



The Special Report of the Public Defender of Georgia

The Practice of Conditional Early Release and Commutation of Unserved Sentence With a Lesser Penalty in Georgia

Prepared in accordance with Article 21.g. of the Organic Law of Georgia on the Public Defender of Georgia

2019

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Introduction

Significant shortcomings remain in the proceedings related to offenders' conditional early release and commutation of their unserved sentence with a lesser penalty.

For years, offenders have been applying to the Public Defender of Georgia, pointing out the problems related to the decisions adopted by the local councils of the Ministry of Corrections, Probation and Legal Aid Affairs of Georgia¹ (hereinafter referred to as "local council/council") being non-uniform and unsubstantiated. Due to the frequency of applications filed by offenders, the need for the analysis of the legislation and practice of the activities of the local councils was put on the agenda for the first time in 2013-2014. Regarding this issue, in 2014, the Public Defender of Georgia published the first special report – the Legal Status of Offenders on Parole.² The report discussed legislative and practical shortcomings and made recommendations to the relevant authorities.

The Public Defender of Georgia addressed the same issue in the 2013 parliamentary report as well.³

Despite certain progress that has been made with regard to this procedure since 2013-2014, offenders still raise concerns about the superficial nature of the local councils' performance. Therefore, the Public Defender's Office decided to assess the activities of the local councils once again, reveal positive trends, identify challenges and offer concrete recommendations to respective authorities for eradicating shortcomings and improving the practice. Furthermore, we focused on the practice of challenging the councils' decisions before courts and assessed the accessibility of courts.

Despite the fact that neither conditional early release nor commutation of unserved sentence with a lesser penalty is an offender's basic constitutional right, it is a significant statutory entitlement to motivate an offender following his/her conviction to be fully oriented towards resocialisation and hope for benefiting from this procedure effectively.

The European Court of Human Rights discussed the procedure of conditional release as a significant and necessary tool in the context of life prisoners and observed that the state must give offenders a possibility for rehabilitation and, in case this goal is achieved, give them a prospect for release. This stems from the Convention system which is based on a key tenet of respect for human dignity.⁴

¹ Presently Local Councils of the Special Penitentiary Service – a public subordinate agency within the system of the Ministry of Justice of Georgia.

² Available at: <https://bit.ly/2og9Io5>.

³ The 2013 Parliamentary Report of the Public Defender of Georgia, available at: <https://bit.ly/2QzQYvz>, pp. 152-153.

⁴ *Matiošaitis and Others v. Lithuania*, applications nos. 22662/13, 51059/13 *et al.*, judgment of the European Court of Human Rights of 23 May 2017, para. 181; *Vinter and Others v. the United Kingdom*, applications nos. 66069/09, 130/10 and 3896/10, judgment of the Grand Chamber of the European Court of Human Rights of 9 July 2013, paras. 120-122.

For the purposes of this report, we consider it conceptually important to highlight this approach of the European Court. However, for the sake of clarity, we point out that the assessment of the practice of life prisoners' conditional release or commutation of their sentence with a lesser penalty is not discussed in this report since this process is entirely within the judicial realm;⁵ it is beyond the mandate of the local councils and, therefore, the purpose of the present report.

It is commendable that the Development Strategy for Penitentiary and Crime Prevention Systems and the Action Plan for 2019-2020⁶ see it necessary to improve the methodology of conditional early release and develop the new assessment system and procedure.

We believe that the present special report will assist the ministry in the reform process and will give the reader a clear understanding about the procedure of conditional early release and commutation of unserved sentence with a lesser penalty.

Most importantly, the present document will be most valuable for offenders applying to the Public Defender, expressing their concerns. It will assure them that the Public Defender's Office will use all effective means within their mandate to protect their rights and interests. Indeed, in response to their applications, the Public Defender's Office has conducted this voluminous research and developed concrete recommendations for redeeming the existing shortcomings and improving the procedure of conditional early release and commutation of unserved sentence with a lesser penalty.

We hereby express our special gratitude to the Special Penitentiary Service and the Service Provision Department of the Local Councils for their prompt cooperation in the process of providing voluminous information and documentation as well as organising meetings with the members of all the six local councils that provided the Office of the Public Defender of Georgia with basic insight into the councils' work.

Methodology

The present report analyses the practice of conditional early release and commutation of unserved sentence with a lesser penalty in 2018-2019. The Office of the Public Defender of Georgia, in total, **requested and analysed 1,413 decisions adopted by all six local councils⁷, in particular:**

- 744 decisions adopted in 2018;⁸

⁵ The Criminal Code of Georgia, Article 72¹ and Article 73.7.

⁶ Order no. 385 of the Minister of Justice of Georgia of 22 February 2019 Approving the Development Strategy for Penitentiary and Crime Prevention Systems and the Action Plan for 2019-2020.

⁷ Requisites of decisions and personal data of offenders have been redacted in the local councils' decisions supplied to the Public Defender's Office and in most cases, it is impossible to indicate the data identifying them.

⁸ In their Letter 15-3/14902, dated 3 December 2018, the Public Defender's Office requested the following data:

1. A copy of all decisions adopted in January, February and March 2018 by the local council examining juveniles' cases;
2. A copy of all decisions adopted by local council I of Eastern Georgia in April 2018;

- 669 decisions adopted in 2019;⁹ and
- Statistical information about decisions adopted from 1 January 2018 to June 2019. In particular, about the outcomes of the examination of 8,077 motions filed with the local councils for conditional early release in 2018, and 3,935 motions filed in 2019; in addition, about the outcomes of the examination of 1,408 motions for commutation of unserved sentence with a lesser penalty filed in 2018 and 903 motions filed in 2019. Consequently, **the Office of the Public Defender of Georgia was provided with statistical information about the decisions adopted by the local councils in 14,323 cases during the period of one year and a half about both conditional early release and commutation of unserved sentence with a lesser penalty.**

In the present report, the Office of the Public Defender of Georgia discusses those several concrete cases, where prisoners applied to, and requested, the Public Defender to study the shortcomings in their individual cases and where the Office identified significant problems as a result of the monitoring of the cases.

The Public Defender's representatives also attended the local councils' oral hearings from December 2018 to the beginning of January 2019. The Office of the Public Defender of Georgia conducted monitoring of all the six local councils that examined 62 cases at oral hearings, namely:

- Local council I of Eastern Georgia examined 9 motions;
- Local council II of Eastern Georgia examined 20 motions;
- Local council III of Eastern Georgia examined 17 motions;
- The local council of Western Georgia examined 11 motions;
- The local council in charge of juvenile offenders' cases examined 1 motion;
- The local council in charge of female offenders' cases examined 4 motions;

Furthermore, the Public Defender's Office, for analysing judicial practice, applied to the Tbilisi City Court¹⁰ and requested information concerning the following issues within the period of 1 January 2018 – June 2019:

- The number of decisions adopted by the local councils regarding conditional early release and commutation of sentence with a lesser penalty was challenged before the court;
- The number of applications considered defective due to the failure to pay court fee;
- The number of applications that were upheld;

3. A copy of all decisions adopted by local council II of Eastern Georgia in May 2018;

4. A copy of all decisions adopted by local council examining female offenders' cases in June, July and August 2018;

5. A copy of local council III of Eastern Georgia adopted in September 2018; and

6. A copy of all decisions adopted by the local council of Western Georgia in October 2018.

⁹ Decisions adopted by the local councils in May 2019 regarding the motions filed with the councils in April 2019.

¹⁰ Letter no. 15-3/8362 of the Office of the Public Defender of Georgia, dated 25 July 2019.

- The number of cases in which the court annulled a council's decision and returned it for the consideration *ab novo*; and
- The number of cases in which the court annulled a council's decision and ordered conditional early release or commutation of sentence with a lesser penalty.

According to the information supplied by the Tbilisi City Court,¹¹ **from 1 January 2018 to June 2019, 288 administrative cases were examined.** Unfortunately, the court does not maintain statistics that are more detailed. Therefore, it was unable to submit information, for instance, about the following issues: in how many cases the court annulled a council's decision and returned it for the examination *ab novo*; in how many cases the court annulled a council's decision and ordered to adopt a decision on conditional early release or commutation of unserved sentence with a lesser penalty.

Furthermore, the Office of the Public Defender of Georgia had the possibility to study some of the court's judgments and the discussion below is based on the results of the Office's research in this regard.¹² In particular, **the Office of the Public Defender of Georgia studied 56 cases in the Tbilisi City Court.**

There was not a single case in the presented 56 cases, in which the court would itself indicate to the council as to what kind of a decision to adopt. Due to this very reason, the Office of the Public Defender of Georgia applied to the Service Provision Department of the Local Councils and obtained¹³ information on an additional 39 judgments of the court. Out of these 39 cases, 8 judgments concerned those cases, where the court annulled a local council's decision and ordered it to adopt a decision on conditional early release. Accordingly, in the research process, **in total, 95 court judgments have been studied (2018-2019).**

The Office of the Public Defender of Georgia also studied the national legislation and identified respective shortcomings.

This report also analyses the dynamics existing since 2013-2014 to this day and the effectiveness of the functioning of this procedure within the five-year interval.

As a result of the general overview of the legislation, trends in practice, practical and legislative problems, the Public Defender presents in this special report concrete recommendations that will facilitate the improvement of the procedure for conditional early release and commutation of unserved sentence with a lesser penalty and enhance the effectiveness of the process of challenging the local councils' decisions before the court.

¹¹ Letter no. 20918 of the Tbilisi City Court, dated 31 July 2019.

¹² According to the oral explanation of the court, they supplied those cases that had already been archived. The cases still kept with a judge or referred to the Court of Appeals are inaccessible and could not be provided.

¹³ Letter no. 278636/01, dated 19 September 2019.

Legislative Framework

The terms and procedure for conditional early release and commutation of unserved sentence with a lesser penalty are determined by several normative acts, viz., the Criminal Code of Georgia,¹⁴ the Imprisonment Code¹⁵ and Order no. 320 of the Minister of Justice of Georgia of 7 August 2018 Approving the Parole Procedure and Adopting Decisions by Local Councils of the Special Penitentiary Service – a Public Subordinate Agency within the System of the Ministry of Justice of Georgia (hereinafter referred to as the “Minister’s Order no. 320”). These normative acts determine preconditions, as to who and when is eligible for conditional early release or commutation of unserved sentence with a lesser penalty as well as functions of the local councils, the rules for their composition and activities, and the procedure for challenging their decisions.

In addition, Order no. 82 of the Minister of Corrections, Probation and Legal Aid Affairs of Georgia of 10 May 2011 Approving the Procedure for Maintaining Registries and Personal Records of Accused/Convicted Persons, Annex no. 18¹⁶ has approved a form for the description of an offender to be submitted to a local council.

In accordance with the normative acts referred above, there are currently six local councils operating in Georgia. One council is in charge of juvenile offenders’ cases; one council examines female offenders’ cases and the remaining four councils examine male offenders’ cases and are organised according to the territorial principle and are ultimately functioning as three local councils of Eastern Georgia and one local council of Western Georgia.¹⁷

Each council consists of five members¹⁸ and operates for a one-year term.¹⁹

The council is authorised to examine two issues:²⁰

1. Conditional early release of an offender; and
2. Commutation of and offender’s unserved sentence with a lesser penalty.

¹⁴ The Criminal Code of Georgia, Articles 72-73.

¹⁵ The Law of Georgia on Imprisonment Code, Articles 40-43.

¹⁶ See Order no. 82 of the Minister of Corrections, Probation and Legal Aid Affairs of Georgia of 10 May 2011 Approving the Procedure for Maintaining Registries and Personal Records of Accused/Convicted Persons, Article 12.12¹.

¹⁷ The Minister’s Order no. 320, Article 3.

¹⁸ The Imprisonment Code, Article 41.2 and the Minister’s Order no. 320, Article 4.1-2.

¹⁹ The Imprisonment Code, Article 41.5 and the Minister’s Order no. 320, Article 4.11.

²⁰ The Minister’s Order no. 320, Article 6.1.

In both cases, there are exceptions applied to high-risk offenders and life prisoners.²¹ Under the Criminal Code, exceptions are determined for offenders placed in special-risk detention facilities.²² In light of the Imprisonment Code, this implies high-risk offenders.²³

The council is authorised to examine the issue at stake with or without an oral hearing.²⁴ A motion submitted by a concrete penitentiary establishment serves as a precondition for instituting the procedure for conditional early release of an offender;²⁵ whereas a motion submitted by an offender and/or his/her lawyer/legal representative is a precondition for instituting the procedure for commutation of unserved sentence with a lesser penalty.²⁶

It is the duty of a penitentiary establishment to dispatch a motion for conditional early release when an offender has actually served the statutory term making him/her eligible for parole;²⁷ it is not determined as the discretion of a penitentiary establishment.²⁸

If the unserved sentence does not exceed six months, the council will examine conditional early release based on a written motion of an offender.²⁹ If the council decides against conditional early release, another motion may be considered only after six months, except when the unserved sentence does not exceed six months and/or there is a special circumstance. Conditional early release of an offender must be considered every six months.

A council examines conditional early release and commutation of unserved sentence with a lesser penalty in accordance with a procedure established by the order and in accordance with the statute. It is guided by the following five criteria:³⁰

- The nature of the crime – when examining a case based on this criterion, attention must be paid to the seriousness and circumstances of the crime committed by the offender and whether it was committed when the offender was serving a conditional sentence;
- Behaviour during serving sentence – when examining a case based on this criterion, attention must be paid to the number and nature of disciplinary and administrative measures and incentives applied to the offender and, in particular, for what kind of an action a respective decision was made; furthermore, attention must be paid to the information about whether the offender respects the penitentiary establishment's statute, the establishment's schedule, his/her statutory duties and the legal regime of the penitentiary establishment when serving sentence;

²¹ *Ibid.*

²² The Criminal Code of Georgia, Article 72.1.

²³ The Imprisonment Code, Article 66².

²⁴ The Minister's Order no. 320, Article 7.

²⁵ The Imprisonment Code, Article 42.1 and Article 42.7.

²⁶ The Imprisonment Code, Article 43.1 and Article 43.8.

²⁷ The Criminal Code of Georgia, Article 72.3 and Article 72.4.

²⁸ The Imprisonment Code, Article 42.1.

²⁹ The Imprisonment Code, Article 42.7.

³⁰ The Minister's Order no. 320, Article 13.1.

- Commission of crimes by the offender in the past, criminal record – when examining a case based on this criterion, attention must be paid as to how many times, how serious and what crimes have been committed in the past by the offender; as well as the nature, seriousness and the number of counts of crimes for which the offender is convicted;
- Family conditions – when examining a case based on this criterion, attention must be paid to the offender's relationship with his/her family members; whether they have minors, disabled family members, the financial situation of close relatives, etc.; and
- The offender's personality – when examining a case based on this criterion, attention must be paid to the offender's attitude towards the crime committed, the establishment's personnel and fellow inmates; information about the offender's participation in social activities during serving sentence is taken into consideration; it is assessed whether the offender requires special supervision on the part of the establishment's management; other important issues relevant for the assessment of the offender's personality must be also taken into account.

It is possible to apply community work or home arrest when commuting unserved sentence to a lesser penalty.³¹

Under the legislation, a local council's decision must be reasoned.³² Furthermore, a council's decision is an individual administrative legal act³³ to which the rules determined by the General Administrative Code of Georgia apply. Stemming from the requirements of administrative law, an individual administrative legal act issued in writing must contain written reasoning.³⁴ The written reasoning should address all those factual circumstances that were essential for issuing the administrative legal act.³⁵

When exercising discretionary powers, no administrative act may be issued if the prejudice to a person's rights and interests protected by law exceeds the benefit to be obtained from issuing the act.³⁶ Whenever an administrative body is granted discretionary powers to resolve some issue, it shall be obliged to exercise the powers within the scope of the law³⁷ solely for the purpose of exercising the powers that they have been granted.³⁸ The measures under an administrative act issued when exercising discretionary powers may not entail an unfounded restriction of the legal rights and interests of a person.³⁹

³¹ The Imprisonment Code, Article 43.6 and The Minister's Order no. 320, Article 7.7.

³² The Minister's Order no. 320, Article 22.2.

³³ *Ibid.*, Article 22.1.

³⁴ The General Administrative Code of Georgia, Article 53.1.

³⁵ The General Administrative Code of Georgia, Article 53.4.

³⁶ The General Administrative Code of Georgia, Article 7.1.

³⁷ The General Administrative Code of Georgia, Article 6.1.

³⁸ The General Administrative Code of Georgia, Article 6.2.

³⁹ The General Administrative Code of Georgia, Article 7.2.

A decision adopted by a council can be challenged before the court in administrative proceedings.⁴⁰ The procedure of examination of this application is determined by the Administrative Procedure Code of Georgia.⁴¹ The court is authorised to either uphold or annul a council's decision (to uphold the application fully or partially).⁴²

The court is authorised to annul a local council's decision without resolving the claim when it considers that the decision has been adopted without the examination and assessment of circumstances of substantive importance for the case. In such cases, the court can order the local council to adopt a new act after the examination and assessment of these circumstances.⁴³ In those cases, where a court considers that all the circumstances have been examined but the decision does not stem from the analysis of these circumstances and is not the most acceptable/appropriate decision, which amounts to the violation of the scope of its discretionary power by the council, the court annuls the council's decision and orders it in express terms to adopt a decision about conditional early release or commutation of unserved sentence with a lesser penalty.

Development of the Procedure Since 2013-2014 to Date

As pointed out in the introduction to the present report, as far as in 2014, the Public Defender of Georgia published the special report on the Legal Status of Offenders on Parole.⁴⁴ The report addressed the shortcomings identified in that period and made respective recommendations.

Since 2013-2014, there have been positive trends in both practice and legislation. However, to this day, there are still issues left without solution; this undermines the effectiveness of the procedure.

The present chapter highlights the dynamics existing since 2013-2014 and compares the effectiveness of the functioning of this procedure within the five-year interval.

The 2014 special report criticises various elements of the work performed by the local councils; among them, the following should be particularly pointed out: the frequent practice of examining cases without an oral hearing; the councils' failure to provide reasons for their decisions; and incomprehensive descriptions of offenders. The descriptions submitted by penitentiary establishments to the local councils, as a rule, contained only basic information about the conviction, disciplinary offences, incentives, the type and measure of punishment.

Furthermore, the 2014 special report also criticised the work of the then standing commission of the Ministry of Corrections and Probation. This commission, without expressly stipulated statutory terms of reference, was authorised to request and review only on its own motion any negative decision adopted by the local councils. On the one hand, the existing situation did not allow determining the

⁴⁰ The Minister's Order no. 320, Article 23.

⁴¹ The Administrative Procedure Code of Georgia, Article 27¹.

⁴² *Ibid.*

⁴³ The Administrative Procedure Code of Georgia, Article 32.4.

⁴⁴ Available at: <https://bit.ly/2PhKvor>.

criteria used by the commission when selecting the cases for review and therefore, its practice lacked uniformity. On the other hand, it was problematic that the commission did not provide reasons for its decisions; therefore, there was a high risk of arbitrariness on the part of this body.

The 2014 report paid considerable attention to the stage of judicial review. The report identified the problems related to a stereotypical form of court judgments and absence of reasoning therein as well as the frequent practice of finding applications defective for failing to pay court fees.

It should be pointed out that, since 2010, Order no. 151 of the Minister of Corrections, Probation and Legal Aid Affairs of Georgia of 28 October 2010 Approving the Number and Territorial Jurisdiction of the Local Councils of the Ministry of Corrections, Probation and Legal Aid of Georgia, a Model Statute of a Local Council had been serving as a ground for the work of the local councils, conditional early releases and commutation of unserved sentences with lesser penalties. This order was abolished by Order no. 138 of the Minister of Corrections and Probation of Georgia of 19 October 2015, which approved anew the number and territorial jurisdiction of the local councils of the Ministry of Corrections and Probation of Georgia and a local council's Model Statute (Order no. 138 Approving the Number and Territorial Jurisdiction of the Local Councils of the Ministry of Corrections and Probation of Georgia and a Model Statute of a Local Council). Since 2018, there has been a new statute in force that was approved by the Minister of Justice. This is Order no. 320 of 7 August 2018 of the Minister of Justice Approving the Parole Procedure and Adopting Decisions by the Local Councils of the Special Penitentiary Service – a Public Subordinate Agency within the structure of the Ministry of Justice of Georgia.

Another positive change over the past few years is that, based on the amendments made to the respective legislation,⁴⁵ presently, a penitentiary establishment has to prepare a detailed description of an offender and submit it to a local council. Descriptions must contain information about the offender's behaviour in the penitentiary establishment, his/her family status or future accommodation prospects as well as education, profession, skills, motivation, plans, wishes, the quality of his/her involvement in social activities when serving the sentence, etc. The persons responsible for the description of an offender are an establishment's director, a social worker of the establishment's social unit, a psychologist, special registry unit and legal regime unit.⁴⁶ Accordingly, an offender's description is based on the multidisciplinary principle.

⁴⁵ On 16 January and 28 May 2014, Order no. 82 of the Minister of Corrections and Probation of Georgia of 10 May 2011 Approving the Procedure for Maintaining Registries and Personal Records of Accused/Convicted Persons was amended in terms of improving the description forms of offenders to be submitted to local councils.

⁴⁶ Order no. 82 of the Minister of Corrections and Probation of Georgia of 10 May 2011 Approving the Procedure for Maintaining Registries and Personal Records of Accused/Convicted Persons, Annex no. 18.

The abolishment of the standing commission within the then ministry should also be assessed as a positive change.⁴⁷ Presently, there is no standing commission and no other structural unit with a similar mandate.

The increase in the number of local councils is also assessed positively. There were only 3 local councils functioning in 2014. The first council was in charge of juvenile offenders' cases; the second council was in charge of the cases of offenders in Western Georgia and the third local council examined the cases of offenders imprisoned in Eastern Georgia. Apart from the small number of the councils, which certainly caused extensive workload for the councils and affected the quality of their performance, there was no council specifically in charge of female offenders' motions. Through the changes of 21 May 2014⁴⁸ and 28 May 2014,⁴⁹ the number of councils was increased to five. Initially, based on the amendments of 21 May, the number of councils was set at four and the second local council became operational in Eastern Georgia, which was in charge of adult offender's cases irrespective of their gender. Based on the changes introduced on 28 May, the local council in charge of adult female offenders' cases became operational. On 19 October 2019, when the new Model Statute of the Local Councils was approved by Order no. 138 of the Minister of Corrections and Probation of Georgia, the number of local councils was increased to six. Namely, the third local council became operational in Eastern Georgia and put in charge of adult male offenders' cases. Presently, the local councils operate based on this territorial, gender and age distribution.

Increasing judicial powers in the procedure of examining applications against the councils' decisions is one of the significant changes. Earlier, the court was only authorised to annul a council's unreasoned decision and return it for the consideration *ab novo*. As a result of amendments made to the Administrative Procedure Code, the court presently is, *inter alia*, authorised to annul a local council's decision and directly order the council to adopt a decision about conditional early release or commutation of unserved sentence with a lesser penalty.⁵⁰

Despite the underlined changes that are mostly positive, unfortunately, there are still significant challenges in terms of effective functioning of the parole procedure. In particular, the problem related to the reasoning of councils' decisions, non-uniform practice and in some cases, superficial or incomprehensive examination of offenders' motions, the frequent practice of deeming applications defective due to the failure to pay a court fee, etc. are notable. These very issues have been identified in the present research.

⁴⁷ The Standing Commission was abolished by Order no. 138 of the Minister of Corrections and Probation of Georgia of 19 October 2015. This order approved the new Mode Statute of the local councils what did not refer to the Standing Commission anymore.

⁴⁸ Order no. 79 of the Minister of Corrections and Probation of Georgia.

⁴⁹ Order no. 93 of the Minister of Corrections and Probation of Georgia.

⁵⁰ The Administrative Procedure Code of Georgia, Article 27¹.1.

Statistics, Trends and Main Findings

In the process of working on the present special report, the Office of the Public Defender of Georgia examined 1,413 decisions adopted by all six local councils in 2018-2019. Out of these, 744 decisions were adopted in 2018:

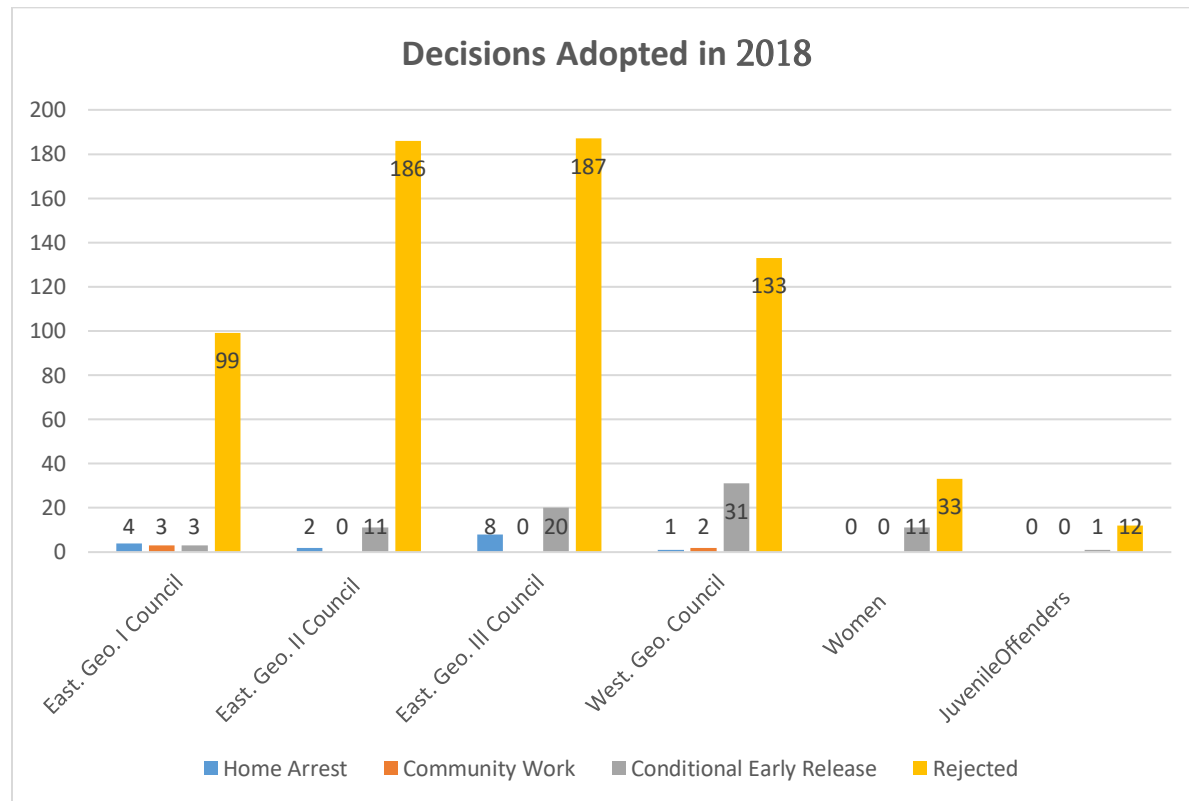
- 704 cases concerned motions for conditional early release and 40 motions for the commutation of unserved sentence with a lesser penalty;
- Out of the 704 motions for conditional early release, 77 motions were upheld, which is 11% of the total number of the motions;
- Out of 40 motions for commutation of unserved sentence with a lesser penalty, 20 motions were upheld and 20 motions were rejected; and
- Out of 20 cases where motions for commutation of unserved sentence with a lesser penalty were upheld, imprisonment was commuted to home arrest in 15 cases and to community work in 5 cases.

The outcomes of each council's decisions are presented as follows (see Diagram no. 1):

- Local council I of Eastern Georgia – the Office examined 106 decisions. Out of them, 7 concerned commutation of unserved sentence with a lesser penalty. All 7 motions were upheld. In 4 cases, unserved sentences were commuted to home arrest and in 3 cases to community work. Out of the remaining 99 motions, only 3 motions for conditional early release were upheld;
- Local council II of Eastern Georgia – the Office examined 199 decisions. Out of them, 9 concerned commutation of unserved sentence with a lesser penalty. In 7 out of 9 cases, the motions were rejected; in 2 cases, unserved sentence was commuted to home arrest. Out of the remaining 190 motions, only 11 motions for conditional early release were upheld;
- Local council III of Eastern Georgia - the Office examined 215 decisions. Out of them, 20 concerned commutation of unserved sentence with a lesser penalty. 8 motions were upheld and unserved sentence was commuted to home arrest. Out of the remaining 195 motions, 20 motions for conditional early release were upheld;
- The local council of Western Georgia – the Office examined 167 decisions. Out of them, 4 concerned commutation of unserved sentence with a lesser penalty. Out of them, 1 was not upheld; in 1 case, unserved sentence was commuted to home arrest and to community work in 2 cases. Out of the remaining 163 motions that concerned conditional early release, 31 motions were upheld;
- The local council in charge of juvenile offenders' cases – the Office examined 13 decisions. All cases concerned conditional early release. 1 motion was upheld. None of the cases concerned commutation of unserved sentence with a lesser penalty; and

- The local council in charge of female offenders' cases – the Office examined 44 decisions. All cases concerned conditional early release. 11 motions were upheld. None of the cases concerned commutation of unserved sentence with a lesser penalty.

Diagram no. 1.



In July 2019, the Office of the Public Defender of Georgia requested the Special Penitentiary Service to supply additional statistical data. The analysis of requested additional information is aimed at highlighting the dynamics of 2018-2019 and the relevant practice.

The statistics submitted by the Special Penitentiary Service are given below⁵¹ (see Diagrams nos. 2 and 3):

- In 2018, in total, the following number of motions for conditional early release was filed with the local councils of the Special Penitentiary Service: 645 in January; 659 in February; 605 in March; 650 in April; 663 in May; 710 in June; 658 in July; 702 in August; 678 in September; 674 in October;

⁵¹ Letter no. 232305/01 of Local Council Service Provision Department of the Special Penitentiary Service.

695 in November; and 738 in December. In total, 8,077 motions were filed in 2018 with the local councils;

- Out of the motions filed in 2018, the following number of motions were upheld: in January – 70; in February – 66; in March – 45; in April – 27; in May – 35; in June – 55; in July – 79; in August – 84; in September – 78; in October – 91; in November – 105; and in December – 86. In total, 821 motions were upheld in 2018;
- In 2019, the following number of motions for conditional early release in each month were filed with the local councils: in January – 748; in February – 640; in March – 620; in April – 655; in May – 669; and in June – 603. In total, 3,935 motions were filed in 2019 (including June);
- Out of the motions filed in 2019, the following number of motions were upheld: in January – 98; in February – 181; in March – 128; in April – 99; in May – 104; and in June – 85 motions. In total, 695 motions were upheld in 2019 (including June);
- In 2018, in total, 1,161 motions for commutation of unserved sentence to community work were filed with the councils. Out of this number, 131 motions were filed in January; in February – 198; in March – 83; in April – 50; in May – 64; in June – 41; in July – 60; in August – 70; in September – 104; in October – 94; in November – 100; and in December – 166;
- In 2018, out of the motions for commutation of unserved sentence with a lesser penalty filed with the local councils, 67 motions were upheld: in January – 4 motions were upheld; in February – 5; in March – 2; in April – 0; in May – 2; in June – 3; in July – 4; in August – 4; in September – 6; in October – 12; in November – 11; and in December – 14;
- In 2019, in total, 680 motions for commutation of unserved sentence with home arrest were filed with local councils: among them, in January – 98; in February – 110; in March – 105; in April – 110; in May – 130; and in June – 127;
- In 2019, out of the motions for commutation of unserved sentence with a lesser penalty, 80 motions were upheld: among them, in January – 9; in February – 10; in March – 15; in April – 15; in May – 11; and in June – 20 motions;
- In 2018, the following number of motions for commutation of unserved sentence with community work was filed with local councils: in January – 31 motions; in February – 22; in March – 17; in April – 19; in May – 13; in June – 10; in July – 31; in August – 20; in September – 17; in October – 19; in November – 19; and in December – 29. In 2018, 247 motions were filed in total;
- In 2018, out of the motions for commutation of unserved sentence with community work, the following number of motions were upheld: in January – 2; in February – 3; in March – 0; in April – 0; in May – 0; in June – 0; in July – 1; in August – 0; in September – 0; in October – 0; in November – 4; and in December – 6. In 2018, in total, 16 motions were upheld;
- In 2019, the following number of motions for commutation of unserved sentence with community work was filed with local councils: in January – 17; in February – 21; in March – 30; in April – 55; in May – 58; and in June – 42. In 2019, 223 motions were filed; and

- In 2019, out of the motions for commutation of unserved sentence with community work, the following number of motions were upheld: in January – 0; in February – 2; in March – 3; in April – 4; in May – 8; and in June - 2 motions. In 2019, 19 motions were filed.

Diagram no. 2.

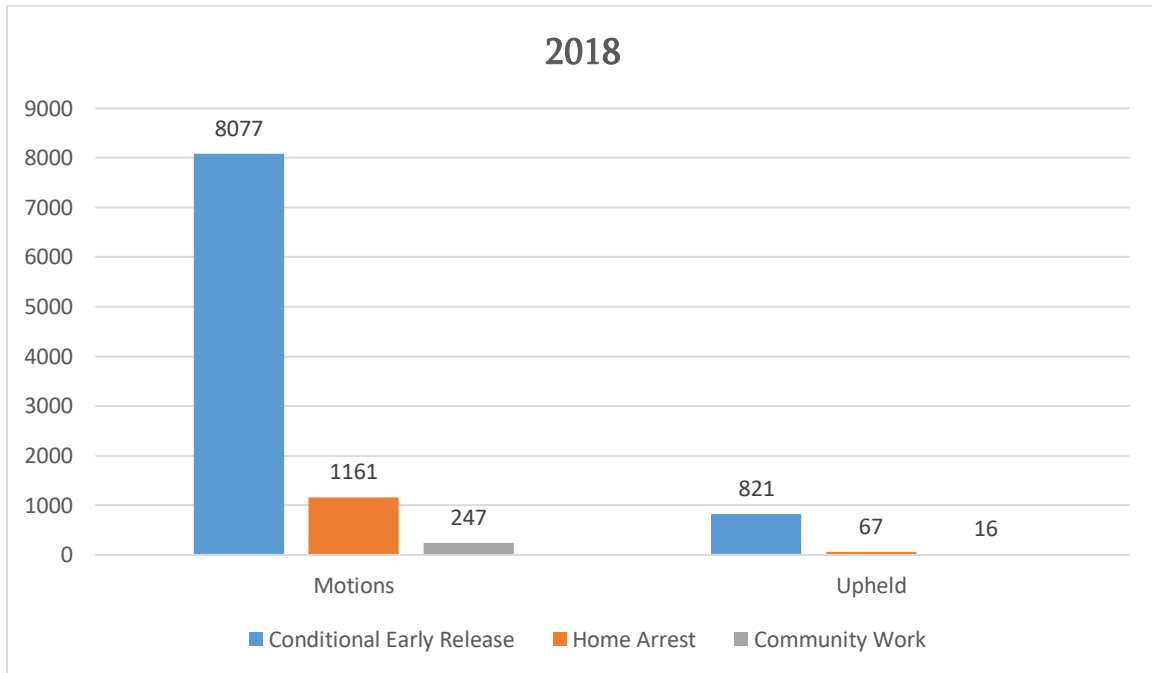
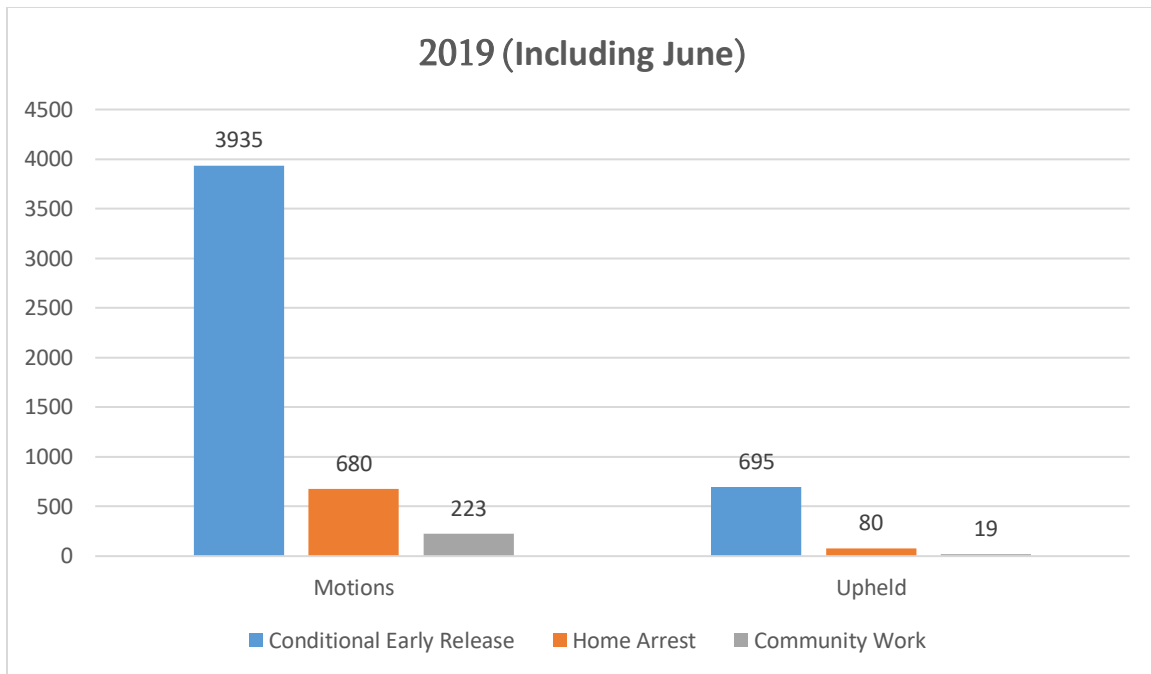


Diagram no. 3.



As mentioned above, the Office of the Public Defender of Georgia studied 56 cases in the Tbilisi City Court and additionally examined 39 judgments supplied by the Ministry of Justice. In total, the Office studied 95 court judgments.

Out of the 56 cases presented by the Tbilisi City Court:

- 49 decisions were adopted in 2018, whereas 7 judgments were adopted in 2019;
- 20 applications were considered to be defective out of 56 cases;
- Out of the 20 cases, in 16 cases, the reason of defect was the failure to pay a court fee and, in certain cases, the failure to submit the claim in accordance with law;
- In 4 cases, claimants retracted applications;
- Out of the 56 cases, the court examined the merits of 32 applications; and
- Out of the 32 applications, the court rejected 27 applications; in 5 cases, the court partially upheld applications and returned them to the council for the additional and comprehensive examination and adoption of a new decision.

The Office of the Public Defender of Georgia obtained⁵² from the Service Provision Department of the Local Councils the information about judgments adopted in accordance with Article 27^{1.1} of the Administrative Procedure Code of Georgia. In particular, as already mentioned, the court is authorised

⁵² Letter no. 278636/01, dated 19 September 2019.

to adopt one of the following judgments as a result of the examination of an application with regard to a decision adopted by a local council:⁵³

- a) To uphold a negative decision adopted by a local council;
- b) To annul a decision adopted by a local council without resolving the issue and order the council to issue a new act after the examination and assessment of relevant circumstances; and
- c) To annul a decision adopted by a local council and order it to adopt a decision on conditional early release or commutation of unserved sentence with a lesser penalty.

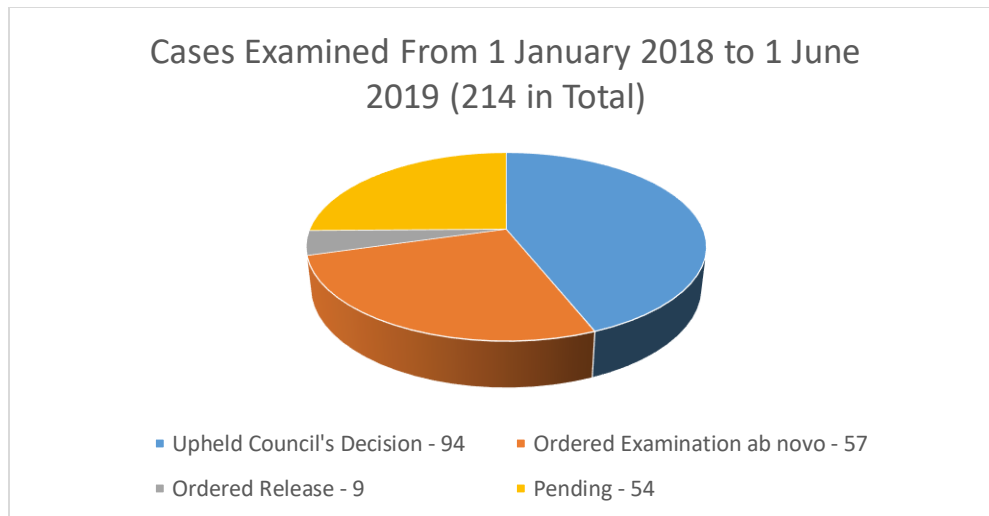
In order to study the judicial practice in a comprehensive manner, the Office of the Public Defender of Georgia requested additional information from the Service Provision Department of the Local Councils that particularly concerned court judgments about those decisions of the councils, where the court, on the one hand, annulled a council's decision and returned it without resolving the issue for additional consideration of the case and, on the other hand, the court annulled a council's decision and ordered it to adopt a decision on conditional early release or commutation of unserved sentence with a lesser penalty.

The Office of the Public Defender of Georgia was informed that in the period of 1 January 2018 to 1 June 2019, the Section of Administrative Cases of the Tbilisi City Court (see Diagram no. 5):

1. Examined 214 applications filed with regard to the decisions adopted by the local councils (the court did not have any decisions adopted with regard to 54 cases at the moment of submitting information to the Office of the Public Defender of Georgia) and upheld the councils' decisions in 94 cases;
2. Without resolving the issue in 57 cases (41 decisions adopted by the councils in 2018 and 16 decisions adopted in 2019), the court annulled the councils' decisions and ordered them to issue a new act after the examination and assessment of relevant circumstances; and
3. The court annulled a local council's decision on 9 occasions and ordered the local councils to adopt a decision on conditional early release of an offender.

Diagram no. 5.

⁵³ The Administrative Procedure Code of Georgia, Article 27¹.



The analysis of the local councils' activities, as well as judicial practice, showed the following several issues:

- The councils' decisions are unsubstantiated; there seem to be no arguments given as to why the council attaches more value to a certain criterion;
- The councils' negative decisions stem, as a rule, from the nature and seriousness of the crime committed by an offender;
- The council's positive decisions do not contain formal reasoning;
- The councils adopt different decisions in similar cases;
- The councils are more lenient towards prisoners convicted for the commission of property crimes or drug crimes;
- The councils adopt positive decisions more easily in those cases where the unserved sentence is short;
- Disciplinary offences negatively affect the process of conditional early release and commutation of unserved sentence with a lesser penalty;
- The councils often disregard statutory limitation for disciplinary offences, their seriousness, the seriousness of imposed sanctions and positive changes in an offender's behaviour in the aftermath of the disciplinary offence;
- Proceedings involving female and juvenile offenders' cases are more comprehensive; personality descriptions are detailed as are future wishes, plans and other supportive factors;
- There are substantive inaccuracies in the councils' decisions which in most cases serve as a precondition for adopting negative decisions;
- The reasoning of decisions in favour of an oral hearing is not foreseeable;
- An oral hearing has a positive impact on the outcome of the examination;
- The shortcomings in the examination of motions for conditional early release and commutation of unserved sentence with a lesser penalty are similar;
- The quality of reasoning of the councils' decisions in 2019 is the same as in 2018;

- The statistics on conditional early release in 2019 are increased compared to 2018 by 7.5%. In 2018, out of the 8,077 motions filed with the councils, 821 motions, i.e., 10.2% were upheld; in 2019, in the first 6 months, out of the 3,935 motions filed, 695, i.e., 17.7% were upheld;⁵⁴
- There is an upward trend in terms of commutation of unserved sentence with a lesser penalty. In 2019, the cases of application of home arrest increased by 6%; namely, in 2018, 1,161 motions for application of home arrest were filed. Out of these 67, i.e., 5.8% were upheld. In 2019, in the first 6 months, there were 680 motions filed, out of which 80, i.e., 11.8% were upheld;⁵⁵
- As regards motions for commutation of unserved sentence with community work, in 2018, 247 motions were filed, out of which 16, i.e., 6.5% were upheld; whereas, in 2019, in the first 6 months, 223 motions were filed, out of which 19, i.e., 8.5% were upheld. Accordingly, in this regard too, there was a 2% increase;⁵⁶ and
- The judicial practice is not uniform.

Shortcomings Identified in Practice

1. Failure to Substantiate Decisions

Negative Decisions

Among the shortcomings identified as a result of the analysis of decisions adopted by the local councils, the failure to provide reasoning is among the central problems. The decisions adopted by the local councils about rejecting motions for conditional early release are mostly worded in a stereotypical manner and contain formalistic references to the criteria based on which the negative decisions were made in a concrete case. These decisions do not contain any arguments about those factors due to which it was established that the offender's resocialisation had not been achieved and/or those specific circumstances giving rise to a reasonable suspicion that in cases of adopting a positive decision public safety could have been endangered.

The absence of such arguments and reasoning makes those decisions refusing conditional early release particularly vague where an offender's personality is positively characterised and there are numerous other positive factors mentioned. In such cases, relying only on the seriousness and the nature of the

⁵⁴ If six-month periods, i.e., both years' January-June periods are compared, the increase is by 10.1%. In the first six months in 2019, 695 motions were upheld out of the 3,935 motions filed; whereas in the first six months in 2018, 298 motions were upheld out of the 3,932 motions filed, constituting 7.6% of the total number.

⁵⁵ If six-month periods, i.e., both years' January-June periods are compared, the increase in 2019 is by 10.7%. In particular, in the first six months in 2019, 680 motions were upheld out of 80; whereas in the same period in 2018, there were 567 motions filed, out of which 16 motions were upheld constituting 1.1% and significantly behind the 2019 results.

⁵⁶ Six-month data is as follows: in the period of January-June in 2018, in total 112 motions were filed, out of which 5 motions were upheld, constituting 4.5%. There is a trend of 4% increase in the same period in 2019.

crime gives an impression that the local council failed to assess and pay any attention to the process of resocialisation and its outcomes, which is its direct duty. Despite the council's duty to apply and take into account the five criteria, the nature of the crime seems to be the prevailing one.

Several decisions adopted by the local councils given below clearly show the approach taken by a council when adopting its decisions and the circumstances it took into consideration when doing so:

***Case no. 1.** On 9 October 2018, the local council of Western Georgia of the Special Penitentiary Service examined without an oral hearing an offender's motion for commutation of unserved sentence with home arrest. In accordance with the decision, the offender "was convicted by Khelvachauri District Court's judgment of 2010, under Article 260.3.a) and Article 262.4.a) of the Criminal Code of Georgia and was sentenced to imprisonment for 25 years and to an additional punishment of fine in the amount of GEL 10,000. Under the decision of 2013, in accordance with the Law of Georgia on Amnesty, the offender was exempted from the punishment imposed under Article 260 of the Criminal Code and was sentenced to imprisonment for 12 years... The offender attended social activities carried out in the penitentiary establishment... He was disciplined during serving sentence... benefited from incentives 6 times... He has not breached the legal regime of the establishment... The offender is polite to the administration and fellow inmates; has no criminal record... When deciding about the issue at stake, the council took into account the offender's relationship with the administration of the prison facility and other personal characteristics, his family conditions, behaviour while serving sentence, not having a criminal record, the fact that he had been given incentives on numerous occasions and that he had participated in various social activities in the penitentiary establishment. However, the council took notice of the fact that the offender had committed a drug crime –illegal buying and storing a large amount of drugs. Since the nature and the seriousness of the crime affect particularly negatively commutation of unserved sentence with home arrest, the council found at this stage that the negative considerations accompanying these criteria were not negated and outweighed by other criteria of positive connotation."*

Assessment: It is evident from the above decision that, despite positive personal characteristics that have been shown in numerous aspects, priority is given to the nature of the crime committed. It is not explained as to why the other positive criteria could not outweigh the negative considerations accompanying the nature of the crime. Similar to the previous case, the council only took notice of the nature of the crime committed in the case below:

***Case no. 2.** On 1 May 2019, local council II of Eastern Georgia rejected the motion of an offender for commutation of unserved sentence with community work. The offender was convicted of fraud and forging a document. The offender has a wife and two children; he maintained frequent telephone communication with them and exercised the right to visit. The family's financial situation is average. The offender is motivated to change. In case of release, he will return to his previous job; he uses the library; actively trains on sports equipment, carves wooden items, attends social activities, goes to the establishment's church; he is a believer, has working experience, discusses future plans; life skills help him maintain flexible relations; he expresses normal degree of interpersonal relations; maintains adequate communications; when resolving conflicts, he gives priority to dialogue; has the skills of managing free time; has not been disciplined during serving sentence; has been commended once – was commended for his exemplary behaviour; follows the establishment's statute, the daily schedule and the*

legal regime; complies with the legal orders of the administration; he is polite; not prone to conflicts or aggression and has no criminal record.

Assessment: Again, in this case, the council's decision is not reasoned as to why the council only took notice of the nature and the seriousness of the crime and why this criterion outweighed all other positive characteristics, making the commutation of unserved sentence with a lesser penalty impossible.

The reasoning in the illustrated decisions is limited to the factors underlying a concrete decision. However, the deficiency of reasoning is manifested in the very aspect that it remains unclear as to why the personal characteristics of an offender could not outweigh the negative factors attached to the crime committed.

Under the legislation, one of the objectives of the punishment is to achieve an offender's resocialisation. The progress in this regard is manifested in the offender's behaviour. If the council considers that an offender's behaviour is not enough to prove his/her resocialisation, then appropriate arguments should be provided in the council's decision and explain why the council considered that the already served sentence is not sufficient and why the person concerned is not resocialised yet despite positive behaviour.

Decisions that are similar to those discussed above leave unanswered questions for offenders; they do not know what else they should do additionally while serving sentence to ensure a positive outcome in the process of conditional early release or commutation of unserved sentence with a lesser penalty. Such an approach may ultimately result in the impossibility of the realisation of the local councils' objective⁵⁷ and make the offender indifferent towards resocialisation.

The Public Defender has been addressed by multiple prisoners with the problem of the failure of the local councils to provide adequate reasoning for their decisions. When adopting negative decisions, the local councils invariably point out the nature and the seriousness of the crime even when there are no other negative criteria present (criminal record, previous conviction, behaviour in the penitentiary establishment, disciplinary offences, etc.). In such cases, the motive behind rejecting a motion remains unclear since the sole reference to the nature and the seriousness of the crime cannot meet the standard of reasoning as the legislation allows offenders having served a certain amount of sentence for a particular crime to avail themselves of this privilege.⁵⁸

⁵⁷ Under the Minister's Order no. 320, Article 1.2, one of the objectives of the council is to facilitate resocialisation of an offender.

⁵⁸ The Criminal Code of Georgia, Article 72.3 and Article 72.4.

While a local council is an administrative body adopting its decisions through the exercise of discretionary power⁵⁹, this decision is an individual administrative legal act⁶⁰ and it must contain a written justification.⁶¹ In its turn, a written justification requires substantive reasons. In other words, it should provide clear answers to the major arguments on which an offender bases his/her request. This justification should give a clear understanding of the reasons as to why the council adopted a certain decision when exercising its discretionary power. Under the General Administrative Code of Georgia,⁶² measures provided by an administrative legal act issued through exercising a discretionary power must not result in the unjustified restriction of a person's statutory rights and interests. Thus, this legislative provision directly requires any administrative body, among them, collective bodies (in this case, the local councils), to provide justification in an individual administrative legal act adopted with regard to an offender. An administrative body must discharge its discretionary power only for the objective, for the achievement of which it has been vested with this power.⁶³

Positive Decisions

Justification of decisions implies providing reasons in both scenarios – whether a positive or negative decision is adopted. Indeed, the reasons provided in a decision should exclude any misgiving about the non-uniform and/or biased approach of an administrative body. Despite this, it should be pointed out that the problem of the failure to provide justification for the local councils' decisions is identified not only in the decisions rejecting motions but also in those decisions that uphold motions for either conditional early release and/or commutation of unserved sentence with a lesser penalty.

While decisions rejecting motions contain at least formal reference to those criteria based on which the council adopts its decisions, the decisions upholding motions, as a rule, do not contain any information⁶⁴ regarding the criteria and positive factors which led the council to arrive at the conclusion that an offender has been resocialised; that his/her release does not pose any threat to the public anymore and therefore, there is no more the need for serving the remaining sentence.

Again, several cases are given below to illustrate this position:

Case no. 1. *In accordance with the decision of the Special Penitentiary Service's local council II of Eastern Georgia of 8 June 2018, "the offender was tried on 7 March 2017 by the Tbilisi City Court under Article 177.2.a) and Article 177.3.b) of the Criminal Code of Georgia. Based on Article 67 of the Criminal Court,*

⁵⁹ In accordance with Article 2.k) of the General Administrative Code of Georgia, discretionary powers mean powers granting freedom to an administrative body or official to choose the most acceptable decision out of possible decisions under the legislation, to protect public or private interests.

⁶⁰ Article 22.1 of Order no. 320 of 7 August 2018 Approving the Parole Procedure and Adopting Decisions by Local Councils of the Special Penitentiary Service – a Public Subordinate Agency within the System of the Ministry of Justice of Georgia.

⁶¹ The General Administrative Code of Georgia, Article 53.1.

⁶² The General Administrative Code of Georgia, Article 7.2.

⁶³ The General Administrative Code of Georgia, Article 6.2.

⁶⁴ Only a handful of decisions upholding motions have been identified among the examined decisions adopted by local councils as the ones referring to the circumstances based on which those decisions were adopted.

the remaining sentence imposed by the judgment of the Tbilisi City Court on 29 July 2016 was revoked and, under Article 59 of the Criminal Code, the last sentence absorbed the remaining previous sentence and ultimately, with cumulative sentences, the term of imprisonment was set at 2 years of imprisonment, three years of conditional sentence and three years of probation... According to the offender, the victim does not have any claims against him, however, failed to adduce any documents confirming this... the offender did not participate in social activities while serving sentence... the offender was neither disciplined nor benefited from incentives... The offender respects requirements of the legal regime and fulfils his statutory duties... The offender is not aggressive or prone to conflicts. He maintains a normal relationship with the establishment's administration and fellow inmates... The offender has a criminal record: on 29 July 2016, under the Tbilisi City Court's judgment, he was sentenced to imprisonment for one year, which was counted as a conditional sentence and to probation for one year under Article 177 of the Criminal Code of Georgia... The council examined the offender's motion for conditional early release at an oral hearing, deemed it appropriate to assess the circumstances relevant for the case under the statutory criteria and heard the offender. The council relied on Article 12 and Article 72 of the Criminal Code of Georgia, Article 41 and Article 42 of the Imprisonment Code as well as the Order of the Ministry of Corrections and Probation of Georgia Approving the Number and Territorial Jurisdiction of the Local Councils of the Ministry of Corrections and Probation of Georgia and a Model Statute of a Local Council and decided to uphold the motion filed with the local council of Eastern Georgia of the Ministry of Corrections and Probation for conditional early release of an offender..."

Assessment: In this decision, the local council of Eastern Georgia does not provide any reasons as to why this time personal characteristics could not have the decisive negative effect on the motion since the offender had a previous criminal conviction and had not benefited from incentives even once. Presumably, the nature of the crime was the key factor and not the progress of resocialisation, i.e., the offender's behaviour in the establishment, whether there was any positive change in his attitude and behaviour that lessened the need for his further isolation and the necessity for the deprivation of his liberty ceased to exist.

***Case no. 2.** Local council II of Eastern Georgia, on 1 May 2019, upheld an offender's motion for conditional early release. The offender was convicted on two counts of theft. He had a previous conviction for robbery; while serving punishment he was disciplined twice and benefited from incentives once; took part in sports and social activities; went to the gym and used the library; participated in the pilot programme Correlation of Violent Behaviour. The offender studied in the establishment and got employed in the bakery where he worked for 7 months. The council released the offender. However, it did not provide even formal reasoning for its decision.*

Assessment: The Office of the Public Defender of Georgia believes that, while it is commendable to have a decision adopted in favour of conditional early release of a particular prisoner or commutation of unserved sentence with a lesser penalty, the council is still obligated to provide reasons for its decision at least to convince an objective observer about the council's impartiality. Furthermore, the reasoning underlying a positive decision will make it clearer as to which behaviour leads the council's positive decision, which can encourage other prisoners and serve as a role model for other's behaviour.

***Case no. 3.** The local council of Western Georgia, on 6 May 2019 upheld the motion of an offender for conditional early release. The offender had committed a drug offence and he reoffended while serving*

sentence, namely, he used a prohibited item with sharp edges. The offender had been punished with fine which, according to him, was not paid. The offender did not participate in any psycho-rehabilitation or social activities; was disciplined nine times, out of which he was placed in solitary confinement for eight times and did not benefit from any incentives. The offender is polite towards the personnel and is motivated to change his behaviour.

Assessment: Thus, in case no. 3 too, similar to case no. 2, a positive decision was adopted. However, the local council of Western Georgia, similar to the local council of Eastern Georgia, had not provided even basic formal reasoning for its positive decision. Despite the fact that the person was serving cumulative sentences and was disciplined for the breach of regime and order while serving sentence, was disciplined nine times, and among others, the most severe disciplinary penalty – placement into solitary confinement – was applied and did not benefit from incentives even once, the council upheld his motion for conditional early release and did not deem it necessary to provide any reasoning for its decision.

It is also to be pointed out that case no. 4 was examined at an oral hearing and, as mentioned in the subchapter on oral hearings, it is possible that the humane disposition of the council towards the offender was preconditioned by direct conversation with him and the personal impression it made.

As already mentioned, the principle of providing reasoning for decisions is equally mandatory for the decisions both rejecting and upholding motions. It should be pointed out that wording of decisions as illustrated above gives rise to obscurity and poses the problem of foreseeability as it is impossible for an offender and/or an objective observer to understand what criteria and specific factors have served as the basis for the council's decision. The above decision does not contain any such criteria or positive factors.

2. Non-Uniformity of Decisions

The process of studying the local council's decisions also revealed a trend of adopting different approaches in similar cases. It is possible that, when faced with similar factual circumstances, the local councils take decisions that are different from each other. A council might assess similar facts differently and adopt a positive decision in one case and a negative decision in another. For instance:

Case no. 1. *Under a decision of the Special Penitentiary Service's local council III of Eastern Georgia of 16 October 2018, in accordance with a judgment of the Tbilisi City Court adopted in 2011, offender D.M. was sentenced to imprisonment for 13 years under Article 19 in conjunction with Article 109.2.b) of the Criminal Code of Georgia, to which the previous conditional sentence was added and, ultimately, he was sentenced to imprisonment for 14 years, 10 months and 14 days... According to the offender, he does not consider himself guilty... attends social activities held in the establishment... the offender did not benefit from incentives while serving sentence, was disciplined thrice... while the offender was disciplined when serving sentence, in the recent period he did not violate the legal regime... he is polite towards the establishment's administration and fellow inmates... has a criminal record; under the Tbilisi City Court's Judgment of 2010, he was given a cumulative fine for GEL 4,000 for his crimes, under Article*

238¹.1 and Article 273 of the Criminal Code. To this sentence, the previous unserved sentence was added and ultimately was given a conditional sentence of imprisonment for two years and one month and probation for three months and one day... under Article 42.4 of the Imprisonment Code, the council took notice of the offender's behaviour while serving sentence, the previous convictions, the offender's personality, family conditions, the nature of the crime committed by him and other circumstances. According to the case-files, D.M.'s behaviour while serving sentence is positive. Furthermore, according to the case-files, while D.M. was disciplined thrice while serving sentence, the last reprimand was given in 2014 and had not been disciplined since then. Previous conviction is an important criterion for conditional early release and D.M. has a previous conviction. However, it is noteworthy that D.M. was convicted for a less serious crime (Article 238¹ and 273 of the Criminal Code of Georgia)... According to the case-files, the offender is characterised positively by the establishment's administration and has a good reputation among fellow inmates; actively participates in various activities... The nature of the crime is an important criterion for conditional early release. Under the Tbilisi City Court's Judgment of 2011, D.M. was convicted under Article 19 in conjunction with Article 109.2.b) of the Criminal Code of Georgia. While D.M. is convicted for a particularly serious crime, it should be taken into account that it was an inchoate crime, namely, an attempted crime. Furthermore, it should be pointed out as well that D.M. has been serving sentence for this crime since 2010. According to the case-files, the victim of the crime has no claims against D.M. and agrees to his exemption from the remaining sentence... At the oral hearing, the council discussed the assessment criteria determined by Article 13 of the statute approved by Order no. 320 of the Minister of Justice of Georgia of 7 August 2018 Approving the Parole Procedure and Adopting Decisions by Local Councils of the Special Penitentiary Service – a Public Subordinate Agency within the System of the Ministry of Justice of Georgia and referred to Article 12 and Article 72 of the Criminal Code of Georgia, Articles 40, 41, and 42 of the Imprisonment Code. Based on the analysis of the received information, it decided to uphold the motion of offender D.M. for conditional early release filed with the Special Penitentiary Service's local council III of Eastern Georgia..."

Assessment: This example clearly shows that the council which emphasises all the factors and presents arguments, apparently changes its approach: the council shifts its emphasis from the nature of the crime – as it was clear in the previous examples – to the personal characteristics and, despite the fact that the offender had been disciplined while serving sentence, deems the offender as re-socialised and accordingly considers it appropriate to rule in favour of conditional early release.

Case no. 2. In the second example, against the background of almost identical circumstances, the local council of Western Georgia adopts a different decision. In particular, under its decision of 6 November 2018, "the offender was tried on 17 December 2013 by the Batumi City Court under Article 19 in conjunction with Article 108 of the Criminal Code of Georgia and was sentenced to imprisonment for 7 years... According to the offender, the victim has been compensated for inflicted damages related to the expenses of medical treatment. The victim has no other claim against the offender, however, the offender failed to submit any document confirming this... In the period of serving sentence, the offender did not take part in social activities.... Owns up to the crime and repents it... the offender has not benefited from incentives but has been disciplined twice. On 4 October 2013, the establishment's director reprimanded him and on 23 June 2016, under the establishment's director's order, he was banned from using a phone for one month. Presently, the offender does not violate the establishment's daily schedule

and the duties under the legal regime; he maintains a normal relationship with the establishment's personnel; has no criminal record. When deciding the issue, the council took into account the offender's family conditions, personal characteristics, his attitude towards the establishment's administration and no criminal record. However, the council emphasised that the crime committed against a person's life, namely, attempted murder, fell into the category of especially serious crimes. Since the seriousness of the crime committed and its nature as well as disciplinary penalties imposed while serving sentence affect particularly negatively the objectives set for conditional early release, the council considered at this stage that negative considerations punctuating these criteria could not be negated and outweighed by other positive criteria..."

Assessment: In this case, personal characteristics and the seriousness of the crime committed are less severe compared to the previous case. In particular, the offender has had no previous convictions, unlike the offender in the previous case, where the offender had been convicted for two crimes previously. In the present case, the attempted murder was not committed under aggravating circumstances. Despite all these facts, the council did not uphold the motion.

Cross-referencing and analysis of the examined decisions show that sometimes the local councils' decisions differ in the cases with similar circumstances. For an objective reader, it will be unclear, from the content of the mentioned cases, as to based on which particular factors the commission found that negative factors (the seriousness and nature of the crime committed, the breach of the establishment's statute, previous convictions, etc.) would be outweighed in one case by positive factors but not in other cases under similar circumstances. Such obscurity shows that these decisions do not contain sufficient arguments in the reasoning part of the decisions and/or there is no uniform standard by which the local councils should be guided when examining cases with similar circumstances. It should also be mentioned that this kind of shortcoming is also noticeable in the cases of offenders convicted for less serious crimes.

3. Impact of the Nature of a Crime and Short Period of Unserved Sentence on the Procedure

According to the examined decisions, the local councils mainly uphold motions filed by individuals convicted for property and drug crimes. The cases where motions lodged by offenders convicted for crimes against life and crimes of other categories are relatively rare. There is also a trend that the council would take favourable decisions in those cases where offenders have short sentences left to serve.

***Case no. 1.** In one of the cases, local council III of Eastern Georgia, under its decision of 9 September 2018, ruled in favour of conditional early release of an offender convicted for theft. He had been previously convicted for theft. While serving his sentence, the offender was disciplined twice; did not benefit from incentives; did not participate in social activities conducted in the penitentiary establishment.*

Assessment: Despite the negative circumstances in the case-file, the council decided in favour of the offender's conditional early release. Unfortunately, the council has not submitted any arguments and it is completely unclear as to which criteria were used by the council in this case. It could be assumed that the nature of the

crime and the short period of the remaining sentence (conditional early release was ordered two months before the end of the sentence) were the decisive factors for the council when adopting the positive decision. The fact, however, is that, against the background of negative circumstances, the council released an offender two months before the end of the sentence.

***Case no. 2.** With its decision of 9 October 2018, local council III of Eastern Georgia decided in favour of conditional early release of an offender serving sentence for illegal purchase and storage of drugs. The offender did not take part in social activities while serving the sentence and was not disciplined. He did not benefit from incentives. It is particularly noteworthy that the prisoner had had three previous convictions, out of which one conviction was for drug crimes and one for theft. It is noteworthy that the offender had been once conditionally released after which he committed crimes twice.*

Assessment: Despite numerous criminal convictions and other negative circumstance in the case-file, again, in this case, the council decided in favour of the conditional early release of the offender (5 months before the end of the sentence). Unfortunately, in this decision the council again failed to present any arguments; it failed to identify the criterion on which it based the decision.

4. Impact of a Disciplinary Offence on the Decision

The analysis of the cases above showed that disciplinary offences⁶⁵ committed while serving sentence affect the process particularly negatively. The reasoning underlying negative decisions, hand in hand with the nature of the crime, is essentially based on disciplinary incidents. The council always seems to be taking into account the fact that an offender has been disciplined; it never discusses whether a disciplinary offence was committed in the recent period or much earlier in the past.

Irrespective of the fact that an offender has committed a disciplinary offence the following issues are still important: when this offence was committed; the seriousness of the crime; whether the behaviour of the offender changed essentially after the commission of the offence; whether the offender took part in social activities; changed the attitude towards the regime and order in the establishment; deserved incentives, etc.

The formal reference to the disciplinary sanction cannot be deemed as the comprehensive examination of an offender's personality.

Several cases are given below:

***Case no. 1.** Based on the application of the offender, the Office of the Public Defender of Georgia examined D.M.'s case. By decision no. 03/18-0506 of local council III of Eastern Georgia of 30 March 2018, the council rejected the motion of D.M. concerning conditional early release. D.M. has been serving his sentence since 4 November 2010. The sentence was to end on 4 August 2020. While serving the sentence, D.M. was disciplined thrice, last time in 2014. The council refused to allow conditional*

⁶⁵ The defective practice of a disciplinary procedure is, in its turn, analysed and assessed in the Public Defender's 2019 Special Report on the Practice of Disciplinary Proceedings against Prisoners in Georgia, available at <http://www.ombudsman.ge/res/docs/2019110509560299657.pdf>.

early release in 2018. Along with the nature of the crime, the council paid particular attention to the fact that while serving sentence, D.M. was disciplined three times.

Assessment: Thus, the council took the disciplinary offences committed by the offender into account. However, the council failed to consider the nature of the disciplinary offences, the circumstances surrounding it and the fact that three and a half year had passed since the last disciplinary offence.

Case no. 2. On 30 April 2018, local council I of Eastern Georgia denied the motion for conditional early release and, apart from the nature of the crime, paid particular attention to the fact that the offender had been disciplined before. The offender had been serving sentence since 13 January 2009. The sentence was to end on 28 February 2019. The council adopted a negative decision in 2018 and referred to a disciplinary offence. The disciplinary offence was committed in 2011. To be specific, the offender was “reprimanded”. Moreover, the offender benefited from an incentive in 2017 and received a commendation.

Assessment: This case shows that the council based its arguments for a negative decision mainly on the fact of the commission of a disciplinary offence. However, this offence had been committed six and a half years before the examination of the motion for conditional early release. Furthermore, the offence was not a serious one as the prisoner was only “reprimanded” and not placed in solitary confinement or punished with a similar severe penalty. However, the council failed to take into account the nature of this offence either. Furthermore, the council did not pay any attention to the positive behaviour of the prisoner in the later period and that in the recent past (2017) the offender was given an incentive by the administration and “commanded” for his behaviour.

Furthermore, it becomes even more unclear that the council refers to disciplinary offences as negative factors justifying negative decisions, considering that there have been numerous cases where, despite disciplinary offences featuring in case-files, the council ordered conditional early release of certain offenders. For instance:

Case no. 3. On 16 October 2018, local council III of Eastern Georgia upheld the motion of an offender convicted for attempted murder, committed in an aggravating circumstance. The offender had never benefited from incentives but was disciplined thrice while serving sentence.

Unfortunately, the disciplinary proceedings themselves are characterised by significant shortcomings. Imposing disciplinary penalties on prisoners is not based on neutral evidence; proportionality of sanctions is not argued; no mitigating or aggravating circumstances are taken into consideration; prisoners are not given the opportunity to present their position or adduce evidence. The Office of the Public Defender of Georgia studied the practice of conducting disciplinary proceedings against prisoners in the penitentiary system of Georgia, the relevant normative framework and highlighted identified practical and legislative shortcomings in the special report.⁶⁶

⁶⁶ Available at: <http://www.ombudsman.ge/res/docs/2019110509560299657.pdf>.

5. Profiling Offenders

Information given in the councils' decision that is based on the descriptions given by penitentiary establishments is exhaustive and in this regard, no major shortcomings have been identified. Apart from demographic data about offenders, information about the committed crime and other personal data, the local councils' decisions also give detailed information about the offenders' family conditions, their relationship with family members at the material time, future goals, risk factors and protective factors, and attitudes toward the committed crime, the use of disciplinary penalties/incentives while serving sentence and criminal record/previous convictions. The submitted information allows the assessment of an offender's personality.

Despite the above-mentioned, it should be mentioned that, in this regard, there have been different approaches taken by the local councils. For instance, the local councils in charge of female offenders and juvenile offenders and partly, local council II of Eastern Georgia provide extensive information in their decisions about an offenders' family and risks and needs associated with the social environment, which is corroborated with the corresponding conclusion of a social worker. The conclusion gives detailed information about the readiness of the family, the social environment towards the possible release of the offender, the attitude of the offender towards the crime committed by the offender, the needs of the persons dependent on the offender and the offender's possible sources of income after release. The decisions of other local councils do not contain such comprehensive information about families and social environment to which the offender will return in case of release.

Unfortunately, as of today, the legislative framework itself leaves room for such non-uniform practice. This issue will be discussed in detail in the chapter on legislative shortcomings. However, this does not prevent the councils to present and discuss comprehensively the information that they were given regarding the personal profile of an offender.

6. Substantial Inaccuracies

The decisions adopted by the local councils show major inaccuracies such as referring to those circumstances of negative connotation when rejecting motions for conditional early release that are not confirmed to exist according to the personal circumstances of offenders given in the same decisions. This shows the superfluous nature of the examination that is characteristic of this process and, in certain cases, as shown below, it can have a damaging effect for offenders.

Case no. 1. In one of the cases, the Special Penitentiary Service's local council III of Eastern Georgia, on 9 October 2018, without an oral hearing, examined an offender's motion for conditional early release. The descriptive part of this decision about the personal information of the offender contradicts the reasoning part of the same decision, where the council argues about the reasons underlying the negative outcome and, what is most important, as mentioned above, the mistake led to the negative outcome for the offender: this inaccurate circumstance is indicated as one of the grounds for adopting a negative decision.

Along with other personal information about the offender, it is written that, while serving sentence, he benefited from incentives once: under the director's order, he was given the right to an additional short visit. The offender did not violate the legal regime in the establishment; he is polite towards the administration and fellow inmates, etc. **Despite the fact that there is no information about disciplinary penalties imposed on the offender**, the council indicated in the reasoning part that "the council took into consideration the attitude of the offender towards the administration and other personal characteristics, family conditions and the fact that he has no criminal record, benefited from incentives once; however, the council emphasises that the offender has committed the crime against entrepreneurial and other economic activities that were manifested in producing and selling a large number of counterfeit excise stamps. The Council also took into account the fact that the offender had not participated in social activities when serving sentence and **had been disciplined**. Since the nature and the seriousness of the crime committed have a particularly negative effect for the purposes of conditional early release, the fact that the offender did not take part in social activities while serving sentence and was disciplined, the council at this stage considered that the negative circumstances accompanying these criteria have not been negated and outweighed by other positive criteria."

Case no. 2. The similar shortcoming is identified in a decision of 9 October 2018 adopted by the Special Penitentiary Service's local council III of Eastern Georgia. According to the decision, **no disciplinary penalty has been imposed** on the offender. However, the council, when giving reasons for rejecting the motion, maintains that "the council also took into account that the offender **had been disciplined** while serving sentence..."

Case no. 3. Major shortcomings were also identified in another negative decision of the Special Penitentiary Service's local council III of Eastern Georgia. It again refers to a previous conviction. In the respective column of the decision which is titled as "**crimes committed previously, criminal record** (an article of the Criminal Code of Georgia, the date and ground of release) (in case of such information)" it is mentioned that the offender **has no criminal record**. However, it is written in the reasoning part of the decision that, when deciding the issue, among other circumstances, "**the council took into account the fact that the offender had had previous convictions...**".

Case no. 4. Major shortcomings were also identified in the decision of the Special Penitentiary Service's local council I of Eastern Georgia, adopted on 22 November 2018. By this decision, the council rejected the motion of offender G.O., placed in penitentiary establishment no. 9, for commutation of unserved sentence with home arrest. According to the case-files,⁶⁷ the report of the session adopted by the risk-assessment team on 18 May 2018, **placement of G.O. in another penitentiary establishment where a large number of offenders serve sentences is not appropriate in terms of the security of G.O. and a higher risk was determined**. Based on this, under an order of the Director of the Penitentiary Department of the Ministry of Corrections and Probation of Georgia, penitentiary establishment no. 9 was determined as the place where G.O. would serve his sentence. When reasoning its negative decision, the local council pointed out among other circumstances that "**the council also took into account that the risk-assessment team had determined a higher risk**." However, the council did not discuss those circumstances based on

⁶⁷ The case-files have been supplied to the Public Defender's Office by Letter no. MOC 2 18 01105878 of the Legal Department of the Special Penitentiary Service, dated 17 December 2018.

which G.O. was assessed to pose a higher risk. The council considered this to be a factor of negative connotation.

Assessment: The shortcoming mentioned above was more noticeable in case no. 4 as the council failed to examine the important circumstances of the offender in a comprehensive manner. The council did not pay adequate attention to the arguments underlining the offender's risk assessment, which in fact excluded the danger posed by the offender himself and therefore failed to analyse this circumstance accordingly. This would have been possible had the council examined adequately the documents before it.

***Case no. 5.** This case merits a separate discussion. The Special Penitentiary Service's local council of Western Georgia based its negative decision on, among other factors, **the conviction for his act which at the time of the examination of the motion was decriminalised and did not constitute a crime.** In particular, an offender is "tried under Article 120, Article 238¹.1, Article 238¹.2, and Article 273¹.1 of the Criminal Code of Georgia, and as a result of the merger of sentences was sentenced to imprisonment for 1 year and six months. Under Article 67 of the Criminal Code of Georgia, conditional sentence of 4 years of imprisonment determined by judgment of the Tbilisi City Court of 18 May 2017, under Article 180.b) and Article 273 and fine in the amount of GEL 1000 (added, in turn, by the punishment determined by judgment of 11 December 2015 under Article 273 of the Criminal Code of Georgia) were revoked..."*

Assessment: According to the gist of the above decision, the offender that was previously convicted for unlawful possession of drugs, as a result of a drug test carried out on 23 October 2016, it was established that he consumed Tetrahydrocannabinol (cannabis) without a medical prescription.

Judgment no. 1/13/732 of the Constitutional Court of Georgia of 30 November 2017 declared, in terms of Article 16 of the Constitution of Georgia, unconstitutional the normative connotation of the words of Article 273 "illegal consumption without medical prescription", which implied criminal responsibility for the consumption of cannabis, a narcotic drug defined in row 92 of Annex no. 2 of the Law of Georgia on Drugs, Psychotropic Substances and Precursors, and Drug Assistance. The unconstitutional provision was declared null and void from the moment of posting it on the website of the Constitutional Court of Georgia. The council's decision concerned was adopted on 13 November 2018. It is evident that, at the material time, the consumption of cannabis without medical prescription did not constitute a crime anymore. Therefore, the council must not have relied on this act when rejecting the motion for conditional early release. The council has the duty to assess the circumstances under which the crime was committed, if there are any additional aggravating or mitigating circumstances to consider, when deciding about conditional early release of an offender.

***Case no. 6.** The Office of the Public Defender of Georgia, based on an individual application, studied the case of another offender, D.M. His motion for conditional early release was rejected by local council III of Eastern Georgia by its decision no. 03/18-0506 of 30 March 2018. This decision is punctuated with both technical and significant substantive errors: 1. In accordance with the court's judgment, a fine was not imposed on the offender; whereas the council's decision states that fine was imposed on the offender (in conjunction with imprisonment); 2. The court's judgment against D.M. was adopted on 13 July 2011 whereas it is stated in the council's decision that it was adopted on 13 June 2011; 3. In accordance with the court's judgment, D.M. sneaked upon G.G., who was sleeping, and inflicted multiple injuries with a stick to G.G.'s head and arm. After G.G. tried to escape, D.M. chased G.G. and inflicted multiple knife wounds on the left buttock and around the waist. G.G. ran to the father – I.G.'s room for protection.*

I.G. tried to defend G.G. from D.M. during which I.G. sustained minor damage to health as a result of unintentional swinging of knife meant for I.G. However, the council's decision states that D.M. sneaked up to G.G. and inflicted multiple injuries with a stick to G.G.'s head and arm and wounded G.G. with a knife.

The above shortcomings clearly show that, in a number of cases, the local councils do not study/examine offenders' case-files in a comprehensive manner. It should also be pointed out that, in the cases above, the errors made by the councils are of essential nature as the councils by relying on the negative factors (disciplinary penalty, criminal record, high risk, decriminalised act in a negative context) rejected the motions and thereby worsened the offenders' legal status. Such errors, naturally, will cause justified indignation of offenders and serve as the basis for a continuing dispute in higher instances.

7. Practice of Holding an Oral Hearing

The examination of cases made it obvious that the council does not provide justification for the decision about holding an oral hearing as the result of exercising its discretionary power.

Under the legislation, if the council deems it necessary to obtain additional information from an offender for reaching a decision about his/her conditional early release, the council will hold an oral hearing.⁶⁸

Despite this, the above decisions are not reasoned and it remains unclear as to which issues the council would like to receive additional information on from an offender. The council's field of interest is to create an opinion about the personal characteristics of an offender, clarify his/her attitude towards the committed crime, receive information about his/her plans and objectives, etc.

For instance:

***Case no. 1.** On 30 May 2018, local council II of Eastern Georgia examined the case of an offender,⁶⁹ who was given multiple sentences: unlawful possession of firearms, desertion and intentional minor damage to health; while serving sentence, did not benefit from incentives; was disciplined once; has one previous conviction.*

The council examined the case without an oral hearing and adopted a decision to examine it at an oral hearing.

The council examined this case on 8 June 2018 at an oral hearing⁷⁰ and decided in favour of the offender's conditional early release.

***Case no. 2.** On 30 May 2018, local council II of Eastern Georgia examined an offender's case⁷¹ without an oral hearing. The offender was convicted for theft and had a past conviction for theft for which the court*

⁶⁸ The Imprisonment Code, Article 42.5.

⁶⁹ The Second Local Council of Eastern Georgia, Decision no. 02/18-0825 of 30 May 2018.

⁷⁰ The Second Local Council of Eastern Georgia, Decision no. 02/18/ᄁ-043 of 8 June 2018.

⁷¹ The Second Local Council of Eastern Georgia, Decision no. 02/18-0876 of 30 May 2018.

imposed a conditional sentence. The offender committed another theft during that period and eventually had to serve multiple sentences for the previous and present convictions. The offender did not participate in social activities; was not disciplined and did not benefit from incentives.

The council examined the case without an oral hearing and adopted a decision to examine it at an oral hearing.

This case was examined at an oral hearing on 8 June 2018⁷² and decided in favour of the offender's conditional early release.

Assessment: When examining the motion for holding an oral hearing, there is no information as to why the council decided in favour of an oral hearing. The decision does not refer to those issues which needed obtaining additional information directly from the offender.

It remains obscure as to what motivation could be there behind the decisions about holding an oral hearing when a council examines motions without an oral hearing. If an oral hearing is held, the council actually receives additional information directly from the offender. This information with appropriate arguments should be visible in decisions about holding an oral hearing.

8. Impact of Oral Hearing on Case Outcomes

It was also important for the Office of the Public Defender of Georgia to clarify the influence of holding an oral hearing on the outcome of the examination of a motion. To this end, we selected the cases with the most similar circumstances.

The analysis of the cases shows that conditional early release is differently decided depending on whether the motion was examined with or without an oral hearing. Certainly, an oral hearing mostly leads to favourable outcomes for offenders.

To further illustrate this, two virtually identical cases are given below:

***Case no. 1.** On 9 October 2018, local council III of Eastern Georgia, without an oral hearing examined the case of an offender convicted for theft amounting to 80 GEL. The offender was sentenced to imprisonment for one year. His sentence commenced on 9 March 2018 and was to end on 9 March 2019 (remaining 5 months were to be served). The offender was serving sentence at the semi-open prison facility no. 15. The offender reimbursed the damage to the victim of the crime. He owned up to his guilt and regrets the crime committed by him. While serving the sentence, he did not take part in social activities; was not disciplined or have not received incentives. He was polite towards the administration and fellow inmates. According to the sentence – criminal records were purged.*

The council rejected this offender's motion with a negative decision and emphasised the serious nature of the crime as well as the fact that the offender had not participated in social activities.

⁷² The Second Local Council of Eastern Georgia, Decision no. 02/18/Z-046 of 8 June 2018.

Case no. 2. On 16 October 2018, local council III of Eastern Georgia, at an oral hearing, examined the case of an offender convicted on two counts of theft. The victims suffered damage in the amount of GEL 8,835 and 1,550 respectively. The offender was sentenced to five years of imprisonment, out of which 3 years were to be served at a penitentiary establishment and a suspended sentence of two years. The sentence commenced on 10 March 2019 and was to end on 10 March 2020 (approximately 5 months were to be served). The offender was serving the sentence at the semi-open prison facility no. 15. The offender reimbursed the damages to the victims of the crime. He owned up to his guilt. While serving sentence, he did not take part in social activities; was not disciplined or did not receive incentives. He was polite towards the administration and fellow inmates. According to the sentence – criminal records were not purged (He was pardoned during previous conviction and, due to statutory limitation, criminal records had been expunged, hence, he did not have a criminal record). The council adopted a positive decision regarding this offender's motion. No reasoning was given in the decision.

Assessment: The above two cases are virtually identical. Moreover, factual circumstances in case no. 2 are relatively a little more serious considering the amount of damage inflicted, the number of crimes committed (two counts) and the length of imprisonment. Despite these differences, the council adopted a positive decision in case no. 2 and ruled in favour of conditional early release unlike in case no. 1. In the first case, the council pointed out the seriousness and nature of the crime as well as the fact that the offender had not participated in social activities. It is noteworthy that the council have not paid any attention to these very circumstances in case no. 2.

Furthermore, the council had not established if there had been any social activities offered to particular offenders in the respective establishment and if there were any objective circumstances to be taken into account in this regard.

Case no. 2 was examined at an oral hearing which, as it seems, had a substantial influence on the predisposition of the council members and they adopted a positive decision unlike in case no. 1 which was examined without an oral hearing.

9. Outcomes of the Monitoring of Oral Hearings

As already mentioned, the representatives of the Public Defender attended the oral hearings of the local councils (all six of them), where motions for conditional early release and commutation of unserved sentence with a lesser penalty were examined. The examination revealed both positive and negative trends. As a result of the monitoring of the oral hearings, the most comprehensive oral hearing was conducted by the Special Penitentiary Service's local council in charge of juvenile offenders.

It should be positively mentioned that the council paid considerable attention to the study of the resocialisation of a juvenile offender. In particular, before interviewing the juvenile offender G.O., the members of the local council interviewed a social worker and a psychologist from whom they obtained significant information about the offender's attitude towards the crime committed as well as family members. The interview itself with the juvenile was conducted in a positive environment; the council members expressed their benevolence towards the offender, which has crucial importance for a juvenile at this stage of mental development. The questions posed by the council members concerned

the rehabilitation and educational programmes that the juvenile offender underwent in the penitentiary establishment, the knowledge obtained, the readiness to cooperate with social workers in case of release, plans, goals and interests. The members of the council posed open questions, which encouraged the offender to talk openly and give exhaustive answers to the raised issues. Furthermore, the council's members provided the juvenile with detailed information about the duties involved in case of release; they asked questions to the lawyer representing the juvenile offender and heard the defence lawyer's opinion about the conditional early release of the offender.

Similar positive trends were identified during the oral hearings of female offenders' motions. There was an exception where the council members did not interview a social worker and a psychologist. It should be mentioned, however, that according to the council's decisions, the council had information about the offenders' families. In addition, psychological descriptions of the offenders were also provided.

Against the background of the reviewed trends, the oral hearing sessions held by the Special Penitentiary Service's first local council of Eastern Georgia was less informative and more formalistic. The questions posed were mostly about factual circumstances surrounding the crime that was committed. Out of the council's members, only the president of the council was active, whereas some of the members were uninvolved in any interviews with offenders. It should be positively mentioned regarding this council's oral hearings that, before the start of the interviews, offenders were familiarised about the descriptions submitted by their respective penitentiary establishments to the council, after which the offenders were given the opportunity to comment on possible inaccuracies in their descriptions.

As regards the Special Penitentiary Service's second and third local councils of Eastern Georgia and the local council of Western Georgia, their oral hearing sessions were conducted without major shortcomings and were mostly satisfactory. Offenders could present their position and adduce arguments. The council's members' attitude towards them was, as a rule, neutral. The council concerned itself not only with the circumstances around the crime but also posed questions about the offender's personality. In certain cases, the local council of Western Georgia was more interested in the circumstances surrounding the crime and paid less attention to the personality of the offender.

It should be emphasised that it was impossible, as a result of observing the oral hearings, to identify as to on what issues the council wished to have more information from offenders and what information was lacking during the examination of motions without oral hearings due to which it was decided to hold an oral hearing. Questions were not prepared in advance to assess a particular aspect within respective criteria.

As a summary of this section of the report, it can be concluded oral hearings of motions filed by juvenile and female offenders were far more comprehensive compared to the hearings of adult male offenders' cases. However, even in the latter cases, oral hearings gave more possibilities to offenders to talk about

themselves, about their journey throughout serving sentence and their plans compared to those offenders whose cases were examined without holding oral hearings and therefore were unable at all to present their position before the council.

10. Practice of Commuting Sentence to a lesser Penalty

The outcomes of the examination of cases did not lead to any tangible and specific approach that would differentiate the practice of commutation of unserved sentence with a lesser penalty from that of conditional early release, except for the fact that commutation of unserved sentence with a lesser penalty, in accordance with statutory requirements,⁷³ is always examined at an oral hearing. It is impossible to systematise a particular approach as a result of the study of the cases examined by the local councils and to discuss what leads to positive or negative decisions.

Decisions about commutation of unserved sentence with a lesser penalty, after descriptive sections, always contain summary as to the application of the criteria the council adopted in a negative decision. However, there is not always a clear cross-referencing of positive and negative aspects or reasoning in this regard.

The same does not apply to positive decisions. In these cases, decisions only contain descriptive sections and there is no reasoning section at all.

There are several cases presented below to illustrate the non-uniform practice of the councils regarding the commutation of unserved sentence with a lesser penalty:

***Case no. 1.** On 27 December 2018, local council II of Western Georgia rejected offender T.S.'s motion for commutation of unserved sentence with community work. The offender had not been disciplined while serving the sentence. He complied with regime requirements and other statutory duties imposed on him. He was not aggressive or prone to conflicts. He maintained a normal relationship with the administration and fellow inmates. He did not have a previous criminal record. However, he committed an attempted murder, which turned out to be the decisive factor for the local council, which observed that a violent crime was committed and it posed a high risk for public safety and, therefore, the offender's motion for commutation of unserved sentence with a lesser penalty was denied.*

Assessment: The violent nature of the crime has not prevented the council from adopting a positive decision in another case. The below case is presented to highlight the uneven practice:

***Case no. 2.** On 31 December 2018, local council I of Western Georgia upheld offender D.I.'s motion for commutation of unserved sentence with home arrest. D.I. had been a police officer of Facilities Protection Department of the Ministry of Internal Affairs of Georgia. Due to an altercation, he intended to kill a citizen and, in that attempt, he wounded him and fled the crime scene. The citizen died in a hospital as a result of the injuries. Despite the fact that D.I. was convicted for an especially grave crime and did not pay the fine imposed as an additional punishment. Though the crime, in this case, was of a*

⁷³ The Imprisonment Code, Article 43.5 and the Minister's Order no. 320, Article 7.7.

violent nature, this factor did not prevent the council, unlike in the previous case, from upholding the offender's motion.

For comparison, two more cases are presented below. Both cases concerned the examination of motions filed by offenders convicted for robbery, out of which one was upheld and the other was rejected:

Case no. 3. *On 28 December 2018, local council III of Eastern Georgia upheld the motion of offender M.Q. for commutation of unserved sentence with home arrest. M.Q. was convicted for deliberate serious damage to health and robbery. The robbery was committed by a group.*

In another case, the fact that robbery had been committed by a group was practically the decisive factor for not upholding an offender's motion for commutation of unserved sentence with home arrest; namely:

Case no. 4. *On 28 December 2018, local council III of Eastern Georgia refused to uphold offender G.M.'s motion for home arrest. This person was convicted of a robbery committed by a group. While serving his sentence, he was disciplined once (telephone calls were restricted).*

Assessment: Case no. 4 differs from case no. 3 in that that G.M., unlike M.Q., was disciplined once which can be considered a negative characteristic of his personality. However, at the same time, he also had positive characteristics in the sense that he, unlike M.Q., had not been convicted for the additional crime of inflicting deliberate serious harm to health. In case no. 4 the council based its arguments on the violent nature of the crime committed by the offender and one disciplinary offence, whereas in case no. 3 the fact that the offender had committed multiple crimes was not assessed.

Judicial Practice

In order to study judicial practice in 2018-2019, the Office of the Public Defender of Georgia, in total, studied 95 court judgments, out of which:

- 24 motions were deemed defective and not examined on their merits;
- 27 motions were rejected and the local councils' decisions were upheld;
- In 44 cases, the local councils' decisions were annulled; and
- In 36 cases out of 44 cases, the local councils' decisions were annulled and returned for consideration ab novo; in 8 cases, the court itself resolved the issue by annulling the local councils' decisions and ordering them conditional early release of offenders.

The present chapter discusses 71 cases where the court examined the merits of motions and adopted different judgments. There are discrepancies among courts' judgments when assessing the local councils' discretionary power, in particular:

- In some cases, the court rules that the acts adopted within the local councils' discretionary powers fail to comply with the objective set for the councils, i.e., to facilitate offenders' resocialisation, due to which the court itself discusses appropriateness of conditional early release of an offender and rules in favour of such release; and

- In some cases, the court states that it is beyond its competence to assess the appropriateness of the decisions adopted by the local councils within their discretionary powers.

First, the judicial practice is discussed below, where the court annuls the councils' negative decisions and adopts a judgment in accordance with Article 27¹.1.c) of the Administrative Procedure Code of Georgia. The Office of the Public Defender of Georgia studied 8 such judgments in total. In **these judgments, the court opined that an administrative body's discretionary power is the legally binding liberty of an administrative body and, provided there are circumstances confirming an offender's resocialisation, the court finds it appropriate to rule in favour of conditional early release of an offender.**

*Case no. 1. On 20 December 2018, the Tbilisi City Court adopted a decision⁷⁴ by which it fully upheld the motion of offender V.Sh.. The Court annulled decision no. 03/18-1103 of local council III of Eastern Georgia of 4 July 2018 and instructed it to order a new individual administrative legal act on conditional early release of V.Sh.. The court opined that “the **discretionary power of an administrative body is the legally binding liberty of an administrative body**; this is such an authority which, on the one hand, is not restricted by specific statutory regulation, however, it is **delimited by the objective and scope of the statutory provision**. Furthermore, considering that full judicial review of decisions adopted through the exercise of a discretionary power would result in the ineffectiveness of an administrative body, the scope of judicial review is limited to the scrutiny of those circumstances whether there had been a mistake during the exercise of this power and if there was otherwise any likelihood of adopting another decision.” The court also observed that “**when discharging its discretionary power, the measures determined by an administrative legal act must not result in unjustified restriction of a person's legal rights and interests**. This principle, in the court's opinion, implies the duty to provide justification for a decision adopted through the exercise of discretionary power, since in this way it will allow clarifying whether the decision adopted was erroneous.” The court observes that “in accordance with the General Administrative Code of Georgia, the rationale behind the statutory duty to provide justification for an individual administrative legal act is to restrict legally an administrative body and contain it within the boundaries of self-control since decision-making must be based on specific circumstances and facts, assessment of which leads the administrative body to a certain decision. Furthermore, justification of a decision is necessary for its recipient to allow the latter to evaluate the decision's lawfulness and ascertain its legality and in case of the impression that the rights have been breached, the applicant must be able to avail him/herself of the right to appeal; when doing so, the applicant must be able to know what arguments to use to challenge the decision, which is not possible when there is no justification for the decision. Furthermore, justification of an act makes it easier for the bodies in charge to revise it and scrutinise the legality and appropriateness of the decision.” The court found that the challenged act did not contain sufficient reasoning underlining the administrative body's negative decision about the issue at stake. The court stated the following: “when examining the issue, the council took into account the offender's attitude towards the penitentiary establishment's administration and other personal characteristics, family conditions and the fact that the offender had taken part in social activities and had no criminal record. However, the council emphasised the offender's past conviction and the fact that he had committed a serious crime,⁷⁵ resulting in deprivation of life. The court maintains that when examining the issue at stake, the administrative body had to exercise the vested powers diligently and refer to all factual circumstances in the reasoning part of the individual administrative legal act that was essential for adopting*

⁷⁴ Case no. 3/5188-18.

⁷⁵ The Criminal Code of Georgia, Article 276.5.

a negative decision.” The court referred to the local council’s statute and opined that “it is a local council’s objective to facilitate an offender’s resocialisation. The court maintains that the council, when examining a motion for conditional early release, must pay attention to whether the objective of the punishment has been attained...the punishment aims at restoring justice, preventing reoffending and achieving an offender’s resocialisation. The Court considers that resocialisation implies the purposeful process aimed at transforming an offender into a law-abiding citizen, resocialisation of a desocialised individual, and preparing him/her for the future life at large. Furthermore, resocialisation of an offender is linked with the objectives of preventing reoffending, i.e., if an offender is resocialised, it means that the risk of repeated crime is reduced as well. In terms of the attainment of the objectives of the punishment, the court deems it necessary that V.Sh. has been characterised positively while serving the sentence in the penitentiary establishment; he respects the establishment’s statute, its daily schedule and legal regime and complies with the legal orders of the administration. The offender expresses adequate reaction when discussing the crime committed and the sense of responsibility is noticeable. The offender is not prone to conflicts or aggression. V.Sh. expresses readiness towards self-development and plans to continue working after release. The offender owns up to the crime committed not only in a legal sense but also repents it and is genuinely remorseful. While serving the sentence, the offender has taken part in social activities. Stemming from the above-mentioned, the court deems that the challenged individual administrative legal act which rejected the applicant’s motion for conditional early release was issued by neglecting its duty to strike a balance between facilitating resocialisation and maintaining public safety on which the Imprisonment Code is based. This is the ground for upholding the application.”

Assessment: The fact that the main reasoning of the court is given in full in this report is aimed at making it clear for the reader about the court’s position regarding what it considers to be a breach of the scope of a local council’s discretionary powers. In particular, according to the court’s position, the local council must take into account all the criteria equally and be primarily guided in the decision-making process by the degree of resocialisation.

Since the other 7 decisions have a similar spirit, there is no need to discuss them in detail.

Second, one of those cases, where the court ruled in accordance with Article 27¹.1.b) of the Administrative Procedure Code of Georgia, is discussed below. In this case, the court annulled the local council’s decision and ordered it to examine all the circumstances and adopt a new decision. The Office of the Public Defender of Georgia studied 36 such judgments. In these cases, local councils were given a leeway to adopt negative decisions, albeit, only after adducing additional arguments. **In these cases, the court did not consider that the councils’ decisions were substantiated and ordered them to strike a fair balance between facilitating an offender’s resocialisation and public safety.**

Case no. 2. Offender U.T. is convicted under Article 178 of the Criminal Code of Georgia; benefited from incentives; attends social activities; has a previous conviction; the local council emphasised the seriousness of the crime and previous conviction and rejected the motion for conditional early release. The court upheld the offender’s motion partially and ordered the council to examine all the circumstances and adopt a new decision. The court reasoned that the council’s task is to contribute to prisoners’ resocialisation and must strike a fair balance between the objectives of facilitating resocialisation and public safety.⁷⁶

⁷⁶ Case no. 3/512-19, 2019.

Assessment: *Despite the fact that the court doubted the appropriateness of the continued isolation of the offender, due to the fact that the offender was characterised positively while serving the sentence, the court did not decide on its own about the offender's conditional early release and instructed the council to strike a fair balance.*

In the second place, one of the cases is presented below where a court ruled in accordance with Article 27¹.1.a) of the Administrative Procedure Code of Georgia on upholding a council's decision. The Office of the Public Defender of Georgia studied 27 decisions of this kind. **In such cases, the court observes that the assessment of an offender's conditional early release does not fall within its competence. In such cases, the judicial review is limited to formal legality and the councils' negative decisions are upheld.**

Case no. 3. Offender A.P. was denied conditional early release. The offender was convicted under Article 260 of the Criminal Code of Georgia. The offender participated in the construction of a church; was not disciplined; benefited from incentives; is not prone to conflicts; has previous convictions; due to previous convictions and the seriousness of the committed crime, the offender was denied conditional early release. The court rejected the offender's motion and upheld the local council's decision by maintaining that it was not competent to assess the appropriateness of an offender's conditional early release.⁷⁷

Assessment: In this case, the court did not take into account the offender's behaviour while serving the sentence and observed that assessment of the quality of resocialisation was beyond its competence.

Furthermore, below is another case, which similar to case no. 1 can be used as a good example, where a court, this time an appellate court, sets a high standard for the assessment of a council's decision and deems it necessary to analyse the degree of attaining the objectives of the punishment:

Case no. 4. The Office of the Public Defender of Georgia was supplied with the decisions of both first- and appellate instance courts concerning offender K.Ts. These decisions contained the most significant arguments which are given below to illustrate the issue: the offender was convicted under Article 236 of the Criminal Code and was denied conditional early release. The council had emphasised the nature of the crime, previous criminal record and the absence of any participation in social activities. The court deemed that these were not sufficient arguments for the adoption of negative decisions. The council's decision was considered unreasoned as it failed to assess whether the punishment's goal, i.e., resocialisation had been attained. The court returned the case to the council and ordered it to examine all circumstances and to adopt a new decision. This decision was appealed before the Court of Appeals and the latter upheld the decision of the first-instance court based on the following reasoning: out of the criteria determined by the statute, the council only applied two criteria – the nature of the crime and the previous conviction. The remaining three criteria have not been applied. The council only stated that when deciding the issue at stake it took into account the relationship of the offender with the administration and other personal characteristics, family conditions and his behaviour while serving the sentence. However, the council failed to provide arguments as to which circumstances were looked into and how these criteria were applied. These criteria have equal significance for the decision... The council was obliged to refer to all those factual circumstances in the reasoning part of the decision which were key to adopting a negative decision. This would allow the assessment of whether the objectives of the punishment – prevention of reoffending and resocialisation – were attained with regard to K.Ts. The council particularly stresses that the applicant had not participated in social activities. However, there

⁷⁷ Case no. 3/806-18.

*are no explanations as to what the reason for this failure was. This factor without any further clarifications served as the ground for adopting the negative decision.*⁷⁸

The outcome of the analysis of the submitted judgment and other cases, the merits of which have been examined by courts and studied by the Office of the Public Defender of Georgia clearly, shows that the respective judicial practice is non-uniform and, to a certain degree, obscure:

- In those 27 cases, where a judgment was based on Article 27¹.1.a) of the Administrative Procedure Code of Georgia, the court sees its role in scrutinising the formal legality of the council's decision and does not deem itself authorised to examine the merits of conditional early release; and
- In the other 44 cases (36 decisions were annulled and returned for the examination *ab novo*; 8 decisions were annulled and conditional early release was ordered in express terms), where the councils' decisions were annulled by the court, there is no clear explanation as to in which circumstances the court deems itself authorised to decide about conditional early release.

In reality, adding Article 27¹.1.c) to the Administrative Procedure Code implies that indeed the court is authorised to assess whether the appropriateness of conditional early release and commutation of unserved sentence with a lesser penalty. This regulation vests the court with the authority to assess and establish the quality of resocialisation and, in case of statutory grounds, to adopt a positive decision in favour of a prisoner. As regards Article 27¹.1.b), this provision should be applied by the court in those cases where a council's decision simply contains insufficient information, argumentation and reasoning, and it is impossible to establish the quality of resocialisation from that decision. As regards Article 27¹.1.a), this provision implies that the court should assess both substantive and formal components of a council's decisions and, if it deems that the decision is reasoned and complies with statutory requirements (formal component) and at the same time the quality of an offender's resocialisation is such that it endangers public safety (substantive component), the court should uphold the council's decision.

Legislative Shortcomings

The analysis of the legislation led to the identification of several major shortcomings that prevent this procedure from functioning effectively, and this conclusion has been proved in practice as well. Accordingly, the present chapter will be focused on two key issues, the solution of which should be dealt as a priority.

⁷⁸ Case no. 3/339-18.

1. Assessment Criteria

For years, the incomprehensive list of criteria for assessing an offender significantly affected the effectiveness of the local councils' work negatively. The councils operate based on five criteria only:⁷⁹

- Nature of the crime;
- The offender's behaviour during serving sentence;
- Previous criminal incidents for which the offender was responsible in the past, criminal record;
- Family circumstances; and
- The offender's personality;

The analysis of the aspects making up these criteria leaves an impression that, when examining the cases of male offenders⁸⁰ especially, the local councils take into account only the nature and number of crimes (present and previous) committed as well as their behaviour during serving sentence. The council does not pay attention to the personal circumstances of the prisoner before his conviction which could have triggered the commission of the crime; his education, working experience, motivation to make a change, his plans, goals, or wishes.

While it is determined within the criteria that the council must assess an offender's personality, the scope of the application of this assessment is also determined. Based on verbatim interpretation, this leaves a narrow leeway for assessing the personality of an offender.

Namely, under the normative act,⁸¹ when assessing the personality of an offender, a local council must pay attention to his/her attitude towards the committed crime, the establishment's personnel and other offenders; information about the offender's participation in social activities during serving the sentence. Whether the offender requires special supervision on the part of the establishment's management and other important issues relevant to the assessment of the offender's personality must be also taken into account.

Against this background, most attention is paid to the description of an offender's personality in the period of serving sentence and there is no emphasis on the period before serving the sentence or future possibilities.

It is also noteworthy that Order no. 82 of the Minister of Corrections and Probation of Georgia of 10 May 2011 Approving the Procedure for Maintaining Registries and Personal Records of Accused/Convicted Persons, Annex no. 18⁸² has also approved a form for the description of an offender to be submitted to a local council. This description form contains more comprehensive information

⁷⁹ The Minister's Order no. 320, Article 13.1.

⁸⁰ The Minister's Order no. 320 governs additionally the procedure for the examination of cases of female and juvenile offenders and envisages their specific needs. See Article 21, also Article 4.9; Article 16.6; and Article 17.7 of order no. 320.

⁸¹ The Minister's Order no. 320, Article 13.1.e).

⁸² See Order no. 82 of the Minister of Corrections and Probation of Georgia of 10 May 2011 Approving the Procedure for Maintaining Registries and Personal Records of Accused/Convicted Persons, Article 12.12¹.

that the criteria set out to be applied by the councils during the examination of motions. However, it appears as if the councils are not obliged to take all circumstances into account within the scope of statutory criteria. This ultimately encourages the local councils to give priority repeatedly to the crime committed, its nature and frequency.

2. Oral Hearing

It was already pointed out that the councils examine an application with or without an oral hearing. If a motion concerns the commutation of unserved sentence with a lesser penalty, it is always examined at an oral hearing. However, if a motion concerns conditional early release, it can be with or without an oral hearing.

Under the regulation of the Imprisonment Code, a council will conduct an oral hearing if it considers that it is necessary to obtain additional information from an offender to decide about exemption from serving the sentence.⁸³

Despite this wording, the legislation does not determine those preconditions as to when and in which circumstances it should be necessary to obtain additional information from an offender. In this regard, in order to prevent a council from adopting a partial or arbitrary decision and in order to ensure that all prisoners should have the possibility to appear before the council on a minimum number of occasions and defend their rights in person, the criteria should be determined in clear terms.

The regulations in force virtually allow that a concrete offender throughout the entire period of serving sentence will never be able to appear before a local council and present his/her arguments. In fact, for years,⁸⁴ this process can be conducted with the offender him/herself remaining a nominal actor so that his/her description by a penitentiary establishment is prepared without his/her active participation and the council adopts a decision either granting or refusing conditional early release without his/her involvement.

It is important that the council members should receive information directly from the source, viz., the offender, and form an impression accordingly about him/her. The legislation should determine the minimum number and frequency of oral hearings. At least, there should be an initial introductory oral hearing, where the date of the examination of the case is set. Furthermore, there should be the statutory duty of holding oral hearings within certain reasonable intervals. It is also possible to introduce such a regulation that there should be at least one oral hearing held when several negative decisions have been adopted. Similarly, it is possible to think of some “bonus” system which allows those persons to appear before a council.

⁸³ The Imprisonment Code, Article 42.5.

⁸⁴ The council examines cases within statutory periods, in accordance with a procedure established by law. The Minister's Order no. 320, Article 21.1 and Article 23.

Conclusion

Stemming from the above-mentioned, it is evident that there are significant shortcomings at the stage of the examination of conditional early release and commutation of unserved sentence with a lesser penalty by the local councils as well as at the judicial stage of the proceedings where decisions of the local councils are reviewed. In conclusion, we present the summarised information about those practical problems that can be redeemed without legislative amendments or other changes:

- The local councils should provide reasons for their decisions, refer to concrete reasoning as to why they gave priority to certain criteria in a particular case;
- The local councils should provide reasons for both negative and positive decisions;
- The practice for conditional early release and commutation of unserved sentence with a lesser penalty should be uniform in cases with similar factual circumstances;
- Negative factors, among others, such as incidents of disciplinary violations should be examined and assessed in a comprehensive manner; in particular, the following issues should be scrutinised: statutory limitation of a disciplinary violation, its impact on the quality of resocialisation, its seriousness and the dynamics of improvement of an offender's behaviour;
- It should be examined whether an offender can actually undergo rehabilitation/resocialisation programmes during serving sentence. Whether an offender was offered to participate in such programmes in a penitentiary establishment (whether a particular establishment afforded such programmes and it was possible to participate in them) and if an offender refused to participate in them should be examined;
- Each case should be closely scrutinised to make sure even technical mistakes do not substantially affect the decision-making process and do not become a precondition for adopting a decision against an offender; and
- To establish a uniform judicial practice that would give identical interpretation to the scope of the discretionary power given to the local councils and the procedure of judicial review of the decisions adopted through the exercise of this power.

Recommendations

To the Parliament of Georgia:

- To amend the Imprisonment Code to the effect of determining the mandatory criteria for holding an oral hearing by a local council; at the same time, maintain the council's authority to hold oral hearings as an additional measure, if needed; and
- To determine a court's duty to exempt a prisoner from paying the court fee in case the latter submits a bank statement about his/her financial status during imprisonment confirming the fact that the offender's average monthly income was less than GEL 100 for the last half a year.

To the Minister of Justice:

- To amend Order no. 320 of the Minister of Justice of Georgia of 7 August 2018 Approving the Parole Procedure and Adopting Decisions by Local Councils of the Special Penitentiary Service – a Public Subordinate Agency within the System of the Ministry of Justice of Georgia to the effect of adding such elements to the predetermined criteria that would be related to an offender's future plans, perspectives, prospects and other issues.