>

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182 *ibid*, pg. 226.

183 *ibid*, pg. 224.

184 *Ibid*, pg. 225.

185 Supreme Court of Georgia, Justice in Georgia – Statistics for 2010-2019, available at: [www.supreme-court.ge](http://www.supreme-court.ge), accessed: 03.05.2021.

186 Jutta Allmendinger/Wolfgang Ludwig-Mayerhofer/Eugen Spitznagel, *Arbeitslosigkeit und Kriminalität*, in: *Handbuch soziale Probleme*, 2012, pg. 342.

187 Tim Newborn, *Adverse Social Status, Crime and Punishment*, p.15, available at: [socialjustice.org.ge](http://socialjustice.org.ge), Accessed: 03.05.2021.

188 Supreme Court of Georgia, Justice in Georgia – Statistics for 2010-2019, available at: [www.supreme-court.ge](http://www.supreme-court.ge), accessed: 03.05.2021.

It is also interesting to discuss the link between crime/criminal response and subsequent unemployment. This problem can arise especially when using punishment as a form of imprisonment. This type of punishment not only excludes convicts from economic activity (even in the case of employment in prison, this activity is not in demand in the labor market) but the employer often refrains from employing a former convict.<sup>189</sup> According to a sociological survey, 39.5% of ex-convicts are unemployed and 48.1% are unofficially employed. According to the focus group results, after leaving a penitentiary institution, the conviction becomes a reason for the employer to refuse to hire him/her.<sup>190</sup>

It is a matter of separate discussion whether the unemployment of the accused increases the risk that he will be convicted or sentenced to imprisonment. Some studies confirm this effect. In addition, the instrumentalization of criminal policy to “solve” the problem of unemployment deserves a special mention. According to the new Marxist theories, toughening the punishment and especially the high rate of imprisonment can be used as a method of disciplining the “extra” labor force during the period of growing unemployment.<sup>191</sup>

The socio-economic causes drug offence, unemployment, poverty and the accompanying psychological effects – frustration, stress, desire to escape from everyday life, can be seen from different theoretical criminological perspectives. Social Disorganization Theory, Strain theory are one of the leading approaches of functionalism to the causes of crime. The first of them is more likely to commit a crime with weak social ties in the community, in the absence of moral and social solidarity, which, often due to various factors gathered in a particular residential area, create the conditions for deviant behavior.<sup>192</sup>

According to the theory of control based on this idea, the temptation to commit a crime can exist in many people, although the decision to commit it is made by those who are weakly controlled by social constraints. Deviation is seen here as a result of a dominant sense of lack of connection to society, and it is considered, that people who believe they are part of society are less likely to commit a crime. According to this approach, the strength of the connection with the society is mainly determined by the extent to which the individual is attached to society, family, relatives, institutions, how directly he/she participates in achieving the goals recognized in the society. A weak or broken relationship of a person with society

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189 Jutta Allmendinger/Wolfgang Ludwig-Mayerhofer/Eugen Spitznagel, *Arbeitslosigkeit und Kriminalität*, in: *Handbuch soziale Probleme*, 2012, pg. 343.

190 Iago Kachkachishvili, Nino Esebu, Ana Papiashvili, Mariam Jibuti, *Social aspects of Crime and Punishment – Study report*, 2021, pg. 254-255.

191 Jutta Allmendinger/Wolfgang Ludwig-Mayerhofer/Eugen Spitznagel, *Arbeitslosigkeit und Kriminalität*, in: *Handbuch soziale Probleme*, 2012, pg. 343.

192 William Little, *Deviance, crime and social control*, in: *Introduction to sociology*, 2014, pg. 20.

is manifested in criminal behavior.<sup>193</sup> The main assumption of this theory is that if a person has to lose, for example, social status, he will refrain from violating the norm. In this sense, unemployment, low quality of education, living in an area where drug use is prevalent, can be a motivating factor for committing drug offence.

In sociological research, apart from the socio-economic factors, the psychological state, stress, frustration named as the cause of drug offence can be explained by Merton's theory of tension, which describes the achievement of a socially acceptable goal as a crucial factor for deviant behavior. According to this approach, the mismatch between structural inequality and the great importance of economic success creates tensions that must be eliminated by some means.<sup>194</sup> According to this theory, when an individual has set a socially acceptable goal but does not have access to legitimate means of achieving it, he chooses illicit means, including for example, improves the material condition with drug trafficking, or denies the importance of socially recognized goals to avoid this tension, including, escaping from the reality of unwanted everyday life by consuming drugs.

### Reasons of Drug Offences in Youth

According to the results of the sociological research, the respondents referring to personal experience mentioned the consumption of drugs for recreational purposes (27.5%) or as a motive of interest in it (26.8%).<sup>195</sup> Responding to the issue in focus groups, respondents also noted that drug offenses can be committed by anyone from any social class. However, according to the prevailing trend, they think that especially the unemployed, people with poor economic situation and young people are vulnerable in terms of committing drug offence.<sup>196</sup>

While an interest in drugs or a user's desire to have fun/relax can equally be explained by theories of anomie, control, or tension. Drug consumption as a form of "youth culture" should be mentioned separately, as interest in drugs at a young age, or group influence/imitation, or the desire to establish oneself in the environment during first contact with such substances.<sup>197</sup>

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193 *ibid.*

194 *ibid.* pg. 23.

195 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 158.

196 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 241.

197 Axel Groenemeyer, Drogen, Drogenkonsum und Drogenabhängigkeit, in: Handbuch soziale Probleme, 2012, 475.

A 2016 study of drug-consumption trends with probationers found that having a lot of free time is one of the most important factors when using drugs. According to the majority of respondents, neither studied nor worked during the first use of the drug. At the same time, those who first used the drug at the ages of 10-17, 18-24 and 25-34, their motivation in this case was more curiosity, fun, imitation of authoritative peers or superiors than other motives. With the increase of the age category, overcoming depression, neutralizing negative feelings, tense rhythm of life and health condition have been named as the motives for the first consumption.<sup>198</sup>

Specific theories about drug consumption put the risk of developing a drug “career” in the foreground, in particular suggesting that drug tasting transforms it into permanent consumption and leads to interest/experimentation with heavier drugs. According to studies, the transition from one substance to another on the principle of automatism is not a priori and much more important in this process are the developmental risks and obstacles of consumption, where bad family relationships, peer influence, serious psychological burden should be taken into account.<sup>199</sup>

The widespread consumption of drugs among young people can be explained by the following factors (Theory of Drug Epidemics):<sup>200</sup>

- Knowledge about drugs and their effects (Awareness) – Drug consumption will only reach a large scale if the emerging youth (sub) culture, media, social movements form a circle in which knowledge, information about effects and techniques of consumption is exchanged / taught.
- Existence and easy access to drugs – Here, on the one hand, the availability and conditions of the drug market should be taken into account and, on the other hand, the lack of adequate financial resources for young people, leisure activities, as well as the extent of institutionalized informal control over adults.
- Motivation for drug consumption – The role of a subculture, including adolescents, in which drug consumptions helps an individual gain recognition, is crucial here as well.

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198 Prosecutor’s Office of Georgia, Study of Trends in Drug Consumption with Probationers, 2017, p. 54.

199 Axel Groenemeyer, Drogen, Drogenkonsum und Drogenabhängigkeit, in: Handbuch soziale Probleme, 2012, pg. 474.

200 Lloyd D. Johnston, Toward a Theory of Drug Epidemics, in: Persuasive Communication and Drug Abuse Prevention, 1991, pg. 99.

- Convincing individuals about the safety of a drug and denying its damaging effects can be a provocative reason for consumption. The path to such persuasion is varied, and it may come from a trusted close community or self-proclaimed experts. This is why it is important to emphasize the importance of healthy living among youth and to raise awareness about the risks associated with drug consumption.
- The readiness for tolerance of deviant behavior – As drug use is considered a deviation from the norm, the response at different levels (family, school) is important for its proliferation. For example, various studies have shown a significant reduction in the probability of deviant behavior by increasing compulsory school education to 18 years.<sup>201</sup>

## State Preventive Measures Related to Drug Offences

Public and state policy interpretations of the causes of crime and the consequences of criminal policy are central issues for the development of strategies related to the crime. In particular, treating an individual as a product of his or her social environment, consideration of the perpetrator as a victim of social injustice, leads to a preference for social policy measures instead of criminal sanctions. If, on a contrary, a person is seen as a self-determined individual who weighs the benefits and “costs” of committing a criminal offense (Rational Choice Theory), then a repressive sentence will be given preference as a response to the crime.<sup>202</sup> Becoming a leading line in the criminal policy of the latter and the main feature of the corresponding transformation of the system is the increase of inmate number in prisons. In addition to increasing the number of prisoners, the repressiveness (Punitive Turn) is manifested in the questioning of the idea of rehabilitation, when with radical deviation from the main goal of rehabilitation and integration of the prisoner into society, person is “neutralized” by deprivation of liberty.<sup>203</sup>

This line of criminal policy explains the criminal behavior of the individual by his lack of morals and value perceptions, which is primarily attributed to groups excluded from society – the unemployed, the poor, the homeless, drug addicts. At the same time, social control is largely exercised through early detection of deviation, technical and architectural measures, electronic surveillance of space, and the prevention of situation-oriented crime, thus “trans-

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201 Philip J. Cook/Jens Ludwig, *Economical Crime Control*, 2010, pg.23.

202 Dietrich Oberwittler, *Kriminalität und Delinquenz als soziales Problem*, in: *Handbuch soziale Probleme*, 2012, pg. 802.

203 Christina Schlepper, *Die punitive Wende und die neue Kultur der Kontrolle*, in: *Strafgesetzgebung in der Spätmoderne*, 2014, pg. 12.

ferring” responsibility to the citizen as a whole.<sup>204</sup> When assessing criminal behavior, attention is no longer paid to social circumstances, but people are being sentenced individually as a result of their own antisocial personal characters. This is how the strategy of punishment towards exclusion, criminal repression and stigmatization approaches are established as a result of the legitimate reaction of the state to the deviant action.<sup>205</sup>

The vision, strategy and combination of preventive measures of the state related to drug offences in show how the Georgian justice system perceives and takes into account the causes of drug offence and, consequently, whether it is punitive or care-oriented criminal policy.

Based on the qualitative research, the assessments of the respondents became clear how important they consider the awareness of the members of the society about this or that type of drug offence from the legal, social, psychological, medical point of view. According to the survey, about a third of the respondents did not have information about the expected legal consequences of drug consumption, purchase, storage.<sup>206</sup> In the focus groups, respondents indicated, based on their personal experience, that ignorance of the risks of committing a crime had a negative impact on crime prevention – with prior information about the severity of the sentence, they might have refrained from committing the crime. They also added that awareness is not a guarantee of not committing a crime, however, it may help its reduction to some extent.<sup>207</sup> A similar trend was found in a 2016 survey of probationers for drug consumption, where a large proportion of respondents did not have information on legal or health risks due to drugs.<sup>208</sup>

Based on the analysis of the policy documents developed at the state level, the action plans for 2014-2016 and 2016-2018, it can be said that the prevention of (illicit) drug consumption is done through the targeted measures. There is no unified approach at the national level for universal, selective, targeted and environment-focused prevention measures. The measures taken by the state, in terms of raising awareness and promoting a healthy life, are episodic and campaign-based. The National Anti-Drug Strategy for 2021-2026 is progressive in this regard, which envisages the establishment of a systematic, evidence-based approach and school-based institutional mechanisms for prevention measures, strengthening the school.

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204 Helge Peters, *Soziale Kontrolle*, in: *Handbuch soziale Probleme*, 2012, pg. 1267.

205 Christina Schlepper, *Die punitive Wende und die neue Kultur der Kontrolle*, in: *Strafgesetzgebung in der Spätmoderne*, 2014, pg. 21.

206 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, *Social aspects of Crime and Punishment – Study report*, 2021, pg. 147.

207 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, *Social aspects of Crime and Punishment – Study report*, 2021, pg. 233.

208 Prosecutor's Office of Georgia, *Study of Trends in Drug Consumption With Probationers*, 2017, p. 53.

The 2016-2021 Strategy also aims to increase the effectiveness of the Prosecutor's Office in combatting drug offence. The document mentions the holding of information meetings with the population, pupils and students, which is of a campaign nature. To fight against drug offences, the agency also aimed to train the staff, review existing criminal law and policy,<sup>209</sup> although recent statistics and practices show high-intensity accountability of drug users.<sup>210</sup>

According to sociological research, the state should offer treatment to drug users instead of punishment. According to the respondents, it is necessary to have medical institutions where drug users can be treated, and the treatment methods will be more sophisticated and result-oriented than they are today. Existing rehabilitation centers fail to provide services to the beneficiary in a way better results are achieved in the drug-addicts live.<sup>211</sup>

Offering medical-psychiatric services to drug users is another control mechanism that considers consumption from an addiction perspective and focuses on eliminating psychological or physical problems arising from consumption needs. The purpose of different forms of intervention is to change the individual, to change the motivation for their action in order to achieve abstinence from consumption.<sup>212</sup> Georgian criminal justice does not offer treatment to drug users as an alternative to punishment, as is the practice of many countries.

The results of the sociological survey once again showed the weakness of criminal policy in this regard. Focus group participants indicated that the state should have a more liberal drug policy towards drug users and instead of punishing them, take care of strengthening rehabilitation (psychological, medical, etc.) programs. Besides, the respondents considered the improvement of the economic situation of the members of the society, their employment, raising awareness, taking care on improvement of the level of education as a necessary precondition for the reduction and prevention of drug offence in the country.<sup>213</sup> Therefore, it is important that anti-drug preventive measures are planned taking into account all the mentioned factors.

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209 Prosecutor's Office of Georgia, Report 2019, available: [pog.gov.ge](http://pog.gov.ge), Accessed: 03.05.2021.

210 Supreme Court of Georgia, Justice in Georgia – Statistics for 2015-2019, available at: [www.supreme-court.ge](http://www.supreme-court.ge), accessed: 03.05.2021.

211 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 261.

212 Axel Groenemeyer, Drogen, Drogenkonsum und Drogenabhängigkeit, in: Handbuch soziale Probleme, 2012, pg. 472.

213 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 261.



## Punishment Policy Related to the Drug Offences

The extent to which the socio-economic causes of crime are reflected in punishment policies directly determines the goals of the state, which it seeks to achieve through the use of coercive measures. Approaches to the justice system in relation to drug offenses, the practice of imposing sentences clearly show the lack of individualization of sentences, which implies the determination of punishment based on the danger of the action, the degree of guilt, the motivation to commit the crime, other important circumstances.<sup>214</sup>

The expected sentence framework for drug offenses goes beyond the Criminal Code and includes a list of additional measures restricting the rights set out in the Law on Combating Drug Offence. This law restricts the right of a person convicted of drug consumption to employment in the public service and activities in the field of education or pharmacy for a period of up to three years, and prohibits the driving of a vehicle for the same period. The same restrictions apply for at least five years in case of drug possession or other offences.<sup>215</sup>

The types and sizes of penalties for drug offenses have changed in recent years in several areas:

1. In 2015, an amendment to Article 260 of the Criminal Code separated the responsibility for illegal possession of drugs from the drug trafficking. In particular, liability for possession of a drug was reduced to 6 years imprisonment instead of 11 years imprisonment. Strict sanctions were maintained for the trafficking;<sup>216</sup>
2. For the purchase and storage of up to 70 grams of dried marijuana and up to 100 grams of raw marijuana for personal consumption, the possibility of deprivation of liberty established by the first part of Article 260 of the Criminal Code has been abolished;<sup>217</sup>
3. New Article- 273<sup>1</sup> of the Criminal Code prohibits the use of imprisonment for the illegal purchase, storage, transportation, shipment and/or personal use of large quantities of dried marijuana, raw marijuana and plant cannabis. Imprisonment as a sanction was envisaged only from the large amounts.<sup>218</sup>

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214 Maia Ivanidze, Trends in Liberalization of Criminal Law in Georgia, 2016, p. 210.

215 Article 3, the Law of Georgia on Combating Drug Crime.

216 Human Rights Watch, exemplary punishment. Severe Human Consequences of Georgia's Repressive Drug Policy, 2018, p. 27, available at: [www.hrw.org](http://www.hrw.org), accessed: 03.05.2021.

217 Article 260, Criminal Code of Georgia.

218 Article 273<sup>1</sup>, Criminal Code of Georgia.

Against the background of these amendments, over the last ten years, the practice of punishing drug offences has changed. In 2010-2014, the deprivation of liberty was particularly high, including for drug consumption (20-30%). The tendencies of liberalization of punishment were revealed in the following period, which was demonstrated in the imposition of a conditional sentence and/or a fine for drug consumption (Articles 273, 273<sup>1</sup> of the Criminal Code). As for other types of drug crimes, in the last five years, the rate of imprisonment has been reduced in relation to Article 260 of the Criminal Code, and if it was 48% in 2015, 23% in 2019, the use of probation has also increased here.<sup>219</sup>

Nevertheless, the law and jurisprudence against drug users remain unreasonably strict to this day, as small amounts, the initial amounts for criminal liability and large amounts are unfairly defined. This, in turn, leads to imprisonment for 8 years of the non-experimental, regular drug user for purchase and possession of a substance for personal use, which is qualified as the possession of a large amount of drugs.<sup>220</sup>

The results of the sociological survey also revealed critical assessments of convicts in drug offenses for punishment approaches. According to the survey, 66.2% of ex-convicts were sentenced to imprisonment and 29.2% were fined. In relation to the current convicts, only two forms of punishment were named – imprisonment (85.6%) and fines (12.1%). Among them, there are frequent cases of imprisonment from 2 to 4 years, as well as fines in the range of 500-2000 GEL.<sup>221</sup> Both family members (33.6%) and persons convicted of drug offenses in the past (31.4%) most often indicate that the sentence is “more inappropriate than appropriate”. A large proportion of ex-convicts (51.9%) consider the sentence unfair.<sup>222</sup>

In the context of punishment policy, the focus group respondents discuss about issues such as the imposition of large fines on drug users, inadequacy of punishment, and unfair trials. As the interviewed family members noted, the judge is invalid, the verdict for the defendant is passed by the prosecutor’s office, and the judge announces only the sentence imposed.<sup>223</sup>

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219 03.05.2021. Supreme Court of Georgia, Justice in Georgia – Statistics for 2015-2019, available at: [www.supremecourt.ge](http://www.supremecourt.ge), accessed: 03.05.2021.

220 Social Justice Center, Drug Policy in Georgia – Trends for 2020, pp. 7, 12, available at: [socialjustice.org.ge](http://socialjustice.org.ge), Accessed: 03.05.2021.

221 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 156, 157.

222 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 142.

223 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 247.

The reason for this may be the fact that 80-90% of drug offenses end in a plea agreement,<sup>224</sup> where the court formally approves the pre-determined charges and sentence conditions between the prosecution and the defense and does not engage in the investigation of additional circumstances. When applying the institute of plea bargaining, taking into account the socio-economic reasons of the drug offence, the selection of the size of the fine based on the assessment of the material condition of the accused is, in fact, entrusted to the prosecutor's office.

The institute of plea bargaining has had a special role and has in terms of criminal policy on drug offenses. For defendants, it is the only legal mechanism that allows them to deviate from the strict sanctions prescribed by law and impose a light sentence on the lowest limit of the sentence.<sup>225</sup> In the context of the zero-tolerance criminal policy, plea bargaining has become an important source of filling the state budget for drug offences. In 2008-2009, the total amount of fines imposed for this category of criminal and administrative cases reached 45 million GEL. According to the studies, since 2012, the number of high fines for drug offences has decreased significantly, although it is difficult to assess the overall picture today, due to the lack of proper statistics.<sup>226</sup>

The analysis of the 2017-2020 court decisions on drug offences showed that even in judgments rendered without a plea agreement, the sentence is not actually assessed from socio-economic viewpoint, and drug offences are seen only from the perspective of public order and security. In most of the analyzed decisions, without additional substantiation, reference is made to the fairness and proportionality of the sentence, with a direct reference to the norm of the Criminal Code in the judgment: While imposing the sentence, the court shall take into account the mitigating and aggravating circumstances of the offender's liability, in particular, the motive and purpose of the crime, the unlawful will expressed in the action, the nature and extent of the breach of duty, the manner of action, method and result of wrongful act, previous life of the offender, personal and economic conditions, behavior after the wrongful act, especially – his aspiration to compensate the damage, to reconcile with the victim.<sup>227</sup> In contrast, sociological survey respondents indicate that the reasons for committing a crime, including drug addiction, family financial status, stress, are not addressed by the court while imposing sentence.<sup>228</sup>

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224 Social Justice Center, Drug Policy in Georgia – Trends in 2020, p.13, available at: [socialjustice.org.ge](http://socialjustice.org.ge) Accessed: 03.05.2021.

225 Article 50 (21), Criminal Code of Georgia.

226 Human Rights Watch, exemplary punishment. Severe Human Consequences of Georgia's Repressive Drug Policy, 2018, p. 50-51, Available at: <https://bit.ly/3h0UAUI>, Accessed: 03.05.2021.

227 Article 53, Criminal Code of Georgia.

228 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 246-247.

Punishment of users, including imprisonment, remains problematic. In recent years, the political discourse of the government has been particularly marked by the fact as if the judiciary refuses to impose imprisonment on drug users. Directly for those convicted for drug consumption, this sentence is indeed be applied in exceptional cases. For example, in 2018-2020, the number of detainees for consumption does not exceed 11 units per year.<sup>229</sup> However, the analysis of the verdicts, as well as the available statistical data show that the ratio of imprisonment in cases of possession of drugs for consumption is still frequent. According to the data of last year, about 680 convicts were serving sentences in penitentiary institutions for drug crimes (except for the trafficking of drugs or their analogue) under Article 260 of the Criminal Code of Georgia.<sup>230</sup> In the case of inadequate regulation of drug quantities under the law, those convicted under this article include persons who possessed a substance intended for personal use, although this amount is large or particularly large under the legislation and therefore leads to several years of imprisonment.

As noted, sentencing policies have changed in recent years, and the use of probation for drug offenses in particular has increased. If the rate of probation for the purchase, storage, shipment and trafficking of drugs (other than consumption and smuggling) was 22% in 2010, it has been growing steadily for the last ten years, and by 2019 the rate will reach 69%,<sup>231</sup> which clearly deserves a positive assessment. Nevertheless, the situation of probationers in terms of re-socialization and reintegration into society remains unresolved. According to a sociological survey, 37.7% of ex-prisoners and 47.3% of family members of current prisoners speak about excessive police control after the end of sentence and/or during the probation period. 10.8% of ex-prisoners and 25.3% of family members indicate a violation of the right to privacy by law enforcement officers.<sup>232</sup>

In addition to constant informal scrutiny by law enforcement, a significant problem for convicted drug offenders is the additional restrictions imposed after serving a sentence. According to the research, the deprivation of a driver's license as an additional punishment has a negative impact on the economic situation of the convicts (family).<sup>233</sup> Respondents name

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229 Social Justice Center, Drug Policy in Georgia – 2020 Trends, p.12, available: <https://bit.ly/33fjwL8>, accessed: 03.05.2021. Supreme Court of Georgia, Justice in Georgia – Statistics for 2018-2019, available: <https://bit.ly/3tbHiHq>, accessed: 03.05.2021.

230 Explanatory Card of the Law of Georgia on Amnesty of January 11, 2021, available: <https://bit.ly/2Rrs3N2>, accessed: 03.05.2021.

231 Statistics of the Supreme Court. Supreme Court of Georgia, Justice in Georgia – Statistics for 2010-2019, available at: [www.supremecourt.ge](http://www.supremecourt.ge), accessed: 03.05.2021.

232 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 188.

233 Iago Kachkachishvili, Nino Esebua, Ana Papiashvili, Mariam Jibuti, Social aspects of Crime and Punishment – Study report, 2021, pg. 254.

conviction as a significant barrier to employment – the communication with the employer in the job searching process often ends after they discover that the applicant was convicted.<sup>234</sup> In addition, ex-convicts find it particularly difficult to describe the process of re-socialization at the stage of their recent release from prison because they find it difficult to communicate with members of the public, to adapt to the environment. According to the respondents, the state itself should take care of the employment of convicts, persons newly released from prisons for a certain period of time, in order to restore their trust in the eyes of other employers.<sup>235</sup>

These circumstances represent the state's approach to sentencing for narcotic crimes as a combination of punishment-oriented measures, neglecting socio-economic causes of these offences, largely targeting the unemployed people, with lack of quality education, material or health problems. Consideration of drug consumption or other related actions only through the prism of public order and safety contributes to the further exclusion of underprivileged groups and public stigma.

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234 *ibid*, pg. 255.

235 *ibid*.

## **Part IV. Serving the sentence and reintegration prospects**

### **The Process of Serving the Sentence, Barriers in the Penitentiary System**

As the sociological study shows, persons convicted of both categories of crimes (against property (theft/robbery) and certain types of drug offenses face significant barriers while serving their sentences. In the sentencing period, the focus shifts to the control of convicted persons, internal security issues, and inmates have little access to adequate medical and educational services, which affects their general rights-based status in the penitentiary system.

#### *Problems with submission of requests/complaints*

The current legislation defines in detail the content of the claim, as well as the complaint, the deadline for its submission, and the review procedures. In addition, the legislation provides for the possibility of filing an individual or collective claim or complaint, the right to use the complaint boxes. Free interpreter services are provided for filing a complaint if necessary.

The claim is usually addressed to the institution and requests the granting of the right within the competence of the institution to the accused or convicted person. The form of the submission is also defined by law – persons placed in the system can also submit the request confidentially.

A complaint may concern an act/omission of the act in the field of the penitentiary, the appeal of legal action, or rights violation. A special regime is set up for the complaints related to torture, inhuman or degrading treatment. Special norms also regulate the procedure for filing a complaint regarding a disciplinary sanction. Thus, the problem with the claim/complaint may relate more to the practical barriers in the system than to the inadequate legislative safeguards.

Realization of the right of prisoners to file a complaint, ensuring that complaints are submitted confidentially and without any problems, has for years been one of the most frequently expressed concerns by prisoners. According to the National Preventive Mechanism, although all penitentiaries are equipped with complaint boxes, most of them are still in the video surveillance area, allowing the identification of the authors of the confidential complaints. In closed institutions, the envelope for the confidential complaint is not given out

without identification. The fact that the social worker writes down the envelope number, name, and surname of the inmate is a clear violation of confidentiality.<sup>236</sup>

The practice of informal governance in the prison setting that has survived to the present day has a significant impact on the exercise of the right to file a complaint. The Public Defender has also paid special attention to this problem. A special report by the Public Defender describes the disturbing trends of informal governance in the system.<sup>237</sup> Informal governance in the penitentiary is a serious systemic problem that, *inter alia*, hinders the proper realization of their rights by accused/convicted persons.

Moreover, in many cases the standard of privacy is violated, the complaint/requests are censored, and often do not even reach the addressee.<sup>238</sup> The rule of censorship in the penitentiary system (control of the content of correspondence) and the practice/intensity of its use violate fundamental human rights.<sup>239</sup>

### *Lack of visits and connection with family*

Lack of visits, contact with family members is a also significant challenge for convicted persons.

Under current law, there are several opportunities for inmates to visit and communicate with their families and other persons. These are short and extended conjugal dates, video dates, phone calls.<sup>240</sup>

The most important problem with regard to the sentence serving regime is the length, intensity, and confidentiality of conjugal dates.

With regard to short dates, a significant practical challenge is that glass barriers are still in place in several facilities. At the same time, the confidentiality of the meeting of the in-

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236 The Parliamentary Report of the Public Defender on the Situation of Human Rights and Freedoms in Georgia, 2020, available: <https://bit.ly/3eIvzKX> accessed: 29.04.2021

237 The Parliamentary Report of the Public Defender on the Situation of Human Rights and Freedoms in Georgia, 2019: <https://bit.ly/3w6LLBI> accessed: 15.05.2021 For more on the same issue, see: <https://bit.ly/3btES0A> 15.05.2021

238 Ibid: p: 73 For more on the same issue, see the Parliamentary Report of the Public Defender on the Situation of Human Rights and Freedoms in Georgia, 2020, available: <https://bit.ly/3eIvzKX> accessed: 29.04.2021

239 Operative work in the law enforcement system, Human Rights Education and Monitoring Center (EMC) 2019, available: <https://bit.ly/3hGtiDx> Accessed: 15.05.2021

240 Imprisonment Code

mate with their visitor is not properly protected. Short-term dates are controlled visually or through electronic monitoring.<sup>241</sup>

There are many legislative gaps concerning extended conjugal. First of all, it has to do with the frequency of visits. An inmate in a closed facility may have only 2 extended conjugal appointments per year, while an inmate in a high-risk facility may have only 1 extended conjugal visit.<sup>242</sup> It is also problematic that extended conjugal visits are related to finances. The fee for the visit is paid by the inmate or their guest.

In terms of contact with the outside world, a video date is an important opportunity. The good thing about this mechanism is that the law does not limit the circle of people with whom one can have a video appointment. However, an inmate placed in a special risk facility, who already has many rights taken away, cannot make use of the video meeting. An important problem is the issue of communication and contact with the outside world for foreign inmates. They,<sup>243</sup> due to the geographical distance, do not have access to either form of conjugal visits and face practical obstacles, including when making phone calls.<sup>244</sup>

Duration of the phone calls for the prisoners differs according to the type of prison facility. Duration of the phone calls is particularly problematic in the closed and special risk prison facility. A convicted person serving a sentence in a closed prison facility has only 3 phone conversation no longer than 15 minutes during the month<sup>245</sup>. A convicted person serving a sentence in a special risk facility has only 2 phone conversation, no longer than 15 minutes in a month<sup>246</sup>. In the situation, when the prisoners have a difficult conditions in prisons according to the types of prison facility, this kind of limitation of phone conversations, hinders the resocialization process, makes prisoners expelled from society and family.

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241 See: Parliamentary Report of the Public Defender on the Situation of Human Rights and Freedoms in Georgia, 2019 available: <https://bit.ly/2RkIT0A> Accessed: 15.05.2021

242 Order N132 of the Minister of Corrections and Probation of Georgia of July 22, 2014 on the approval of the rule of extended conjugal visits

243 See Prison and health, WHO regional office for Europe, 2014, available at: <https://bit.ly/3w8bvZD> Accessed: 15.05.2021

244 See: Parliamentary Report of the Public Defender on the Situation of Human Rights and Freedoms in Georgia, 2019 available: <https://bit.ly/2RkIT0A> Accessed: 15.05.2021

245 Imprisonment Code, Articles: 60<sup>2</sup>;62, 65, 66<sup>3</sup>

246 Imprisonment Code, Article 65



## *Access to Health Services*

One of the major problems identified by the sociological study is the use of health services in the penitentiary system. Under the current law, the state has an obligation to ensure the implementation of departmental, state, and international health programs in the system.<sup>247</sup> The Imprisonment Code guarantees the right of a convicted person to access the necessary medical services, with medical means allowed in the system. It is possible, if necessary, to invite a personal doctor if paid by the convicted person.<sup>248</sup>

According to the standards of the World Health Organization, it is necessary for the state, in compliance with the principle of equity, to ensure the introduction of all health services in penitentiary institutions with the same quality and quantity that are generally available in the civil sector.<sup>249</sup>

Contrary to this standard, not all health services are available with the same quality and quantity in the penitentiary system. This issue is especially problematic for persons with drug addiction. The long-term substitution treatment program is not operational in the penitentiary system. The system offers only a short detoxification course to convicted and accused persons. In such a case, persons who were involved in the substitution treatment program before imprisonment are forced to refuse treatment against their will. This approach is contrary to the constitutional right to health care and may pose a significant threat to a person's health.<sup>250</sup>

Timely and adequate medical care in the penitentiary system is a significant practical problem. In addition to the lack of appropriate services, the problem is the overwork of health professionals. The harsh working conditions of the doctors and nurses on duty hinder the provision of adequate medical services to the convicted persons.<sup>251</sup>

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247 Imprisonment Code, Article 66<sup>3</sup>

248 Imprisonment Code, article 7<sup>1</sup>

249 Imprisonment Code, Article 24

250 See also: Substitution Treatment Programs for Opioid Addicted Persons in the Penitentiary System (Legislation Analysis), Human Rights Education and Monitoring Center (EMC) 2021, available at: <https://bit.ly/33M466e> Accessed: 15.05.2021

251 See: Parliamentary Report of the Public Defender on the Situation of Human Rights and Freedoms in Georgia, 2019, available at: <https://bit.ly/2RkIT0A> Accessed: 15.05.2021

## The Process After Serving the Sentence, Obstacles in the Reintegration Process

The study shows that after serving their sentence, ex-offenders face several obstacles that hinder their reintegration and resocialization process.

Overcoming economic or social barriers post-imprisonment depends significantly on whether the system provides a sufficient basis for this in a detention setting. What is the quality of preparation for release and what does the state offer to the convicted to reduce the risk of reoffending after their release?

To overcome social and economic vulnerabilities, it is necessary to create sufficient professional and educational foundations for the convicted persons. In this respect, the conditions or obstacles that exist in the prison setting have a significant impact on the reintegration of a person after their release.

It should be noted that under current law, an accused/convicted person has the right to receive general and vocational education. However, not all types of vocational education programs are available in the penitentiary system. In this case, preference is given to those professions that can be studied in a penitentiary setting.<sup>252</sup>

The convicted person may study at the BA and MA levels of academic higher education.<sup>253</sup> However, access to higher academic programs is associated with certain barriers in the penitentiary system. Undergraduate and graduate education is allowed at only two types of institutions – at a detention facility that prepares convicted persons for release and at a low-risk detention facility.<sup>254</sup> Consequently, in the penitentiary system, a convicted person's desire and ability alone are not sufficient to obtain a higher academic education. For this, convicted persons must meet the criteria for placement at the two institutions where it is possible to receive higher education.

Only a low- or medium-risk inmate who has served the sentence provided for in the statute may be placed in a detention facility that prepares for release.<sup>255</sup> To place a convicted person at a low-risk penitentiary institution, the motive of the crime, the result, the behavior re-

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252 Imprisonment Code, Article 115

253 Imprisonment Code, Article 14

254 Undergraduate study program is also available at the Juvenile Rehabilitation Facility

255 Imprisonment Code, Article 71<sup>5</sup>

vealed in the penitentiary institution, etc. are taken into account.<sup>256</sup> Consequently, the placement of a person in this type of institution depends on the assessment, which does not give a convicted person the opportunity to receive academic education purely based on their will. Such an approach reduces the chances of receiving an education in the penitentiary system and, at a later stage, employment and reintegration.

### *Employment-related problems*

Employment after release from prison is particularly challenging. Unemployment, in turn, causes severe social, economic, and psychological problems. It is also directly related to the process of integration and re-socialization. Moreover, unemployment after release creates a risk of recidivism. Therefore, the state should promote the employment of persons released from prison.

There is no social and employment policy in the country that will promote the employment of individuals in the post-imprisonment period. Relevant programs, which should facilitate reintegration and employment after release, are also scarce in the penitentiary system. The facilities offer the convicted person employment at various places during imprisonment. However, the system does not take proper care in the post-release stage. In an official letter, the Special Penitentiary Service directly states that promoting the employment of ex-offenders is beyond the competence of the Service. According to the service, after release, a person can receive different services from the Agency for Crime Prevention, Execution of Non-custodial Sentences, and Probation, including access to employment programs.<sup>257</sup>

In addition to problems at the policy level, there are significant barriers to legislation. By law, a person will not be hired for a position of a civil servant if he or she has been convicted of an intentional crime.<sup>258</sup> Such a restriction has legitimate grounds in law. Especially, even given the specificity of the activities in concrete institutions and the nature of the crime committed, this restriction may be justified. Such exceptions are also provided for in the Labor Code. However, it would not be fair to resolve this issue with a blanket rule in all types of institutions, against a person convicted of any criminal act.

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256 *ibid.* Article 60<sup>1</sup>

257 Despite number of request from the research team, the Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation the organization did not provide information about the measures taken by them for the purposes of crime prevention (as of April 27, 2021)

258 Law of Georgia on Civil Service, Article 27

It should be noted that such a restrictive norm was also found in the legislation on public service in force up until 2015. There was also a direct indication that a person would be able to be employed in the public service if the conviction was expunged.<sup>259</sup>

The current law does not provide for such a reservation. It is true that in the case of expunging of a conviction, under a criminal code, a person should not face an obstacle in the employment in the public service, as a person is considered convicted only until their conviction is expunged or reversed.<sup>260</sup> The current record in the law, however, creates the risk of inconsistency in practice. Therefore, it will be important to specify this in the Law on Civil Service. It is also advisable to reconsider the possibility of employment if the person's conviction is revoked/expunged. To establish a uniform practice, there should be an unambiguous record in the legislation stating that revoked or overturned convictions are not taken into account in the employment process.

Employment is a particular problem for those convicted of drug offenses. Existing legislation, among other restrictions, provides for the deprivation of the right to engage in various work activities for a person convicted of a drug crime.<sup>261</sup>

### *Mechanisms of resocialization*

Work on resocialization and reintegration should begin at the imprisonment stage. This process can not take place at a later stage after the convicted person serves their sentence. In such a case, the justice goals cannot be achieved. In the absence of proper conditions during incarceration, further integration into society will be complicated. Promotion of employment opportunities should begin in the prison setting.

According to the information provided by the Penitentiary Service, for those convicted persons with one year left in the institution, there is a six-month resocialization-reintegration program called "Preparation for Release".<sup>262</sup> Such programs in the system are very important. However, the measures taken in terms of resocialization-rehabilitation are fragmentary and are not tailored to the individual needs of the convicted. Moreover, the prison subculture and the informal governance, disallowing inmates to participate in the program even if they wish to do so, further harm these processes.<sup>263</sup>

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259 See the version of the Law of Georgia on Civil Service in effect until 2015

260 Criminal Code of Georgia, Article 73

261 Law of Georgia on Combating Drug Crime, Article 3

262 The information is based on the letter N36813 / 01 of February 15, 2021 of the Special Penitentiary Service

263 See: Parliamentary Report of the Public Defender on the Situation of Human Rights and Freedoms in Georgia, 2019, available at: <https://bit.ly/3htJYxS> Accessed: 15.05.2021

In this regard, the fact that a vocational training and retraining center for convicted persons has been launched in the country since 2020 should be positively assessed. The Center aims to facilitate the re-socialization / rehabilitation process, to offer vocational training and re-training to the convicted, as well as to prepare them for future employment.<sup>264</sup>

### *Police control risks*

After being released from imprisonment (as well as during probation) the greatest physical and psychological difficulty is an intensive police control.

Undoubtedly, in the case of imposing a suspended sentence on a person, the state must have effective control over the execution of the sentence. Adequate mechanisms for controlling and supervising the execution of probation are contained in the relevant legislation. However, subjecting a person to intensive police control after their release from the prison setting is very problematic. Bringing people under the lens of control is more of a problem of practical implementation than of existing legislation. However, we must also take into account that our legislation also allows for this exercise in the framework of operative activities. This is one of the most important challenges of this mechanism in terms of human rights protection. Especially when almost all operative measures, including those that may be used for controlling purposes, are carried out without court order.<sup>265</sup>

The strengthening of control mechanisms, after release, once again indicates that the state does not have an effective method of prevention. Under these conditions, intensive police monitoring and subjecting persons to control remain, in the hands of the state, as a mechanism for the prevention of re-offending.

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264 Order N492 of the Minister of Justice of Georgia of December 31, 2019 on the approval of the Statute of the Legal Entity of Public Law – Center for Vocational Training and Retraining of Convicted Persons

265 For more see: “Operative Activities at Law Enforcement Bodies”, “Human Rights Education and Monitoring Center (EMC)” 2019 Available: <https://bit.ly/3ohGdNp> Accessed: 15.05.2021

## Summary

The search for the causes, the foundations of the problem, and the solutions to different types of crimes are often carried out through the wrong perspective, which ultimately presents issues from the position of power and elitism. Perceptions of criminal justice are usually formed by judges, law enforcement agencies, and government structures in general.<sup>266</sup> Voices of ordinary people in contact with the judiciary and law enforcement are lost in this context and, thus, cannot contribute to the formation of alternative visions of structural and systemic problem-solving. In this regard, the question of the legitimacy of knowledge is critically important, and research, based on the study of the structural causes of specific experiences and problems, has a special role to play.

A sociological study of the specific types of drug crime and theft/robbery, and a legal analysis of the existing underlying situation, revealed that the process of shaping criminal policy in the country is not based on proper research. Decisions made at the central level do not adequately reflect the needs of the country. The policy-making process is largely deprived of social context.

Difficult social and economic situation, bank loans, financial liabilities because of gambling, are the main motivating factors in the cases of theft and robbery. Nevertheless, the state's response to crime is only responsive, it does not care to reduce the social and economic causes of crime, to develop appropriate social policies.

Research shows that the difficult social and economic situation is also one of the important factors contributing to the spread of drug crime (drug use). Drug use is a way to escape from the existing difficult situation, to create an alternative reality, a situation, for people whose basic needs the state is unable to meet.

The idea of a "punishing state" is particularly evident in the context of drug policy. Despite systematic criticism at the domestic and international levels, the state has so far failed to transform its repressive drug policy into a care-oriented, human rights-based framework.

Against the background of the problem of access to educational programs in the penitentiary system, the scarcity of re-socialization-rehabilitation programs, the existing legal and practical barriers in terms of employment, the situation of persons after serving their sentence gets even worse. Under these conditions, the risk of reoffending is in-

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266 Tony Platt, Prospects for a radical criminology in the USA, in *Critical Criminology* edited by Ian Taylor, Paul Walton and Jock Young, London, 1975, p. 99.

creasing, as a state that fails to provide decent social protection pushes people to commit crimes.

In relation to the above-mentioned crimes, the state usually acts from a punishment perspective and intensively controls the representatives of the lower social class (the unemployed, low-income people, otherwise vulnerable groups, etc.). In the absence of appropriate policies, systemic control over the “vulnerable groups of society” and the watchful eye of the police controlling people’s lives is the only prevention mechanism for the state. The state manages to achieve security at the expense of these people, at the cost of punishing and controlling them.