

PUBLIC DEFENDER OF GEORGIA

HUMAN RIGHTS SITUATION IN CLOSED INSTITUTIONS

NATIONAL PREVENTIVE
MECHANISM

2016



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

HUMAN RIGHTS SITUATION IN CLOSED INSTITUTIONS

(NATIONAL PREVENTIVE MECHANISM)

2016



www.ombudsman.ge



ევროკავშირი
საქართველოსთვის
The European Union for Georgia



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

This publication has been produced with the assistance of the European Union.
The contents of this publication are the sole responsibility of the author and can in no way be taken to reflect the views of the European Union.

CONTENTS

1. THE MANDATE OF THE NATIONAL PREVENTIVE MECHANISM.....	5
2. REVIEW OF ACTIVITIES CARRIED OUT BY THE NATIONAL PREVENTIVE MECHANISM	6
2.1. PREVENTIVE VISITS.....	6
2.2. COMMUNICATION WITH STAKEHOLDERS	7
2.3. WORKING METHODOLOGY AND TRAINING OF THE NPM STAFF	11
3. SITUATION IN THE PENITENTIARY ESTABLISHMENTS	13
3.1. GENERAL OVERVIEW	13
3.2. SITUATION IN PENITENTIARY ESTABLISHMENTS IN TERMS OF PREVENTION OF TORTURE AND ILL-TREATMENT	23
3.3. ORDER AND SECURITY IN THE ESTABLISHMENTS OF DETENTION AND DEPRIVATION OF LIBERTY	31
3.4. PERSONNEL: WORKING CONDITIONS, TRAINING AND ACCOUNTABILITY	60
3.5. PRISON CONDITIONS.....	67
3.6. REGIME, DISCIPLINARY RESPONSIBILITY AND INCENTIVES.....	95
3.7. CONTACTS WITH THE OUTSIDE WORLD	107
3.8. THE MECHANISM FOR CONSIDERING APPLICATIONS/ COMPLAINTS IN THE PENITENTIARY SYSTEM OF GEORGIA	119
3.9. PENITENTIARY HEALTH-CARE SYSTEM.....	125
3.10. SPECIAL CATEGORIES.....	157
4. THE SITUATION IN AGENCIES UNDER THE MINISTRY OF INTERNAL AFFAIRS.....	181
4.1. INTRODUCTION.....	181
4.2. GENERAL OVERVIEW	182
4.3. SITUATION IN TERMS OF PREVENTION OF TORTURE AND OTHER ILL-TREATMENT.....	185

4.4. THE KEY SAFEGUARDS AGAINST ILL-TREATMENT.....	205
4.5. PROCEDURAL SAFEGUARDS	220
4.6. WORKING CONDITIONS AND TRAINING OF EMPLOYEES.....	237
4.7. SITUATION IN TEMPORARY DETENTION ISOLATORS.....	241
5. MONITORING OF THE JOINT RETURN OPERATIONS	250
6. MONITORING OF THE STATE CARE INSTITUTIONS FOR PERSONS WITH DISABILITIES	253

1. THE MANDATE OF THE NATIONAL PREVENTIVE MECHANISM

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter also referred as *OPCAT*) is an international human rights treaty designed to strengthen protection of people deprived of their liberty. Its adoption reflected a consensus among the international community that people deprived of their liberty are particularly vulnerable to ill-treatment and efforts to combat such ill-treatment should focus on prevention. The *OPCAT* embodies the idea that prevention of ill-treatment in detention can be best achieved by a system of independent, regular visits to the places of detention. During such visits treatment and conditions of detention are inspected.

The *OPCAT* entered into force in June, 2006. States having ratified the *OPCAT* are required to designate a “National Preventive Mechanism” (NPM). This is a body or group of bodies that regularly examine the treatment of detainees, make recommendations, and comment on existing policy and practice.

In order to carry out its monitoring role effectively, the NPM must:

- Be independent from government and the institutions it monitors;
- Be sufficiently resourced to perform its functions; and
- Have personnel with the necessary expertise and who are sufficiently diverse to represent the community in which it operates.

The NPM must have the power to:

- Access all places of detention (including those operated by private entities);
- Conduct interviews in private with detainees and other relevant people;
- Choose which places it wants to visit and who it wishes to interview;
- Access information about the number of people deprived of their liberty, the number of places of detention and their location; and
- Access information about the treatment and conditions of detention.

The NPM also liaises with the Subcommittee on Prevention of Torture (SPT), an international body established by the *OPCAT* with both operational functions (visiting places of detention in states parties and making recommendations regarding the protection of detainees from ill-treatment) and advisory functions (providing assistance and training to state parties and NPMs). The SPT is made up of 25 independent and impartial experts

from around the world, and publishes an annual report on its activities. Currently, there are 83 states parties to the OPCAT and 65 of them have already designated NPMs.¹

National Preventive Mechanism of Georgia

According to the amendments made to the organic law of Georgia on Public Defender, The Public Defender of Georgia carries out the functions of a National Preventive Mechanism, envisaged by the OPCAT.

In order to fulfill powers of the National Preventive Mechanism, the Special Preventive Group is set up with the Public Defender of Georgia. The group regularly monitors the conditions and treatment of detainees and prisoners or persons whose liberty is otherwise restricted, convicted persons, as well as persons in mental health facilities, elderly care homes and children's homes in order to protect them from torture and other cruel, inhuman or degrading treatment or punishment.²

The structure of the National Preventive Mechanism of Georgia is as follows:

- Department of Prevention and Monitoring of the Public Defender's Office;
- Special Preventive Group, which includes experts from various fields, selected through public call;
- The Advisory Council of the NPM constituting a consultative body aimed at supporting NPM activities.

2. REVIEW OF ACTIVITIES CARRIED OUT BY THE NATIONAL PREVENTIVE MECHANISM

2.1. PREVENTIVE VISITS

This report presents the results of the monitoring carried out by the National Preventive Mechanism in the reporting period in penitentiary establishments, police divisions, temporary detention isolators, small family-type children's homes,³ boarding houses for persons with disabilities, as well as the outcomes of the joint return operations of migrants. The monitoring has been conducted with the financial support of the European Union.⁴

1 Data retrieved from the official web site of the Association for the Prevention of Torture: <http://apt.ch/en/opcat-database/> [last accessed: 07.06.2017].

2 The Organic Law of Georgia on The Public Defender of Georgia, article 19²(1).

3 The monitoring outcomes are reflected in the 2015 Parliamentary Report of the Public Defender, see Chapter on Children's Rights Protection, available in Georgian at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf> [Last visited on 28.03.2017].

4 Within the European Project – Support to the Public Defender's Office, II.

Besides, in 2016, with the support of the Open Society Georgia Foundation, the project of Promoting Right to Health in Penitentiary System was carried out in penitentiary establishments.⁵

In the reporting period, the Special Preventive Group for the assessment of the situation in the country in terms of prevention of torture and other cruel, inhuman or degrading treatment or punishment carried out 35 visits⁶ to 12 penitentiary establishments;⁷ 58 visits to 58 police divisions; 31 visits⁸ to 27 temporary detention isolators; 11 visits⁹ to 11 small family-type children's homes; 6 visits¹⁰ to 6 boarding houses for persons with disabilities. Furthermore, the employees of the Department of Prevention and Monitoring carried out monitoring of five flights within the joint return operation of migrants from EU member states.¹¹

During monitoring, the representatives of the Public Defender inspected the material conditions existing in closed type establishments and protection of the rights of persons placed therein. Special emphasis was made on the treatment of these persons.

2.2. COMMUNICATION WITH STAKEHOLDERS

In compliance with its mandate the NPM gives due consideration to the need for maintaining good communication with stakeholders. Notably, it is impossible to carry out inspection, draft recommendations and consequently advocate for and follow up the implementation of recommendations without engaging in the dialogue with civil society, international organizations, relevant governmental authorities and other stakeholders. In this regard, various important activities had been carried out in 2016.

2.2.1. DIALOGUE WITH THE GOVERNMENT AUTHORITIES

During the reporting period, the NPM maintained active communication and engaged in dialogue with government authorities. Meetings were held both individually and within various working groups.

-
- 5 The publication of the report reflecting the results of the research conducted within the project is planned for 2017.
 - 6 At various occasions, in accordance with the necessity, the employees of the Gender Equality Department, Child's Rights Centre, Department of Criminal Justice and Equality Department of the Office of the Public Defender of Georgia also took part in the monitoring.
 - 7 Members of the Special Preventive Group interviewed 650 prisoners.
 - 8 Members of the Special Preventive Group interviewed 60 arrestees.
 - 9 Monitoring in small family-type children's homes was conducted jointly with the Child's Rights Centre of the Office of the Public Defender.
 - 10 Monitoring was carried out with the participation of the employees of the Office of the Public Defender of Georgia at the Department of the Protection of the Rights of Persons with Disabilities and members of the Monitoring Group of Implementation of CPRD. See the monitoring results in this report, under Chapter on Monitoring of Boarding Houses of Persons with Disabilities.
 - 11 The employees of the Department of Prevention and Monitoring interviewed 206 citizens of Georgia returned to Georgia.

Throughout the reporting period several meetings were held with the Minister of Corrections and other representatives of the Ministry on particular problems existing in the penitentiary system and on activities carried out for the purpose to fulfill certain recommendations of the Public Defender.

The NPM was actively involved in the activities within the working group of the Interagency Council against Torture and Ill-treatment.

2.2.2. DIALOGUE WITH DIPLOMATIC MISSIONS AND INTERNATIONAL ORGANIZATIONS

In 2016, the NPM had active communication with diplomatic missions and international organizations in Georgia as well as abroad. The Public Defender and representatives of the NPM were participating in different forums and meetings held under the aegis of international organizations. The following events need to be outlined:

- On March 17, 2016, Deputy Public Defender Natia Katsitadze delivered a speech at the 31th Session of the Human Rights Council in Geneva, where recommendations, provided to Georgia by the Working Group of the Universal Periodic Review in November 2015, were discussed. She emphasized the necessity of creation of an independent investigative mechanism, which will investigate cases of torture, inhuman and degrading treatment in penitentiary facilities.
- From 29 November to 2 December, 2016, Public Defender Ucha Nanuashvili, Deputy Public Defender Natia Katsitadze and EU Project Manager Levan Meskhoradze held bilateral meetings with representatives of the Committee of Ministers of the Council of Europe, the European Court of Human Rights, the European Committee against Racism and Intolerance, the Office of the European Commissioner for Human Rights and other representatives of the Council of Europe during their working visit to the French city of Strasbourg.
- Throughout the reporting period, the Public Defender held regular meetings with the international organizations and diplomatic corps accredited in Georgia and discussed, *inter alia*, issues related to the existing situation in the closed type institutions.
- Head of the Department of Prevention and Monitoring had a regular meetings and communication with representatives of diplomatic corps and international organizations.

2.2.3. PUBLIC RELATIONS

The provision of information concerning the human rights situation at the places of deprivation of liberty to the public remains one of the priorities set by the NPM. This objective is achieved through the publication of after-visit, special and annual reports, organizing various events, meetings and via media.

- On June 26, 2016, the NPM presented its annual report.
- During 2016, the NPM released three special (thematic) reports related to the (1) situation in organs subordinated to the Ministry of Interior; (2) situation in mental health institutions; (3) the state of rights of persons with disabilities in social care homes.
- In 2016, the NPM prepared, published and submitted two after-visit reports describing situation in the penitentiary establishments. These reports are accessible via official web-site of the Public Defender.
- During the reporting period, in order to better inform society, the NPM maintained practice of releasing quarterly bulletins, which briefly describe activities carried out by the NPM, information on the penitentiary establishments, dynamics of implementation of NPM recommendations, legislative review, information on international events, experts' opinion, agenda of the upcoming events and etc. In 2016, totally three such bulletins had been published.

Currently, 5 after-visit reports as well as one thematic report on penitentiary health care are being drafted by the NPM.

The NPM regularly disseminated public statements concerning outcomes of the visits to the places of deprivation of liberty. In addition, members of the NPM participated in different TV and radio programs and gave interviews to the printed and internet media outlets.

2.2.4. PARTICIPATION IN INTERNATIONAL EVENTS

Representatives of the NPM participated in several international events, among them:

- From February 7 to 11, 2016, the head of the Department of Prevention and Monitoring took part in a study visit held in Strasburg and organized by the joint project of the European Union and the Council of Europe "Human Rights in prisons and other types of Closed Establishments".
- The International Ombudsman Institute has organized a working meeting in cooperation with the Association for the Prevention of Torture in Vilnius, Lithuania, on June 21-23, 2016. The topic of the meeting was: "Monitoring of psychiatric institutions". The meeting was attended by representatives of national preventive mechanisms from 17 countries. The Public Defender's Office was represented at the meeting by Nika Kvaratskhelia, Head of the Department of Prevention and Monitoring, and the Department's research analyst, Akaki Kukhaleishvili.
- On June 28-29, employees of the Department of Prevention and Monitoring, Akaki Kukhaleishvili and Levan Begiashvili, participated in a working meeting on "Strengthening capabilities of joint return operation monitors" in Warsaw, Poland. The aim of the meeting was to improve monitoring mechanisms to ensure effective protection of migrants' rights during joint return operations.

- On September 6-7, 2016, Nika Kvaratskhelia, Head of the Department of Prevention and Monitoring of the Public Defender's Office, participated in a symposium organized by the Association for the Prevention of Torture. The topic of the symposium was the monitoring of psychiatric institutions. Nika Kvaratskhelia talked about the specifics of the National Preventive Mechanism of Georgia and the main problematic issues identified during the monitoring, as well as quality of care, overmedication and chemical restraints.
- On October 13-14, annual working meeting of NPMs from the OSCE region was held in Vienna, Austria. The meeting was attended by the head of the Department of Prevention and Monitoring – Nika Kvaratskhelia. He outreached to the participants of the meeting the activities of the Georgian NPM, its accomplishments and existing challenges.
- On November 8-9, senior legal expert of the Department of Prevention and Monitoring – Saba Pipia participated in the Sixth Eastern European Conference of NPMs, held in Lviv, Ukraine.
- On December 8-10, researcher-analyst of the Department of Prevention and Monitoring – Akaki Kukhaleishvili participated in the international conference "Citizen and Militia" held in Minsk, Belarus.
- On November 17, 2016, Nika Kvaratskhelia, Head of the Department of Prevention and Monitoring of the Public Defender's Office, addressed the participants of the 30th session of the United Nations Subcommittee on Prevention of Torture on behalf of the National Preventive Mechanism (NPM) of Georgia.¹² The speech emphasized the importance of the efforts carried out by the mechanism for 7 years, as well as the achievements and challenges. The speech contained a clear message about strengthening the cooperation between the National Preventive Mechanism and state agencies in order to prevent torture and ill-treatment. The event marked the 10th anniversary of the entry into force of the OPCAT.

2.2.5. COOPERATION WITH NGOS AND OTHER DONOR ORGANIZATIONS

In 2016, the NPM actively cooperated with different local and international NGOs and donors. Throughout the reporting period, the NPM had an active communication with the South Caucasus regional office of "Penal Reform International" (PRI). A number of meetings were held on the issue of protection of human rights in the places of deprivation/restriction of liberty.

Representatives of the NPM had regular communication with the international NGO "Association for the Prevention of Torture" related to the setting up of effective follow-up mechanism for recommendations.

¹² It should be noted that out of the world's 65 national preventive mechanisms, representatives from only 3 countries - Georgia, Kyrgyzstan and Norway were invited to this important event.

Throughout the reporting period, the National Preventive Mechanism carried out research on penitentiary healthcare through the financial support of the Open Society – Georgia Foundation.

Throughout the reporting period, the NPM has been in active cooperation with the EU within the framework of the project “Support of the Public Defender’s Office II”. Through this project, the EU has been providing important financial and analytical support to the NPM for already several years. This support is manifested in planning and financing of various training, capacity building and monitoring activities.

Moreover, several training activities have been carried out under the framework of the Council of Europe Project “Human Rights in Prisons and Other Closed Institutions.”

2.2.6. COMMUNICATION WITH FOREIGN COLLEAGUES

The NPM paid a particular attention to the communication and experience sharing with colleagues. On November 22-24, 2016, representatives of the Department of Prevention and Monitoring of the Public Defender’s Office of Georgia, paid a working/study visit to the Croatian capital, Zagreb. The aim of the visit was to get information about the mandate and activities of the Croatian National Preventive Mechanism. During the visit, representatives of the Department of Prevention and Monitoring familiarized with the working methodology of the Croatian National Preventive Mechanism, characteristics of preparation of reports, the existing practice of taking photos, monitoring instruments and methods of supervising the implementation of recommendations.

2.3. WORKING METHODOLOGY AND TRAINING OF THE NPM STAFF

2.3.1. ADVISORY COUNCIL

The objective of the Advisory Council is to foster an effective functioning of the National Preventive Mechanism. The Council presents its opinions to the Public Defender on the following issues: a) on the plan of activities that should be implemented by the National Preventive Mechanism; b) on the working methodology; c) on thematic research; d) on professional training of members of the National Preventive Mechanism; e) on other strategic documents of the National Preventive Mechanism; f) on other important issues for the efficient functioning of the National Preventive Mechanism. The opinion of the Council is of a consultative nature. The invited members of the Council facilitate communication of the National Preventive Mechanism with academic circles, donor organizations, and other stakeholders.

Besides of the representatives of the PDO, the members of the Council are also invited experts, which can be: a) a person who conducts educational/academic activities in the field related to the mandate of the National Preventive Mechanism; b) a member of an international organization who works in the field of prevention of torture and criminal

justice; c) a member of an international non-governmental organization who works in the field of prevention of torture and criminal justice; d) a member of a local non-governmental organization who works in the field of prevention of torture and criminal justice.¹³

During 2016, NPM's Advisory Council held four meetings. Members of the Council were provided with the information on past and future activities of the NPM; they expressed own opinions and recommendations for better functioning of NPM.

2.3.2. WORKING METHODOLOGY

The NPM worked extensively for reviewing and updating working methodology. To that end, several meetings and events were held, new monitoring instruments were prepared and members of the Special Preventive Group were trained.

In 2016-2017, composition of the Special Prevention Group has been renewed through the public call competition. Totally 36 independent experts have been selected with various professional backgrounds. This multi-discipline team includes lawyers, physicians, healthcare professionals, psychiatrists, psychologists, social workers, drug-addiction specialist, nutritionist and etc.¹⁴

New members of the Special Preventive Group have been trained by the SPT member Arman Danelyan on monitoring methodology.

From September 1, 2016, legislative amendments entered into force, which enable members of the Special Preventive Group to take photos in penitentiary establishments. For the effective implementation of these amendments, the Department of Prevention and Monitoring of the PDO drafted specific rules of photographing, which include legal regulations as well as technical instructions for the recording.

In 2016, the Special Preventive Group introduced the practice of conducting focus groups with participation of lawyers and NGOs working in the regions. The primary objective of these focus groups is to receive additional information regarding existing situation in the police system. This information is applied to come up to certain findings, which later are incorporated into the report. In 2016, total of 6 such focus groups have been conducted.

Moreover, for the drafting of report on penitentiary health care system, specific research methodology was adopted, which was intended to review the legal framework and the practice in the light of international standards applicable to the penitentiary healthcare system.

13 For details on Advisory Council of the NPM, please see: <<http://www.ombudsman.ge/en/prevenciis-erovnuli-meqanizmi/prevenciis-erovnuli-meqanizmis-sakonsultacio-sabcho/about-advisory-council-of-the-national-preventive-mechanism.page>> [last accessed 07.06.2017].

14 For details on members of the Special Preventive Group, please see: <<http://www.ombudsman.ge/en/prevenciis-erovnuli-meqanizmi/specialuri-prevenciuli-djgufi>> [last accessed 07.06.2017].

2.3.3. STAFF TRAINING

Training was held for the members of the Special Preventive Group within the framework of a joint program of the European Union and the Council of Europe “Human rights in prisons and other closed institutions” in report-writing. The training aimed at increasing the National Preventive Mechanism effectiveness through improving the reporting skills.

On April 15-17, 2016, training was held for members of the Special Preventive Group within the framework of the EU project “Support to the Public Defender II”. The topic of the training was working methodology of the National Preventive Mechanism. The training was aimed at raising professional skills of members of the Special Preventive Group.

On May 7-8, 2016 training was held for the members of the Special Preventive Group within the framework of the EU project “Support to the Public Defender II” on documenting bodily injuries. The aim of the training was to review international standards and practices of documenting bodily injuries. The training was led by the member of the European Committee for the Prevention of Torture, expert Djordje Alempijevic.

On July 7-9 and October 28-30, 2016, with the financial support of the European Union and the Council of Europe, training has held for the Special Preventive Group on the issues related to the forensics photography.

On November 3-5, 2016, under the Council of Europe Project, training was held for the staff of the Public Defender’s Office and members of the Special Preventive Group. The topic of the training was: “Monitoring mental health issues in the penitentiary institutions.”

On November 14, 2016, training was held for members of the Public Defender’s Special Preventive Group on the right to health in the penitentiary facilities.

3. SITUATION IN THE PENITENTIARY ESTABLISHMENTS

3.1. GENERAL OVERVIEW

According to the report prepared by the Council of Europe, on 1 September 2015, the total number of inmates in Georgia was 10,242, including 54 minors. This means that prison population rate per 100, 000 inhabitants amounted to 274.¹⁵ It is noteworthy that these figures are higher in comparison to the situation of penal institutions of Georgia on 1 September 2014 (227 prison population rate per 100,000 inhabitants).¹⁶ According

15 Council of Europe, Annual Penal Statistics, SPACE I– Prison Populations, Survey 2015, available in English at: http://wp.unil.ch/space/files/2017/03/SPACE_I_2015_Report_170314.pdf [Last visited on 20.03.2017].

16 Council of Europe, Annual Penal Statistics, SPACE I– Prison Populations, Survey 2014, available in English at: http://wp.unil.ch/space/files/2016/05/SPACE-I-2014-Report_final.1.pdf [Last visited on 20.03.2017].

to the annual Council of Europe survey, Georgia is among the countries with the highest incarceration rates.¹⁷

It is a positive development that by December 2016, in comparison to the same period of 2015, the total number of remand and convicted persons decreased by 382. The Public Defender deems it necessary that the Criminal Justice policies should be aimed at the application of non-custodial measures, rehabilitation of convicts and their reintegration into the society. The large number of prisoners, as well as the large size of penitentiary establishments, creates substantial challenges in terms of maintaining order and security in the penitentiary system and ensuring adequate conditions and services.

Therefore, the Public Defender positively assesses the introduction of the new category of a non-custodial sentences – home detention¹⁸- for juvenile offenders who have been found guilty of less grievous offences, and the execution of punishments imposed on minors through electronic monitoring without resorting to their isolation from the public. The Public Defender welcomes the introduction, in the Parliament by the Ministry of Corrections, of the draft amendments about setting up the new type of an establishment of deprivation of liberty in the penitentiary system that will ensure preparation of convicts for their release. In accordance with the said draft amendments, the local council of the Ministry of Corrections of Georgia will be entrusted, upon the written request of a convict and where the statutory grace period has been served, to commute the rest of the sentence with a more lenient sentence – home detention.

It is essential for the prevention of torture and ill-treatment that the state does not allow impunity. The state has a duty to respond appropriately to incidents of alleged torture and ill-treatment. Accordingly, as in the years of 2013, 2014, and 2015, the position of the Public Defender remains the same concerning the creation of an independent investigative body for ensuring effective investigation of incidents of ill-treatment allegedly committed in penitentiary establishments.

In 2016 the Public Defender submitted three proposals for launching investigation on alleged physical abuse of inmates. During the visits made in 2016, the members of the Special Preventive Group obtained information on isolated incidents of ill-treatment.

In the reporting period, it is still a problem that the definition of torture in the Criminal Code of Georgia does not comply with the definition given by the UN Convention against Torture. Besides, the Georgian legislation and practice do not provide legal aid for the torture victims at state expense.

Ensuring respect for confidentiality of interactions between health-care professionals and prisoners remains problematic in penitentiary establishments. In most of the penitentiary establishments, during placement of a prisoner in the establishment, administration personnel are present at his/her medical examination by a health-care professional.

17 Council of Europe, Press release - DC031(2017), available in English at: <https://wcd.coe.int/View-Doc.jsp?p&Ref=DC-PR031%282017%29&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&direct=true> [Last visited on 27.03.2017].

18 The Juvenile Justice Code, Article 69.

The Public Defender of Georgia welcomes the adoption of the new procedure for documenting prisoners' bodily injuries in penitentiary establishments. It is, however, noteworthy that the new procedure of registering prisoners' bodily injuries was not enacted in the reporting period. Registering injuries, as in previous years, was punctuated with irregularities, therefore failing to ensure effective identification of the incidents of alleged treatment and their documentation.

Furthermore, it is noteworthy that the issues related to independence and qualifications of medical personnel remain problematic in 2016. This raises misgivings regarding the impartiality of health-care professionals when dealing with the alleged ill-treatment of inmates, when they are obliged to register injuries and notify investigative authorities. The Public Defender's position remains the same regarding determining the duty of a health-care professional to notify the Office of the Chief Prosecutor of Georgia when identifying the incidents of ill-treatment. The Public Defender deems that, irrespective of an inmate's consent, the decision about notifying investigative authorities should be taken by a health-care professional with the due consideration of interests of the inmate and the public.

Furthermore, the lack of involvement of a convict in the risk-assessment procedure is problematic.

In the Parliamentary Report of 2015, the Public Defender gave his recommendation to the Minister of Corrections of Georgia to enable convicts to furnish additional documentation to the multidisciplinary team at any stage of assessment, if they believed this would lead to a desirable outcome. However, this recommendation has not been fulfilled.

It is a positive development that the duration of placement of inmates in de-escalation rooms decreased in 2016, in comparison to 2015. However, there have been isolated incidents where prisoners were placed in de-escalation rooms from 20 to 36 days.

The Public Defender positively assesses the amendments made to the statutes of penitentiary establishments under which the maximum term of placement for prisoners in de-escalation rooms is limited to 72. However, it is noteworthy that a statute authorises the administration of a penitentiary establishment to place an inmate in a de-escalation room for unlimited time, which can again result in long-term isolation of prisoners. The recommendation of the Public Defender remains the same about introduction of the statutory limit of the term of placement of prisoners in de-escalation rooms to a maximum term of 24 hours.

The environment and conditions in the de-escalation rooms are not safe and do not minimise the risk of self-harm. In these rooms, visual surveillance systems are installed so that toilet areas are within the camera's scope. When in de-escalation rooms, prisoners are not given access to shops, telephone calls and correspondence, and visits are not allowed either. The decision on placement in a de-escalation room is taken by an establishment's director and joint multidisciplinary assessments are not conducted, i.e., psychologists, social workers, medical doctors or other personnel of the establishment's units are not involved in preventing/decreasing the above-mentioned risks. Therefore, prisoners have the feeling that de-escalation rooms are used for punitive purposes.

The introduction of 120 hours (five days) as the minimum term for storing video recordings is welcomed by the Public Defender as a step forward. The recommendation of the Public Defender, however, still remains the same that it is necessary to store the said recordings at least for ten days and the recordings from de-escalation rooms should be stored for one month. Furthermore, it is necessary to ensure unimpeded access to these recordings for members of the Special Preventive Group.

The outcomes of the inspection of penitentiary establishments carried out by the Special Preventive Group in 2016, similar to those in 2015, showed that in accordance with the established practice, the decisions ordering surveillance contain scarce information and is formulaic. In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Parliament and the Minister of Corrections to amend the Imprisonment Code and the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of stipulating that meetings of remand and convicted persons with the Public Defender and members of Special Preventive Group are confidential and eavesdropping or surveillance of any kind are impermissible. This recommendation, however, has not been fulfilled.

Serious threat in terms of ill-treatment of prisoners is posed by criminal subculture existing in penitentiary establishments, which often becomes the reason for violence and oppression among inmates.

The Public Defender negatively assesses the policy of the Ministry of Corrections concerning the high risk prison facilities. According to the established practices, these are penitentiary establishments based on static security principles with a particularly restrictive, prohibitive and unconditionally strict regime. Such conditions are not conducive to positive changes in inmates' behaviour, their rehabilitation and reintegration into the society.

It remains problematic that the limitations imposed on the convicted persons placed in high risk prison facilities are unsubstantiated and not based on individual risk assessment of a particular prisoner. For instance, in accordance with the existing regulations, a director has discretionary powers to place a prisoner separately from other inmates for a considerable time. There is no maximum term defined in the statutes of the high risk prison facilities for isolation of prisoners and surveillance is ordered in every case of placement. The inmates of high risk prison facilities do not have any possibility to carry out meaningful activities that are of interest for them. The legislation allows the inmates placed in high risk prison facilities fewer visits and telephone calls than the prisoners in other penitentiary establishments.

In 2016, isolation of prisoners in solitary confinement cells in penitentiary establishments without following statutory regulations remained a structural problem. In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure mandatory review of solitary confinements after 14 days of the application of this measure and in the same intervals afterwards. This recommendation has not been fulfilled.

The Public Defender welcomes installation of a scanner at establishment no. 5 and amendment of the statute of penitentiary establishment no. 5 to the effect of providing remand/convicted persons with the right to undergo full body search with a scanner.

The Public Defender observes that the regulations under the statutes of penitentiary establishments according to which full bodily searches may be administered in all occasions of the first arrival, temporary leave and return to the penitentiary establishment is a blanket provision allowing routine and unjustified strip-searches. Furthermore, apart from full strip-search, it is problematic that the law does not differentiate between full strip search and body cavity search and procedures are not prescribed for each type of bodily search. It is also problematic that prisoners' short and long term visitors are requested to undergo mandatory partial strip searches when entering a penitentiary establishment, which runs counter the legislation in force.

The Public Defender welcomes the implementation of infrastructural projects in penitentiary establishments in 2016. However, some of the establishments are still challenged with the lack of adequate natural and artificial ventilation, light and heating; sanitation and hygiene standards are not complied with either. The provision of prisoners with clothing according to the season and items of personal hygiene, exercise of the right to stay in the open air and equipment of yards remain problematic.

There is no privacy ensured in barrack-type dormitories at establishments nos. 14 and 17; smokers and non-smokers live in the same area; following sanitation and hygiene rules is difficult and the risk for spreading infectious diseases is high. Furthermore, such accommodations pose additional and serious challenges in terms of security.

It remains problematic in 2016 to ensure that living space of 4 m² is made available for each prisoner. Besides, in establishments nos. 2 and 8, remand and convicted persons are placed together in some occasions which is in breach of the Imprisonment Code.

In 2016, compared to the previous year, there has been 16% increase in the number of imposition of disciplinary penalties on prisoners. Despite the fact that in some of the establishments fewer disciplinary penalties were applied, the indicator for the use of these measures alarmingly increased in establishment no. 3 (2 disciplinary penalties per prisoner, in 2015; 9 – in 2016); establishment no. 6 (in 2015, 1 disciplinary penalty was imposed on every second prisoner and in 2016, 2 disciplinary penalties per prisoner); and establishment no. 2 (increase by 2.5%). Besides, in comparison to 2015, in 2016, the number of placement of prisoners in solitary confinement cells increased by 40.4% in establishment no. 2, which is noteworthy. For the sake of fairness, it should be positively mentioned that, in total, the number of incidents of placement in solitary confinement cells decreased in the penitentiary system by 23%. However, the Public Defender is, at the same time, alarmed that, in the reporting period, there were again incidents of placing prisoners with mental health problems in solitary confinement cells in some establishments.

In the course of 2016, according to the prisoners at establishments nos. 3, and 6, there were incidents where the personnel attempted to incite them so as to impose disciplinary penalties on them or to place them in de-escalation rooms. The prisoners have the feeling

that their transfer to de-escalation rooms serves punitive purposes whenever they violate the statute of an establishment and not for security reasons. The inspection of documentation in establishments nos. 3 and 6 revealed that in some of the periods spent by a prisoner in a de-escalation room, a disciplinary report had been applied.

Usually, according to the existing practice, a disciplinary penalty is applied without an oral hearing and an order on its application is only substantiated with explanations and reports submitted by the personnel. Prisoners practically do not participate in disciplinary proceedings. This increases the risk for the imposition of arbitrary disciplinary penalties.

The Public Defender welcomes conducting an official inspection by the Inspectorate General of the Ministry of Corrections of Georgia in establishment no. 7 concerning the incidents of the complete ban on contacts with relatives, identified by the Special Preventive Group in 2015. As the result of the inspection, a disciplinary penalty was imposed on the director of establishment no. 7 and its lawyer. It is a positive fact that in 2016, there were no incidents of imposing full bans on contacts with relatives in establishment no. 7. The Public Defender hopes that the Inspectorate General, within the systematic monitoring, will continue the examination of the practice of the use of disciplinary penalties in order to prevent their arbitrary imposition.

According to the Ministry of Corrections' report on its annual activities of 2016, the individual sentence planning (ISP) mechanism has been successfully implemented for juvenile convicts. In 2015, the ISP approach was also introduced in establishments nos. 5, and 16. In 2016, the Ministry of Corrections launched a pilot programme of Individual Sentence Planning at establishments nos. 6, 12 and 17. Individual sentence planning will have covered all penitentiary establishments by 31 December 2017, which is welcomed by the Public Defender of Georgia.

In 2016, various rehabilitation activities were carried out in penitentiary establishments; some of them are still ongoing. In the course of the year, prisoners could take part in cultural and sporting events, pursue general/professional education and study various trades. In this regard, establishment no. 5 sets the best example. Despite the attempts to enhance rehabilitation component, there are still significant challenges in this regard. There is a lack of rehabilitation activities in most of the penitentiary establishments, especially in closed-type and high-security prisons;; besides, the indicators of prisoners' participation in ongoing activities are low. Due to language barriers, foreign prisoners find it difficult to communicate with prison administration, including social workers, and therefore are virtually unable to be involved in rehabilitation activities.

The number of personnel in social units remains insufficient. E.g., two psychologists deal with 1,218 prisoners in establishment no. 2, and 1,922 prisoners in establishment no. 17. Only one psychologist works with 1,152 prisoners in establishment no. 14, and 1,706 prisoners in establishment no. 15.

In the context of positive management of prisoners' behaviour, unfortunately, it should be mentioned that against the background of the increase in the number of the use of disciplinary penalties, in 2016, the cases of giving incentives prisoners decreased by 37.2%.

The Public Defender reiterates that positive management of behaviour through the forms of incentives is most significant for weakening the influence of the criminal subculture, correction of anti social behaviour, rehabilitation and finally public re-socialisation.

In terms of employment in establishments, it should be negatively assessed that in 2016, compared to 2015, the number of employed prisoners decreased by 28.1%. Similar to 2015, the majority of the prisoners involved in the economic services had to work against their will on the weekends, days off and, if needed, at night. It is noteworthy that prisoners in detention centres, closed-type and high-risk prison facilities have not been able to be involved in meaningful activities that are of interest for them; they still spend 23 hours a day in their cells. Their outdoor stroll is limited to an hour a day and takes place in a cell like yard. There are no conditions for physical exercise in these yards, which also has ramifications for the inmates' health.

According to the prisoners of establishments nos. 6 and 8, they often decline to exercise their right to leave their cell as they are offered a walk either at 7 a.m. or 8 a.m. In establishment no. 8, considering the number of yards and prisoners, as well as the established procedure of taking prisoners for a walk, it is impossible to ensure that all prisoners are taken outside within the three-hour period allocated by the daily schedule. According to the prisoners of establishment no. 18, they are only taken to a yard twice a week for only 15 minutes. Such conditions can have negative ramifications for prisoners' health.

The Public Defender of Georgia gave recommendations to the Minister of Corrections of Georgia on numerous occasions to set out and introduce a new pattern for registering traumas in accordance with Istanbul Protocol, which would enable entering information on bodily injuries that is more detailed.

The steps made in terms of organisation of health care in the penitentiary system are positively assessed, namely, job descriptions have been defined for the Medical Department staff and the procedure for documenting bodily injuries that complies with Istanbul Protocol has been approved. Besides, with the view of improving medical services, the system for quality management has been statutorily regulated.

The number of medical personnel has not changed in 2016. Accordingly, the availability of doctors/nurses remained problematic. The availability of assisting personnel and paramedics in establishment no. 18 was also problematic. The examination of the issue of consultation provided to prisoners revealed that regularity and frequency of the visits of the doctors providing consultation was not adequate in a number of establishments. Besides, there are problems concerning specialised doctors' visits in the beginning of a year before the contracts between the Medical Department and the specialists are finalised.

It should be positively pointed out that upon electronic registration incidents are promptly confirmed by the Medical Department. However, there are number of cases where a prisoner's transfer to a medical establishment for providing medical service was delayed. There have been cases where a prisoner has been awaiting a transfer to a medical establishment since 2014 or 2015.

The steps made towards the implementation of the public health-care standards in the system of the penitentiary health-care system are welcome. In particular, the standards of medical service have been approved; the procedure for processing statistical data, the terms of processing and submitting of statistical data in the penitentiary system have been approved. It should be negatively assessed that there have been no steps made towards elaboration of activities and their timetable for the transfer of the penitentiary health-care to the Ministry of Health, Labour and Social Affairs of Georgia.

Mental health-care remains one of the challenges of the penitentiary health-care. Provision of adequate mental care remains problematic. In order to identify persons with mental ailments and provide them with adequate psychiatric assistance, it is necessary to enhance cooperation with psychologists and social workers, apart from improving the accessibility of a psychiatrist.

The introduction of suicide prevention programme in all establishments of the Penitentiary Department should be positively assessed. It is, however, important, to assess the effectiveness of the suicide programme in order to identify the programme's shortcomings and make the necessary amendments for addressing them.

In 2016, the majority of the prisoners placed in penitentiary establishments expressed their indignation concerning the quantity, quality and taste of the food given to them. The shops of the penitentiary establishments do not have the list of the products they offer in print to facilitate making choices. Besides, the prices in the shops of penitentiary establishments are higher by 10-20% than outside. It is problematic that a prisoner is allowed to receive maximum five kg of fruit in a single parcel, which is not enough.

Juvenile convicts are mostly placed in rehabilitation establishment no. 11 for the underage. Juvenile remand are placed in penitentiary establishments nos. 2 and 8. In a number of cases, for security reasons, a juvenile is transferred from a rehabilitation establishment to penitentiary establishments nos. 2 or 8. The Public Defender emphasises that juvenile offenders should serve in a rehabilitation establishment and they should not be transferred to a closed-type prison facility for indefinite term and without reasoning. This significantly compromises rehabilitation and runs counter to the best interest of juvenile convicts.

Female prisoners are placed in establishment no. 5 and also in establishment no. 2. The Public Defender welcomes the draft amendments to the Imprisonment Code and other relevant normative acts that have been prepared by the Ministry of Corrections allowing a mother, with the consent of the Director of the Penitentiary Department, to leave a penitentiary establishment on days off (weekends) in the period of a year after her child left the establishment.

As mentioned, female prisoners are placed in establishment no. 5 and also in establishment no. 2. In the latter establishment, similar facilities and services tailored to the women's needs, available in establishment no. 5, are absent.

The Public Defender positively assesses the improvement of transportation for female convicts and repair works in establishment no. 5. However, there is still a problem con-

cerning sanitation and hygiene conditions in the cells of prison facility, which remain unsatisfactory. The cells need to be repaired; there is no hot water in toilets and prisoners have to hand wash their clothes with cold water straight under taps.

It is noteworthy that, unlike establishments nos. 6, and 8, the prisoners serving a life sentence in establishment no. 7 were not allowed to exercise the right to long visits. In 2016, there were no diverse and systematic rehabilitation activities in those establishments where prisoners serving a life sentence are placed. Besides, these prisoners have fewer meetings and telephone calls than allowed under the legislation in force.

As of December 2016, there were foreign nationals from 35 countries and stateless persons in the penitentiary system of Georgia. The Public Defender welcomes printing a brochure on the rights of foreign prisoners in various languages. However, due to the limited number of publication, sufficient copies are unavailable for all foreign prisoners. The foreign prisoners, due to their language barriers, face problems in communication with personnel, including the medical staff. Foreign prisoners, unlike other prisoners, cannot participate in the activities available in their establishments. According to the foreign prisoners, due to the cost of phone calls abroad, they cannot afford to talk frequently with their family members. Besides, sending letters and receiving parcels appear to be costly for the foreign prisoners. The dietary needs of various religions are not taken into consideration when preparing food in establishments. Therefore, they frequently refuse to eat the food offered to them.

It should be positively mentioned that after 1 January 2016, remand persons no more need permission of an investigator, a prosecutor or a court for short visits, correspondence and telephone calls.¹⁹ However, there are still problems concerning the detention conditions of remand persons. In particular, rehabilitation activities are not provided for the remand placed in penitentiary establishments. They spend 23 hours in their cells so that they do not have any possibility to be engaged in worthwhile activities in which they would be interested. Besides, in establishments nos. 2, and 8, in numerous cases, remand and convicted persons are placed together in some occasions. This is in breach of the Imprisonment Code and unjustifiable for security reasons as well. Furthermore, the Public Defender observes that it is important to ensure each remand is provided with 4 m² living space. This proposal was made to the Parliament of Georgia in 2015 Parliamentary Report. However, this proposal has not been followed.²⁰ Similarly, the proposal of the Public Defender concerning allowing remand persons to have long visits has not been followed.

It was still a problem in 2016 that during placement of prisoners their place of residence was not taken into consideration. Short visits are held in rooms with window partitions. This does not allow a prisoner to have any physical contact with family members. It is noteworthy that the infrastructure allows video visits only in five penitentiary establishments.

19 Until 2 January 2016, an remand person could use one short-term visit only with the permission of either a prosecutor, or an investigator; could use the right to correspondence and telephone calls with the permission of an investigator, a prosecutor or a court.

20 Under Article 15.3 of the Imprisonment Code, living space per remand person in a prison facility should not be less than 3 m².

It should be positively mentioned that, in 2016, the prisoners placed in penitentiary establishments nos. 8, 9, 18, and 19 were allowed to have long visits in other establishments with the requisite infrastructure. However, it remains problematic to provide the long visit infrastructure in closed-type establishments²¹ and medical establishments.²²

The convicts of the high risk prison facilities are not allowed to have long visits. This is a blanket restriction which does not allow an exception for securing a legitimate aim. It should be positively mentioned that the Minister of Corrections of Georgia introduced a new initiative according to which convicts placed at the high risk prison facilities will be allowed to two long visits. The Public Defender expresses his hope that this initiative will soon be provided for by the Imprisonment Code, which will be a step forward.

Telephones are so installed in the closed-type establishments that it is impossible to make a phone call in a confidential environment. Besides, it is still problematic for the prisoners placed in de-escalation rooms to send correspondence to or call the Public Defender. During the monitoring visits made to establishments nos. 5, 8, and 11, the representatives of the Public Defender tried several times to call the hotline (1481) of the Office of the Public Defender but the calls could not go through. It is also noteworthy that prisoners cannot call the Office of the Public Defender or other organs of inspection at night.

The Public Defender welcomes the steps made towards informing prisoners of their rights, including the right to lodge an application/appeal as well as the procedures for their consideration. In particular, handing out information booklets on the rights of remand and convicted persons and delivering training sessions in several establishments should be positively assessed. Despite these efforts, informing prisoners adequately remains a challenge in penitentiary establishments.

According to the assessment made by the Special Preventive Group, the function of social services aimed at exercising the right to apply/appeal by prisoners should be enhanced. Laws or information on the rights and duties of prisoners is not available in the cells. It is problematic to collect the number of registration confirming an open letter from a closed-type establishment and sending an appeal with due respect for confidentiality.

The Public Defender welcomes the increase in the number of inspections carried out by the Division of Systemic Monitoring of the Inspectorate General in comparison to 2015. However, the Public Defender observes that unannounced monitoring is more effective as it is the surprise factor that allows more problematic areas to be identified.

In terms of ensuring security at a penitentiary establishment, it should also be taken into consideration that security encompasses many other elements such as personal screening of an remand/convicted person and periodic inspection of the premises of an establishment and buildings and constructions located there.

It is important that the establishments should maintain the existing well-qualified resources. To this end, salaries should be adequate and working conditions should be favourable to remunerate hard and labour-consuming work. The health-care personnel of

21 Penitentiary establishments nos. 7, 8, 9.

22 Penitentiary establishments nos. 18 and 19.

the penitentiary establishments do not have medical insurance. The working conditions of on-duty doctors and nurses, paramedics, psychologists, and social workers are quite hard. The establishments' personnel are not provided with transportation and food; they do not benefit from advice as to how to avert professional burnout.

The Public Defender welcomes the implementation of the certified compulsory retraining module for the penitentiary personnel. However, it can be concluded, based on the study of the programmes, that the methodology of the module is general and needs further improvement.

3.2. SITUATION IN PENITENTIARY ESTABLISHMENTS IN TERMS OF PREVENTION OF TORTURE AND ILL-TREATMENT

It is essential for the prevention of torture and ill-treatment that the state appropriately responds to the incidents of alleged ill-treatment in penitentiary establishments and alleged ill-treatment by law-enforcement officers, so that perpetrators do not act with impunity.

In the Parliamentary Reports of 2013, 2014 and 2015, the Public Defender proposed to the Parliament of Georgia to establish an independent investigative body to ensure effective investigation of incidents of deprivation of life, torture, inhuman and degrading treatment allegedly committed by law-enforcement bodies, as well as on the premises of penitentiary establishments. This recommendation has yet to be fulfilled. The position of the Public Defender, therefore, remains the same; there is a standing problem in Georgian legislation and practice of institutional independence in investigating alleged crimes committed by law-enforcement officers as well as alleged crimes committed in penitentiary establishments.

Under Article 17.2 of the Constitution of Georgia, no one shall be subjected to torture, inhuman, cruel or degrading treatment and punishment.

Under Article 7 of the International Covenant on Civil and Political Rights, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Under Article 10 of the International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The United Nations Human Rights Committee 'believes that here the Covenant expresses a norm of general international law not subject to derogation.'²³

International human rights law pays special attention as to how the rights of those deprived of their liberty are protected in respective establishments. The state must take all adequate measures to ensure that the suffering inherent in punishment is not exceeded.²⁴

23 General Comment no. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31, August 2001, para. 13.a).

24 *Kudla v. Poland*, application no. 30210/96, judgment of the Grand Chamber of the European Court of Human Rights of 26 October 2000, para. 94; see also, *Valašinas v. Lithuania*, application no. 44558/98, judgment of the European Court of Human Rights of 24 July 2000, para. 102.

The European Court of Human Rights has held on many occasions that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. Under this provision, the state must ensure that a person is detained in conditions which are compatible with respect for his/her human dignity, that the manner and method of the execution of the measure do not subject him/her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his/her health and well-being are adequately secured.²⁵

It is particularly important to protect inmates in closed establishments from torture, inhuman or degrading treatment or punishment, as well as to safeguard their right to life. Inmates are under exclusive control of the state and, therefore, the respective authorities are under the obligation to take all steps that are reasonably expected of them to prevent real and immediate risks to an individual's physical integrity, of which the authorities had or ought to have had knowledge.²⁶ In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms and the standards established by the case-law of the European Court of Human Rights, the prohibition of torture and ill-treatment and the right to life impose on the state both a negative obligation (to refrain from violating a right) and a positive obligation (to secure a person's right).

Prevention of torture is a global strategy that is aimed at substantially minimising risks and creating the environment in which torture and ill-treatment are expected to a lesser extent.

The positive obligation taken up by the state to protect persons from torture and other forms of ill-treatment obviously includes taking the very preventive measures conducive to the protection of persons from ill-treatment. The necessity of the aforementioned preventive measures is pointed out in international human rights treaties, the judgments of the European Court of Human Rights, numerous reports of the European Committee for the Prevention of Torture and the UN Committee against Torture. Accordingly, there should be such guarantees at the national level, both in legislation and practice that secure unconditional protection of individuals from ill-treatment.

Article 144¹ of the Criminal Code of Georgia does not encompass the instances where torture is committed through the tacit approval of a state official or other officials. Accordingly, in the Parliamentary Report of 2015, the Public Defender proposed to the Parliament of Georgia to amend Article 144¹ of the Criminal Code of Georgia to ensure that the definition given in the UN Convention against Torture was accurately reflected in the Georgian legislation.²⁷ In particular, according to the Public Defender's recommendation, Article

25 *Davtian v. Georgia*, application no. 73241/01, judgment of the European Court of Human Rights of 27 July 2006, para. 36.

26 *Pantea v. Romania*, application no. 33343/96, judgment of the European Court of Human Rights of 3 June 2003, para. 190; and *Premiininy v. Russia*, application no. 44973/04, judgment of the European Court of Human Rights of 10 February 2011, para. 84.

27 For the purposes of the UN Convention against Torture, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

144¹ of the Criminal Code of Georgia should criminalise torture committed through the acquiescence of a public official or other person acting in an official capacity.²⁸ It should be pointed out that this proposal has not been fulfilled. As the Public Defender observed in the Parliamentary Report of 2015, the provision of legal remedies is an essential aspect of the protection of the victims of torture and ill-treatment. It is noteworthy that the protection of the victims of torture and ill-treatment was one of the main objectives of the 2015-2016 Action Plan on Fighting against Torture. The task to attain this objective involved analysing the legislation in force, its further improvement to provide victims with effective legal aid and legal protection.²⁹

In accordance with the Law of Georgia on Legal Aid, only indigents are as a rule entitled to free legal services, unless otherwise stipulated by law. The mandate of the public law entity Legal Aid Service does not envisage the provision of free legal services to victims of torture at the places of deprivation or restriction of liberty. Accordingly, in the Parliamentary Report of 2015, the Public Defender of Georgia proposed to the Parliament of Georgia to amend the Law of Georgia on Legal Aid to provide alleged victims of ill-treatment with adequate legal services at the expense of the state in all cases.³⁰ This recommendation has not been fulfilled yet.

It is noteworthy that according to the information provided by the Investigative Department of the Ministry of Corrections and the Office of the Chief Prosecutor of Georgia, not a single staff member of a penitentiary establishment was convicted in 2016 for ill-treatment.

In 2015, the Public Defender prepared four proposals concerning alleged ill-treatment by the staff of the Penitentiary System.³¹ In 2016 the Public Defender submitted three proposals related to the alleged physical abuse by the staff of the penitentiary establishments.

During the visits made in 2016, the members of the Special Preventive Group obtained information on isolated incidents of ill-treatment. In particular, inmates reported psychological pressure (threat and intimidation) and physical violence from the administration of an establishment. According to the inmates, in some cases, the penitentiary establishment personnel address them rudely, raise their voice without any apparent reason and attempt to create a conflict situation. As inspections revealed, there were isolated cases of violence among inmates in some penitentiary establishments. The Public Defender of Georgia did not bring these cases to the attention of investigative bodies as the inmates refused to take legal actions.

Medical screening of inmates during their admission to closed establishments should be observed with medical confidentiality. It is of decisive importance that an inmate should

28 The Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia, 2015, p. 28.

29 2015-2016 Action Plan on Fighting against Torture, Inhuman, Cruel or Degrading Treatment or Punishment, p 21, available at: <http://police.ge/files/MONITORING/Documents/Action%20Plan%2015-16.pdf>.

30 The Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia, 2015, p. 28.

31 *Ibid.*, p. 386.

be examined and interviewed, in connection with alleged ill-treatment, only by a health-care professional without the presence of the penitentiary establishment's personnel.³²

It is noteworthy that in the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections of Georgia to set out express instructions to guarantee confidentiality of interactions between health-care professionals and inmates and secure its practical implementation. This recommendation has not been fulfilled. Furthermore, as the inspections conducted in 2015-2016 show, during admissions of inmates to the most of the penitentiary establishments, the personnel of the latter were present at the medical screening. Sometimes, the administration personnel were present at inmates' medical examination and registration by a health-care professional of the injuries sustained in a penitentiary establishment. Accordingly, in these penitentiary establishments the confidentiality of interactions between an inmate and a health-care professional is not observed.

In the opinion of the Public Defender, the trust factor between an inmate and a health-care professional is of paramount importance in terms of documenting the incidents of alleged ill-treatment, which is unfeasible without their confidential communication.

The practice of 2016 concerning documenting the injuries on an inmate's body does not differ from that of 2015. When admitting an inmate to a penitentiary establishment, he/she is immediately met by a health-care professional and if there are injuries on the inmate's body, they are documented. After the identification of injuries, the medical services rendered are entered into a file in accordance with a general rule and kept in the inmate's medical history. Furthermore, similar to the previous years, in 2016, there was a Journal for Registering Injuries of Remand/Convicted Inmates, in which the medical personnel documented injuries found on inmates. Brief description of injuries and information about their origin were entered into the following columns: Self-Harm, Regular Injuries and By Other Person. Health-care professionals did not assess the compatibility of information submitted by an inmate concerning the origin of an injury with its nature.

According to the information submitted by the Ministry of Corrections of Georgia,³³ the 2015 and 2016 statistics of the bodily injuries found on inmates in penitentiary establishments are as follows:

Number of Bodily Injuries of Inmates in Penitentiary Establishments										
Establishment	Self-Harm		By Another Person		Regular		Unspecified		Total	
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
No.2	533	624	100	129	236	246	7	6	876	1005
No.3	0	180	0	9	16	23	3	0	19	212
No.5	21	19	0	7	202	275	0	0	223	301

32 Council of Europe, 23rd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 1 August 2012 – 31 July 2013, para. 75.

33 Letter no. MOC 71600192429 of the Ministry of Corrections of Georgia, dated 10 March 2016 (registered under no. 3159/16 at the Office of the Public Defender of Georgia).

No.6	353	387	0	3	27	68	0	246	380	701
No.7	110	9	0	0	5	4	2	1	117	14
No.8	771	482	79	36	396	215	54	0	1300	733
No.9	0	0	0	0	6	9	0	0	6	9
No.11	1	2	3	0	40	22	0	0	44	24
No.12	2	2	1	1	9	5	0	2	12	10
No.14	2	10	6	0	105	181	0	0	113	191
No.15	42	6	2	0	214	162	0	4	258	172
No.16	0	0	0	0	15	24	0	0	15	24
No.17	56	15	3	4	168	216	3	2	230	237
No.18	172	128	0	0	30	0	0	28	202	156
No.19	57	28	4	0	21	32	15	4	97	64
Total	2120	1892	198	189	1490	1482	84	293	3892	3853

The above data shows that there was no significant change in the total number of bodily injuries identified in penitentiary establishments in 2016, in comparison to 2015. It is worth mentioning that in penitentiary establishments nos. 8 and 15, the number of bodily injuries has been decreased, which is a positive development. It is, however, noteworthy that there has been an increase in the number of bodily injuries (including those sustained from other persons) in establishment no. 2. Furthermore, in establishment no. 6, the origin of bodily injuries could not be identified in 246 cases. There was no such fact registered in 2015. The similar tendency is observed in medical unit no. 18 for remand and convicted persons (28 cases).

Similar to the previous years, documenting bodily injuries found on the inmates at penitentiary establishments remains problematic in 2016. The Public Defender of Georgia gave recommendations to the Minister of Corrections of Georgia on numerous occasions to set out and introduce a new pattern for registering traumas in accordance with Istanbul Protocol, which would enable entering more detailed information on bodily injuries.

There has been a positive development concerning the fulfilment of the above recommendations as Order no. 131 of the Minister of Corrections of Georgia, dated 26 October 2016 approved 'The Procedure for Registering Injuries of Remand/Convicted Inmates at the Penitentiary Establishments of the Ministry of Corrections Sustained as the Result of Alleged Torture, and Other Cruel, Inhuman or Degrading Treatment.'³⁴

Under the new procedure, if during providing medical services, a health-care professional notices either physical injury or emotional change of any kind, and/or other circumstances which could raise suspicions in an objective observer concerning possible torture and other cruel, inhuman or degrading treatment, medical personnel should make maximum effort to obtain information from the patient on the abovementioned. The same Order approved the new pattern for registering injuries allowing a health-care professional to indicate the location of injuries with the help of illustrations. The same Procedure also

³⁴ In accordance with the Order, the procedure will be in force as of 1 April 2017.

stipulates that when registering injuries, in case of a patient's consent, a health-care professional is obliged to take a colour photo of the injury.

The Public Defender of Georgia welcomes the fact that the issue at stake has been legally regulated and considers that the approval of the above-mentioned procedure is clearly a step forward. It is, however, noteworthy that the new procedure of registering inmates' bodily injuries was not enacted in the reporting period.³⁵ Registering of injuries was conducted, as in previous years, in accordance with the procedure in force, therefore failing to ensure effective identification of the incidents of alleged treatment and their documentation.

Furthermore, the Public Defender of Georgia believes it is necessary to make certain amendments to the aforementioned procedure for the effective identification of alleged ill-treatment. These considerations are discussed below.

Firstly, it should be pointed out that Article 6 of the Procedure for Registering Injuries of Remand/Convicted Inmates at the Penitentiary Establishments of the Ministry of Corrections Sustained as the Result of Alleged Torture, and Other Cruel, Inhuman or Degrading Treatment as approved by Order no. 131 of the Minister of Corrections of Georgia, dated 26 October 2016, in cases where a health-care professional has suspicions about torture and other cruel, inhuman or degrading treatment, he/she has to inform the Investigative Department of the Ministry of Corrections.

The Public Defender welcomes the fact that the obligation of a health-care professional to inform investigative authorities has been statutorily stipulated. However, the Public Defender still believes that initiating and conducting investigation by the Investigative Department of the Ministry does not fulfil the obligation to carry out an independent, impartial and effective investigation.

In the Parliamentary Report of 2015, the Public Defender of Georgia issued a recommendation to the Minister of Corrections with regard to informing investigative authorities on alleged ill-treatments. It was recommended to provide in a respective sub-legislative normative act for the obligation of a penitentiary establishment's doctor to notify directly the Office of the Chief Prosecutor of Georgia upon receiving information of, or finding, an inmate who could have been possibly subjected to ill-treatment.

According to the Ministry of Corrections, the practice of notifying the Investigative Department of the Ministry is dictated by the regulation on Determining Investigative and Territorial Jurisdiction of Criminal Cases as approved by Order no. 34 of the Minister of Justice, dated 7 July 2013. In accordance with the aforementioned regulation, the investigators of the investigative unit of the Ministry of Corrections of Georgia have the jurisdiction over crimes allegedly committed on the premises of penitentiary establishments within the system of the Penitentiary Department.

Stemming from the above-mentioned, the recommendation at stake has not been fulfilled and, therefore, the position of the Public Defender on this issue remains the same. Furthermore, the Public Defender deems it necessary that the respective sub-legislative

³⁵ Will be in force as of 1 April 2017.

normative act is amended to the effect that the Office of the Chief Prosecutor of Georgia is in charge of investigation of alleged torture, inhuman or degrading treatment of inmates.

Under Article 2.2 of the abovementioned procedure, a health-care professional should obtain a patient's informed consent before medical screening. Article 2.5 stipulates that a patient's objection to medical screening should be confirmed by his/her signature. In those cases, where a patient objects, medical screening should not be done.

It should be pointed out in this context that inmates of penitentiary establishments are a vulnerable group, especially when they are subjected to ill-treatment. In the existing conditions, the victims of alleged ill-treatment lack adequate statutory and administrative legal safeguards, which would decrease the risks of repression in case of filing a complaint. Therefore, the above-mentioned provisions contains a risk that in those cases, where a victim of alleged ill-treatment does not feel protected and does not have the expectation that those who violated his/her rights will be adequately punished, he/she might be reluctant to notify investigative authorities.

Under the Istanbul Protocol, prison doctors are the primarily providers of medical treatment but they also have the task of examining detainees arriving in prison from police custody. In this role or in treating people within a prison, they may discover evidence of unacceptable violence which prisoners themselves are not in a realistic position to denounce. In such situations, doctors must bear in mind the best interests of the patient and their duties of confidentiality to that person, and the moral arguments for the doctor to denounce evident maltreatment are strong, since prisoners themselves are often unable to do so effectively. Where prisoners agree to disclose, conflict does not arise and the moral obligation is clear. If a prisoner refuses to allow disclosure, doctors must weigh the risk and potential danger to that individual patient against the benefits to the general prison population and the interests of society in eliminating the practice of ill-treatment.³⁶

Therefore, the Public Defender stresses that, irrespective of an inmate's consent, the decision about notifying investigative authorities should be taken by a health-care professional with the due consideration of interests of the inmate and the public.

Furthermore, it is noteworthy that the issues related to independence and qualifications of medical personnel remain problematic in 2016. According to the findings of the monitoring conducted by the Special Preventive Group, there is certain dependence of the medical personnel on the prison administration. This raises misgivings regarding the impartiality of health-care professionals when dealing with the alleged ill-treatment of inmates, when they are obliged to register injuries and notify investigative authorities. The Public Defender deems it necessary that the Ministry of Corrections of Georgia should take appropriate measures for ensuring adequate independence of medical personnel. In the context of professional independence of medical personnel, the transfer of prison health care to the Ministry of Health, Labour and Social Affairs of Georgia is important.³⁷

36 The Istanbul Protocol, para. 72.

37 The importance of the issue is also stressed by the CPT in its report on the visit to Georgia. The CPT is of the view that the transfer of prison health care to the Ministry of Labour, Health and Social Affairs would certainly help increase the professional independence of prison health-care staff.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To lay down clear instructions with the view of ensuring the confidentiality of doctor-inmate interaction and ensure their practical implementation;
- To amend the Procedure for Registering Injuries of Remand/Convicted Inmates at the Penitentiary Establishments of the Ministry of Corrections Sustained as the Result of Alleged Torture, and Other Cruel, Inhuman or Degrading Treatment, as approved by Order no. 131 of the Minister of Corrections of Georgia, dated 26 October 2016 with the view of
 - determining the obligation of health-care professionals to notify the Office of the Chief Prosecutor of Georgia where they obtain information or conclude that an inmate could have been subjected to ill-treatment;
 - Entitling health-care professionals to decide about notifying the investigative authorities with the due regard to the interests of the inmate and the public.
- To draft amendments to the Imprisonment Code of Georgia for determining the obligation of health-care professionals of penitentiary establishments to notify the Office of the Chief Prosecutor of Georgia, whenever they obtain information or conclude that an inmate could have been subjected to ill-treatment.

TO THE MINISTER OF JUSTICE OF GEORGIA:

- To draft an amendment to the Criminal Code of Georgia for criminalising torture committed through the acquiescence of a public official or other person acting in an official capacity and to submit the draft amendment to the Government of Georgia for its initiation in the Parliament;
- To draft an amendment to the Law of Georgia on Legal Aid so that adequate legal aid is secured for the alleged victims of ill-treatment in all cases and to submit the draft amendment to the Government of Georgia with the view of its initiation in the Parliament; and
- To amend Order no. 34 of the Minister of Justice, dated 7 July 2013, which approved Determining Investigative and Territorial Jurisdiction of Criminal Cases, for authorising the Office of the Chief Prosecutor of Georgia to investigate alleged crimes of torture, inhuman and degrading treatment of inmates.

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To amend Article 144¹ of the Criminal Code of Georgia for criminalising torture committed through the acquiescence of a public official or other person acting in an official capacity

- To amend the Law of Georgia on Legal Aid so that adequate legal aid is secured for the alleged victims of ill-treatment in all cases; and
- To amend the Imprisonment Code of Georgia for determining the obligation of health-care professionals of penitentiary establishments to notify the Office of the Chief Prosecutor of Georgia, whenever they obtain information or conclude that the an inmate could have been subjected to ill-treatment.

3.3 ORDER AND SECURITY IN THE ESTABLISHMENTS OF DETENTION AND DEPRIVATION OF LIBERTY

Under Article 10 of the International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The United Nations Human Rights Committee ‘believes that here the Covenant expresses a norm of general international law not subject to derogation.’³⁸

Maintaining security and order is a fundamental right in the places of deprivation of liberty. Stemming from the human rights protection provisions, maintaining security is an integral part of the commitments taken by the state with regard to human rights protection.³⁹

The objective of maintaining control and security is best attained in a humane and just prison system. Therefore, it would be wrong to assume that treating prisoners with humanity hinders safeguarding security and order in prisons. On the contrary, it is fundamental to ensuring that prisons are secure and safe. Good practice in prison management has shown that when the human rights and dignity of prisoners are respected and they are treated fairly, they are much less likely to cause disruption and disorder, and more likely to accept the authority of prison staff.⁴⁰

In every country, there will be a certain number of prisoners considered to present particularly high security risks and hence require special conditions of detention. The perceived high security risks of such prisoners may result from the nature of the offences they have committed, the manner in which they react to the constraints of life in prison, or their psychological/psychiatric profile.⁴¹

Categorisation of convicted persons necessitates providing them with special conditions of deprivation of liberty. The perceived high security risk of such prisoners may result from the nature of the offences they have committed, the manner in which they react

38 The United Nations Human Rights Committee, General Comment no. 29, States of Emergency (Article 4), August 2001, para. 13.a).

39 Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, submitted to the UNGA, 5 September 2006, para. 51.

40 United Nations Office on Drugs and Crime, Handbook on the Management of High-Risk Prisoners, 2016, p. 10, available at: http://www.unodc.org/documents/justice-and-prison-reform/HB_on_High_Risk_Prisoners_Ebook_appr.pdf [Last visited on 09.03.2017].

41 Council of Europe, 11th General Report on the CPT’s activities, 1 January - 31 December 2000, para. 32, available in Georgian at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680696a75> [Last visited on 10.02.2017].

to the constraints of life in prison, or their psychological/psychiatric profile.⁴² This group of prisoners will (or at least should, if the classification system is operating satisfactorily) represent a very small proportion of the overall prison population. However, it is a group that is of particular concern to the CPT, as the need to take exceptional measures vis-à-vis such prisoners, brings with it a greater risk of inhuman treatment.⁴³

Under Rule 27 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, 'discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.'⁴⁴

As is well established in the Court's case-law, during their imprisonment prisoners continue to enjoy all fundamental rights and freedoms, save for the right to liberty. It follows, in general terms, that severe measures limiting Convention rights must not be resorted to lightly; more particularly, the principle of proportionality requires a discernible and sufficient link between the application of such measures and the conduct and circumstances of the individual concerned.⁴⁵

Under Article 66² of the Code of Imprisonment of Georgia, 'for the purpose of serving a sentence, a high risk prison facility is used for highly dangerous convicted persons whose personal qualities, criminal influence, motive of the crime, consequences of the unlawful actions and/or conduct demonstrated in the prison facility poses or may pose a serious threat to the prison facility or to other persons, and to the state or public security and/or to the law enforcement authorities.'⁴⁶ It is noteworthy that under Order no. 106 on Penitentiary Establishments, issued by the Ministry of Corrections of Georgia, the penitentiary establishments nos. 3, 6, and 7 have been assigned the status of high risk prison facility.

The Public Defender negatively assesses the policy of the Ministry of Corrections concerning the high risk prison facilities. According to the established practices, these are penitentiary establishments based on static security principles with a particularly restrictive, prohibitive and unconditionally strict regime. Such conditions are not conducive to positive changes in inmates' behaviour, their rehabilitation and eventual reintegration into the society.

It is noteworthy that in accordance with the statutes of the high risk prison facilities, inmates are placed in single or double cells. This falls within the discretion of a director of the establishment. The Public Defender believes that the existing regulation vests the directors of high risk prison facilities with the right to take arbitrary decisions about placing an inmate for a considerable time in a single cell and limit contact with other prisoners.

The Public Defender stresses the need for the amendment of the statutes of the high risk prison facilities for ensuring that placement in a single cell is based on individual assessment of the risks a particular inmate poses and reasoned decision. Furthermore, such decisions should be reviewed within reasonable intervals and placement in a single cell

42 *Idem*. [Last visited on 07.03.2017].

43 *Idem*.

44 United Nations Standard Minimum Rules for the Treatment of Prisoners, 1997, Rule 27.

45 *Khoroshenko v. Russia*, application no. 41418/04, judgment of the Grand Chamber of the European Court of Human Rights of 30 June 2015, para. 141.

46 The Code of Imprisonment of Georgia, Article 66².

should be compensated by additional measures such as contact with the outside world, accessibility to rehabilitation activities, library and television /radio.

Under Article 54 of the Imprisonment Code, the decision to conduct surveillance and control is made if other means proved to be ineffective. However, Article 121 of the Imprisonment Code allows visual and/or electronic surveillance and control of convicted persons placed in high risk prison facilities. The above-mentioned shows that the system of static security is the main means to attain security in these establishments. The Public Defender of Georgia has numerous times observed in his reports that the security system may not be based only on static security and it should take into account effective implementation of dynamic security concept.

The monitoring conducted by the Special Preventive Group showed that surveillance is carried out with regard to every prisoner admitted to a high risk prison facility. Each remand and convicted person admitted into the establishment is placed in a special cell equipped with electronic surveillance. In each case, there is an order issued to allow surveillance based on the Security Service motion and the report of an official in charge of legal regime of the facility. The aforementioned orders are, however, stereotypical and never based on individual risk assessment.

The Public Defender observes that the legislation should not allow routine surveillance and control through visual and/or electronic means only because the establishment is a high risk prison facility. It is important that the aforementioned restriction should only be used with the due account for individual assessment of security risks posed by an inmate, proportionality and necessity. Otherwise, such measures will amount to unlawful and arbitrary interferences in the private life of an individual.

The absence of specific, maximum terms for extending solitary confinement as a security measure in high risk prison facilities shows the danger of arbitrary continuation of such measures for unlimited time. This practice shows differential treatment in high risk prison facilities in comparison to other penitentiary establishments.

European Committee for the Prevention of Torture points out in its report that the number of visits should not depend on the type of the facility and the crime committed. It is important that prisoners sentenced to life in prison should be allowed more short and long visits which will enable them to maintain close ties with their family members and facilitate their rehabilitation.⁴⁷

It is noteworthy that in terms of maintaining contacts with their families, the inmates placed in closed penitentiary establishments and high risk prison facilities receive differential treatment in comparison to inmates of other establishments. In particular, convicted persons, placed in either high risk prison facilities or closed penitentiary establishments, are only allowed one short visit and as an incentive one additional short visit in a month.

The inmates placed in high risk prison facilities face even more restrictive conditions in terms of use of telephone. They are allowed to have one telephone conversation at their

⁴⁷ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2015, available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last visited on 14.03.2017].

expense. This conversation should last no more than 10 minutes and is allowed only once a month. As an incentive, they can have another telephone conversation lasting no more than 10 minutes at their expense.

The Public Defender observes that the establishment type and the nature of the crime committed should not condition allowing visits. It should also be pointed out that the law should allow the inmates of high risk prison facilities the same amount of visits and telephone conversations as afforded to the inmates placed in other penitentiary establishments. The limitation of the number of short visits and telephone conversations should be preconditioned by specific links between such contacts and the crime committed.

The existence of strict security regime in the high risk prison facilities is evident due to the particular increase in the number of disciplinary penalties imposed in 2016 in penitentiary establishments nos. 3 and 6.

The Public Defender observes that under the conditions of enhanced security measures, the administration of a high risk prison facility should use maximum efforts to ensure that the regulations applying to regular penitentiary establishments are also extended to high-risk inmates. In order to compensate the existing regime, the latter category of inmates should more actively benefit from rehabilitation activities.

It is of paramount importance that there are diverse rehabilitation activities tailored to inmates' individual necessities and aspirations in the high risk prison facilities. The results of the monitoring carried out in 2016 showed that the inmates of high risk prison facilities do not have any possibility to carry out meaningful activities that are of interest for them.⁴⁸ Such a situation creates unhealthy and stressful environment in an establishment, which in turn has negative ramifications for the relations between inmates and prison staff as well as maintenance of order and security. Most importantly, the objectives of convicted persons' social rehabilitation and prevention of reoffending cannot be attained in such conditions.

According to the letter received from the director of no. 6 establishment, the reason behind the absence of professional and vocational education, and other rehabilitation activities, was that establishment no. 6 is a high risk prison facility.⁴⁹ The Public Defender negatively assesses such an approach and observes that it once again shows the dependence of the system on the high risk prison facilities in violation of international standards.⁵⁰

It is noteworthy that in the course of the reporting year only two inmates participated in a rehabilitation activity carried out in high risk prison facility no. 7. There were eight rehabilitation activities in establishment no. 3 in which four convicted persons took part.

It is of paramount importance that high risk prison facilities and closed penitentiary establishments offer diverse and regular activities to their inmates in order to contribute to the positive changes in their behaviour and their rehabilitation. Hence, it is necessary that,

48 See further information under the chapter on daily schedule of and rehabilitation activities in penitentiary establishments.

49 Letter no. MOC7 17 00040633 of the Director of penitentiary establishment no. 6, dated 17 January 2017, registered under no. 03-3/205 at the Office of the Public Defender of Georgia.

50 UN Nelson Mandela Rules, see Rules nos. 91, and 92.

with due account of security interests of the establishments, various activities should be carried out.

In accordance with the European Prison Rules, 'good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity and offering them a full programme of activities....'⁵¹ The aforementioned regulation implies introduction of such systems of order and safety that would allow maintaining balance between security and the programs designed for social reintegration of inmates. This also implies inclusion of various components necessary for the effective management of prisons.

Apart from nonexistent rehabilitation programmes, it is of concern that inmates placed in high risk prison facilities and penitentiary establishments spend 23 hours a day in their cells. Their outdoor stroll is limited to an hour a day and takes place in a cell like yard. Conditions that allow physical exercise in these yards are absent, which also has ramifications for the inmates' health.

The Public Defender welcomes the legislative amendment prepared by the Ministry of Corrections, which is aimed at decreasing the duration of administrative detention. However, the adoption of the draft law would mean increasing the term of administrative detention for the inmates of high risk prison facilities up to 150 days. This once again shows the preferences given to repressive approaches especially against the background of the Public Defender's position that favours the abolition of administrative detention, as it is an ineffective method for ensuring order and security in penitentiary establishments.

The measures of static security in high risk prison facilities, as well as their blanket prohibitions, restrictions, very limited rehabilitation activities that stem from the high risk status given to these establishments, ran counter to the spirit of the recommendations given to the States by the Committee of Ministers of the Council of Europe, calling upon the States to apply, as far as possible, ordinary prison regulations to dangerous prisoners and to apply security measures only to the extent to which they are necessary.⁵²

Security implies prevention of violence among prisoners, fire and other emergencies, creating safe and working environment for inmates and prison staff as well as prevention of self-harm and suicide. For the aforementioned objectives, the following components of security can be highlighted:

Aspects of physical security include the architecture of prison buildings, the strength of the walls of those buildings, the bars on the windows, the doors of the accommodation units, the specifications of the perimeter wall and fences, watchtowers and so on. Procedural security includes those methods and procedures that are in place for prison security.

51 Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states On European Prison Rules, Rule 49.

52 Council of Europe, Committee of Ministers, Recommendation of the Committee of Ministers R (82) 17 to Member States Concerning Custody and Treatment of Dangerous Prisoners, adopted by the Committee of Ministers on 24 September 1982 at the 350th meeting of the Ministers' Deputies, available at: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Umluvy/vezenstvi/R_82_17_treatment_dangerous_prisoners.pdf [Last visited on 07.03.2017].

It implies the rules for preventing escape and maintaining order in prisons.⁵³ One of the best practices of maintaining security is the concept of dynamic security. Dynamic security refers to actions that contribute to the development of professional, positive relationships between prison staff and prisoners based on dignity and mutual respect in how people treat each other, and in compliance with international human rights principles and due process; it also implies activities aimed at future social reintegration. According to the United Nations Prison Incident Management Handbook, prison staff members need to understand that interacting with prisoners in a humane and equitable way enhances the security and good order of a prison.⁵⁴

The positive relationship between prison staff and prisoners is a necessary precondition for maintaining order and security in a penitentiary establishment. In order to attain such positive relationships, it is important that prisoners understand that the existing rules and procedures are safe and aim at creating a humane environment. Prisoners should be aware that they are treated fairly and their rights are being protected.

Ensuring security and safety in prisons in the conditions of positive relationships between prison staff and prisoners is a starting point. In some cases, however, it is practically impossible not to resort to force and other measures of coercion. Control of prisoners also includes elements of static security such as the use of prison security infrastructure and equipment and the use of force to manage and respond to prison incidents if needs be.⁵⁵

In accordance with the Code of Conduct for Law Enforcement Officials, law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.⁵⁶ This implies that additional security measures should be the last resort. The use of force and other measures of coercion may only be based on appropriate procedures and best practices existing in place.

Inspections carried out by the Special Preventive Group in penitentiary establishments in the reporting period revealed the problems in the implementation of security measures and surveillance by prison administration not only in high risk prison facilities but also in other penitentiary establishments as well.

Apart from the above-mentioned problems, serious threat in terms of ill-treatment of prisoners is posed by criminal subculture existing in penitentiary establishments, which often becomes the reason for violence and oppression among inmates.

Criminal subculture has its origins from the beginning of 20th century in Georgia as well as other post-soviet countries. To this day, it is manifested by informal rule aiming at maintaining 'Order' by a certain group of privileged prisoners.

53 Andrew Coyle, International Centre for Prison Studies, 'A Human Rights Approach to Prison Management', 2009, available at: <http://www.prisonstudies.org/> [Last visited on 10.02.2017].

54 The United Nations Prison Incident Management Handbook, 2013 paras. 21-22, available at: http://www.un.org/en/peacekeeping/publications/cljas/handbook_pim.pdf [Last visited on 10.02.2017].

55 *Ibid.*, para. 13.

56 The United Nations General Assembly, Code of Conduct for Law Enforcement Officials, 5 February 1980, A/RES/34/169, available at: <http://www.refworld.org/docid/48abd572e.html> [Last visited on 09.02.2017].

The authority of criminal subculture is used in the informal categorisation of prisoners. This way, certain group of prisoners enjoying a privileged position establish informal rule through repressive methods, which often cause violence among prisoners and are manifested in punitive measures towards those prisoners that disobeyed the said informal rule.

Considering the fact that it is within the interest of administrations of penitentiary establishments to maintain order, there is a temptation on their part to allow to a certain degree, or even foster, informal rule in their facilities. In 2015, in penitentiary establishment no. 17, the treatment inflicted by the privileged prisoners upon one of the inmates was qualified by the investigative authorities and court as torture. It is noteworthy that in this case the court also held the director of the penitentiary establishment as guilty on the account of exceeding official powers, which was manifested in allowing unlimited movement for privileged prisoners within the premises of the establishment at night hours. Those very privileged prisoners tortured the victim at night.

It is necessary that the Ministry of Corrections of Georgia understands the challenges posed by the existence of criminal subculture in penitentiary establishments and elaborates the strategy to overcome these problems. The issue needs to be addressed by a complex approach comprising relevant legal actions to be taken against those inmates violating the rights of other prisoners.

The Public Defender observes that for changing the existing situation it is necessary to take task-oriented complex measures, including the practical implementation of dynamic security concept, fighting impunity, enhancement of rehabilitation services, creation of adequate prison conditions, raising awareness among prisoners, offering incentives to inmates and giving them opportunities to be involved in various meaningful activities. All these measures taken together will weaken the authority of criminal subculture in penitentiary establishments. It is also necessary to take measures aimed at overcoming criminal subculture under the conditions, where inmates' rights and safety are secured. Violent and repressive methods should not be applied in order to avert possible torture and other cruel, inhuman or degrading treatment or punishment.

Protection of human rights and security in penitentiary establishments necessitates a complex and systematic approach. The following important organisational aspects⁵⁷ should be taken into account: relevant normative regulation; accountability; personnel's operational capacity and competence (correlation of the number of personnel and inmates, organisational structure, personnel's skills and experience, the Code of Conduct for the staff, establishment's statute, and disciplinary proceedings); elements of dynamic security (interactions with inmates, monitoring, collecting information and knowledge of each inmate's personality, conflict management, mediation, etc.); and provisional plan for the management of incidents and emergencies. The aforementioned and other relevant issues are further discussed in the subsequent chapters.

57 *Idem.*, [Last visited on 09.02.2017].

RECOMMENDATIONS

TOO THE MINISTER OF CORRECTIONS:

- To take all the measures to ensure to the maximum extent, with due attention to security interests, accessibility of rehabilitation activities and contact with the outside world in high risk prison facilities, similar to the practices in the regular penitentiary establishments;
- To take all the measures to ensure that security systems in high risk prison facilities are not based only on static security and dynamic security concept is actively implemented;
- To take all the measures to ensure that prisoners are more actively involved in rehabilitation activities as a compensation for special security regime;
- To take all the measures to ensure that limitations/prohibitions imposed on a convicted person are not preconditioned by the mere fact that this person is placed in a high risk prison facility; instead limitations/prohibitions should be imposed individually, based on an adequately reasoned decision by taking into account the assessment of imminent risk posed by a particular convict;
- To amend statutes of the high risk prison facilities to the effect that convicted persons are placed in single cells based on an adequately reasoned decision taking into account the assessment of imminent risk posed by a particular convict, subject to review in reasonable intervals;
- To take all the measures to ensure that that placement of convicted persons in single cells are compensated by maintaining contact with the outside world, accessibility of rehabilitation activities, library, and TV and radio; and
- To overcome criminal subculture and informal rule in penitentiary establishments
 - ensure elaboration of the strategy on overcoming criminal subculture which should contain systematic and regular activities based on the study of criminal subculture existing in a penitentiary establishment;
 - prevent informal rule in penitentiary establishments;
 - ensure enhancement of prison personnel's accountability, competences and operational capacities;
 - ensure optimum correlation of the number of personnel and inmates for practical implementation of dynamic security;
 - ensure enhancement of personnel's skills in terms of interactions with inmates, conflict management, mediation, and conduct compatible with the Code of Ethics; and

- Ensure enhancement of rehabilitation services in penitentiary establishments, adequate prison conditions, raising awareness/education among inmates and the system of fair incentives, and inmates' involvement in various daily and meaningful/interesting activities.

3.3.1. CLASSIFICATION OF PRISONERS

The types of detention and penitentiary establishments are determined by Article 10.2 of the Code of Imprisonment of Georgia.⁵⁸ Article 46.4 of the Imprisonment Code⁵⁹ provides for the authority of the Director of the Penitentiary Department to place a prisoner in a particular establishment. Order no. 70 of the Minister of Corrections, dated 9 July 2015, provides for the types of risks posed by convicted persons, risk assessment criteria, procedure for risk assessment and re-assessment, conditions of and procedure for transfer of prisoners to the similar or other type of establishment, as well as the terms of reference of the risk assessment team.

In the Parliamentary Report of 2015, the Public Defender gave his recommendation to the Minister of Corrections with regard to the above-mentioned procedure. It was suggested, in particular, to introduce an obligation of a penitentiary establishment or the Penitentiary Department to inform a convict about the initiation of the risk-assessment process by a multidisciplinary team. Furthermore, convicts should be enabled to furnish additional documentation to the multidisciplinary team at any stage of assessment, if they believe this will lead to a desirable outcome. It should be noted that this recommendation has not been fulfilled.

RECOMMENDATION

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To amend the Procedure for the Assessment and Re-assessment of the Risks posed by a Convict, Risk Assessment Criteria to the effect of determining the obligation of a penitentiary establishment or the Penitentiary Department to inform a convict about the initiation of the risk-assessment process by a multidisciplinary team. Furthermore, convicts should be enabled to furnish additional documentation to the multidisciplinary team at any stage of assessment, if they believe this will lead to a desirable outcome.

58 The prison facilities are: low risk prison facility; semi-open prison facility; closed type prison facility; high risk prison facility; juvenile rehabilitation facility; and special facility for women.

59 By a decision of the Director of the Department, a convicted person may be transferred for serving the rest of the sentence to a prison facility of the same or different type in cases where he/she regularly violates the internal regulations of the facility; is ill and/or in cases where it is necessary to ensure his/her safety after taking risk factors into account; also in cases of reorganisation, liquidation or overcrowding of the facility or in circumstances specified in Article 58(1) of this Code; or in other important, reasonable circumstances and/or in the case of the consent of the convicted person. A risk assessment team assesses and periodically re-assesses the risks of a convicted person.

3.3.2. SECURITY MEASURES, MANAGEMENT OF INCIDENTS AND EMERGENCIES

3.3.2.1. De-escalation rooms

In 2015, within the framework of the reform of the penitentiary system of Georgia, relevant ministerial orders approved the statutes of all penitentiary establishments. In accordance with the respective statutes, de-escalation rooms were operating in penitentiary establishments nos. 2, 5, 8, and 18; safe rooms were operating in establishments nos. 3, 6, and 7.

On 9 August 2016, the statutes of establishments nos. 3, 6, and 7 were amended and the procedure of transfer of inmates to safe rooms was replaced by the procedure of transfer to de-escalation rooms.⁶⁰

According to the information received from the Ministry of Corrections of Georgia, the numbers of inmates placed in the de-escalation rooms are the following: penitentiary establishment no. 3 – 116 inmates; penitentiary establishment no. 6 – 90; and penitentiary establishment no. 8 – 145.

It is a positive development that the duration of placement of inmates in de-escalation rooms decreased in 2016 in comparison to 2015. However, there were isolated instances where inmates were placed in such rooms from 20 to 30 days. On one occasion identified in penitentiary establishment no. 3, a prisoner was placed in a de-escalation room for 36 days.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in their Report to the Georgian Government on the visit to Georgia in 2014, observed that the maximum time limit at the material time for placement in a ‘de-escalation room’ (four days according to their information) was way too long. The CPT recommended that ‘it should preferably be limited to a few hours and, in any event, not more than 24 hours’.⁶¹ Furthermore, the Committee highlighted the importance of the strategy of de-escalation and observed that the lack of a genuine de-escalation strategy results in some inmates finding no other means of communicating their grievances than through hunger strikes, acts of severe self-harm and even attempted suicides.⁶²

The Public Defender considers that the placement in a de-escalation room should be an instantaneous measure of urgent nature and it is impermissible to subject inmates to the conditions existing in these rooms for a long term as such placement could amount to inhuman and degrading treatment. The administration of a penitentiary establishment should resort to other measures, among them, involvement of a multidisciplinary group (a psychologist, a social worker, a medical doctor, and if needs be a psychiatrist) and provision of adequate help to inmates.

60 In the reporting period, de-escalation rooms were operative only in penitentiary establishments nos. 3, 6, and 8.

61 See Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, CPT/Inf (2015), para. 94.

62 *Ibid.*, para. 54.

In the Parliamentary Report of 2015, as well as the penitentiary establishments monitoring reports of 2016, the Public Defender of Georgia recommended numerous times to the Minister of Corrections of Georgia to limit statutorily the placement of inmates in de-escalation rooms to a maximum term of 24 hours.⁶³

As the result of the amendments made on 9 August 2016 to the statutes of penitentiary establishments nos. 3, 6, and 8, the maximum term of placement for prisoners in de-escalation rooms was limited to 72 hours, which is positively assessed by the Public Defender. However, it is noteworthy that a statute authorises the administration of a penitentiary establishment to place an inmate in a de-escalation room for unlimited time, which can again result in long-term isolation of prisoners.

In accordance with all the above-mentioned statutes, a de-escalation room should be equipped with a safe mattress, surveillance camera, remotely controlled and damage-resistant open toilet, tap, light and adequate ventilation.

The respect for an inmates' private life in de-escalation rooms was of concern in 2016 and remains so in 2016. Surveillance systems in de-escalation rooms in establishments nos. 3, 6, and 8 are installed in such a way that the toilet is in the field of view of cameras, which is impermissible as it can amount to inhuman and degrading treatment.

It was revealed during the visits to establishments nos. 3, 6, and 8 in the reporting period that sanitation and hygiene conditions were absent in the escalation rooms: there was no mattress on the floor, windows would not open and therefore there was no natural ventilation.

It is noteworthy that the environment and conditions in the de-escalation rooms are not safe and do not minimise the risk of self-harm. According to the information provided by the Ministry of Corrections, cushioning material is not available in Georgia for lining the walls in de-escalation rooms. The Ministry searched for companies manufacturing the material in various countries and presently is in negotiations to make a purchase. The Public Defender of Georgia positively assesses the efforts made by the Ministry of Corrections for adequate equipment of the de-escalation rooms and expresses his hope that the works will be soon completed.

It should also be pointed out that the items of personal hygiene and washing detergents are given to inmates of de-escalation rooms in limited quantities. Furthermore, the inmates placed in de-escalation rooms have to keep their clothes with prison personnel and this way they have limited access to their own clothing.

According to prisoners, apart from their hard daily conditions, when in de-escalation rooms, they are not given access to shops, telephone calls and correspondence, and visits are not allowed either. It should also be noted that according to the information received by the Special Preventive Group in penitentiary establishment no. 3, verified in relevant documentation, despite serious health condition of one of the inmates, he was not trans-

⁶³ See the Annual Report of the Public Defender of 2015, p. 44, available at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf> [Last visited on 02.11.2017].

ferred from a de-escalation room to a medical unit and the medical personnel did not provide him with assistance as frequently as it was needed.

It is the observation of the Public Defender that somatic and mental health is not taken into consideration when placing inmates in de-escalation rooms. Therefore, long-term isolations in de-escalation rooms could provoke self-harm and suicide. It is noteworthy that in penitentiary establishments nos. 3, 6, and 8, incidents of inflicting self-harm were registered. This questions the effectiveness of these measures in terms of preventing harm to the life and limb of inmates. E.g., from January to May 2016, the inmates of penitentiary establishment no. 3 placed in de-escalation rooms inflicted self-harm in nine occasions. It is therefore evident that the mere placement in de-escalation rooms will not be an effective measure to prevent self-harm. To the contrary, the existing conditions of the de-escalation rooms, combined with isolation, are very likely to provoke self-harm in prisoners.

The inspections showed that in those cases where administration is satisfied that an inmate poses risk to him/herself or others, the use of security measures, including placement in a de-escalation room, is the only intervention. It should be noted that the decision on placement in a de-escalation room is taken by an establishment's director and there is no joint multidisciplinary assessment conducted - psychologists, social workers, medical doctors or other personnel of the establishment's units are not involved in preventing/decreasing the above-mentioned risks.

As the results of the visits made to establishments nos. 3, 6, and 8 revealed, the inmates in these facilities have the feeling that their transfer to de-escalation rooms was punitive in purpose and occurs whenever they breach the establishment's regulations. According to them, the placement has nothing to do with ensuring their safety.

The group inspected the documentation in establishment no. 3 and found out that out of 51 instances of placement, in 22 cases, disciplinary measures (restriction of telephone calls, visits and correspondence) were imposed on the prisoners placed in a de-escalation room. The Public Defender stresses that it is impermissible to resort to security measures for punitive purposes as such measures should only serve the statutory objective, which is ensuring the safety of people in a penitentiary establishment.

Under the conditions, where there are adequate rehabilitation and psychological services are not available in penitentiary establishments, the prisoners found themselves locked up in cells almost round the clock for 23 hours. The Special Preventive Group concludes that long-term placement of inmates in de-escalation rooms could amount to cruel, inhuman and degrading treatment and this measure increases the risk of self-harm or inflicting harm to other persons.⁶⁴

64 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on the visit to Georgia in 2015. The special Rapporteur pointed out that he was informed the permitted time frame and practices of solitary confinement varied between days, weeks and even months and this could amount to cruel, inhuman or degrading treatment or even torture, para. 85. The report is available in English at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/273/24/PDF/G1527324.pdf?OpenElement> [Last visited on 10.09.2017].

It is noteworthy that the basis for the application of placement, its procedure and legal safeguards are not stipulated in law; they are governed by the sub-legislative normative act issued by the Minister. Due to the fact that placement in a de-escalation room is a restrictive measure by its nature, it is important that this measure should be governed by law. In the Parliamentary Report of 2015, the Public Defender proposed to the Parliament of Georgia to provide statutory regulation for the basis of placement of inmates in de-escalation rooms, its procedure and a maximum reasonable term not exceeding 24 hours. It was also proposed by the Public Defender that the official in charge of placement, as well as reasoning standards for the application of the measure and appropriate legal safeguards should be governed by law. It should be pointed out that the aforementioned proposal has not been fulfilled.

Apart from the above-mentioned, in his Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure that video recordings from de-escalation rooms were stored for at least a month. However, this recommendation has not been fulfilled and the recordings are stored in accordance with a general rule – for no less than 120 hours.

It should be reiterated that placement in a de-escalation room is a coercive measure aimed at maintaining order and safety, application of which is characterised by increased risks of inciting self-harm or use of force against other inmates. This, in turn, increases the risk of ill-treatment. In accordance with the existing regulations, the recordings of visual and/or electronic surveillance are to be archived based on a decision of a particular official in case of a breach of the legal regime. The commission of an alleged crime, death of remand/convict or any other act that could result in any of the aforementioned outcome are such cases. The Public Defender, therefore, observes that the surveillance recordings from de-escalation rooms should not be archived based on the decision of a particular official; instead, these recordings should be automatically archived in all cases. It is possible that, at the material time, there was no basis for archiving recordings in accordance with the regulations in force; however, after the lapse of certain time, an inmate might lodge a complaint and allege the violation of his/her rights in a de-escalation room. It should be also taken into consideration that these recordings will serve as a safeguard against false and unsubstantiated accusations against administration.

In the light of the above-mentioned, the position of the Public Defender remains the same. Placement of inmates in de-escalation rooms should occur only within the scopes of clear statutory regulation and where there are sufficient legal safeguards against human rights violations by such measures. Such placements should only be allowed if there are statutory provisions in place determining the authority of the officials to place an inmate in a de-escalation room, reasoning standards of application of the measure and maximum term limited to 24 hours.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To regulate by law the grounds for placement of inmates in de-escalation rooms, its procedure and a maximum reasonable term not exceeding 24 hours;

to specify by law the official authorised to order placement, standards for reasoning for such decisions, and legal safeguards for the protection of prisoners when applying this measure.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure drafting legislative amendments to the Imprisonment Code of Georgia for determining grounds for placement of inmates in de-escalation rooms, its procedure and a maximum reasonable term not exceeding 24 hours; to determine the official authorised to order placement, set standards for reasoning for such decisions and legal safeguards for the protection of prisoners when applying this measure; and to ensure the submission of the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia;
- To determine by a sub-legislative normative act storage of video recordings from de-escalation rooms for a minimum period of 1 month;
- To secure rigorous observance of requirements of statutory requirement during placement of inmates in a de-escalation room through supervision and control;
- To ensure amendment of the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings as approved by Order no. 35, dated 19 May 2015, to the effect that the recordings of visual and/or electronic surveillance in de-escalation rooms are stored in all cases for no less than a month; and
- To ensure safe environment in de-escalation rooms, including lining the walls and floors with soft material.

3.3.2.2. Surveillance through Visual and/or Electronic Means

The grounds for surveillance and control of remand/convicted persons through visual and/or electronic means are determined by Article 54.1 of the Code of Imprisonment.⁶⁵ The Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings is approved by Order no. 35 issued by the Minister of Corrections of Georgia on 19 May 2015.

Under Article 3.5 of the above-mentioned Procedure, 'electronic surveillance and control of remand/convict persons cannot be extended to showers, toilets, rooms for long visits,

⁶⁵ In the case of a reasonable belief, based on security and other lawful interests of remand/convicted or other persons, to prevent suicide, self-injury, violence against remand/convicted or other persons, damage to property, and to avert other crimes and offences, the administration may conduct surveillance and control through visual and/or electronic means. Electronic surveillance is conducted with audio and video devices and/or other technical means of control. The administration may, through electronic means, record the process of surveillance and control, and the information received as a result of this process.

except for the procedure and cases prescribed by Georgian legislation.’ With regard to the aforementioned reservation, as early as on 19 December 2014, the Public Defender of Georgia proposed to the Minister of Corrections to add toilets in prison cells to the list of places that cannot be placed under surveillance. This proposal has not been fulfilled. The European Committee for the Prevention of Torture (CPT) regularly reiterates in its reports, based on visits to various countries, that it is essential ‘that the privacy of detained persons be preserved when they are using a toilet and washing themselves.’⁶⁶

The Special Preventive Group visiting penitentiary establishments revealed that prisoners’ right to private life is not respected in establishment no. 6. In particular, in the majority of cells, visual surveillance systems (video cameras) are installed so that toilet areas are within the camera’s scope. The Special Preventive Group therefore concluded that inmates’ privacy was not respected in the establishment.

The European Committee for the Prevention of Torture (CPT) has numerously emphasised the importance of reasoning standards of the decisions about surveillance and control through visual and/or electronic means. The Committee has repeatedly pointed out that the use of surveillance without adequate reasoning can amount to violation of an inmate’s right to private life.⁶⁷

Furthermore, the Public Defender observed in the Parliamentary Report of 2015 that, to provide prisoners with sufficient legal safeguards, it was necessary to indicate in surveillance orders those facts and circumstances that warranted the surveillance measure in each particular case. The reason as to why other measures are considered to be ineffective should also be indicated in those orders. In each individual case, risks should be assessed in detail and the decisions about surveillance should clearly show that such measure is the last resort. It should be noted with regret that this recommendation has not been fulfilled.

The outcomes of the inspection of penitentiary establishments carried out by the Special Preventive Group in 2016, similar to those in 2015, showed that decisions ordering surveillance contain scarce information and the wording is stereotypical. This issue is discussed in detail in the 2015 Parliamentary Report of the Public Defender of Georgia.⁶⁸

Apart from the reasoning standards of decisions ordering surveillance through visual and/or electronic means, it is also important to have these decisions periodically reviewed. Under Rule 51.1 of the European Prison Rules, ‘the security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.’ Under Rule 51.4, ‘each prisoner shall then be held in security conditions appropriate to these levels of risk.’ Under Rule 51.5, ‘the level of security necessary shall be reviewed at regular intervals throughout a person’s imprisonment.’

66 See” <http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf> p. 19, para. 31, also: <http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.pdf> p. 30, para. 60 [Last visited on 12.03.2017].

67 Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 December 2012, para. 52, available in English at: <http://www.cpt.coe.int/documents/ukr/2013-23-inf-eng.htm> [Last visited on 12.03.2017].

68 The Report of the Public Defender of Georgia of 2015 on the Situation of Protection of Human Rights in Georgia, p. 46.

The Public Defender welcomes the fact that the Minister of Corrections of Georgia fulfilled the recommendation on amending the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of providing the obligation on reviewing decisions on surveillance.⁶⁹ However, against the background where those decisions are of stereotypical nature, it is meaningless to issue a formal new decision with the same standard of reasoning.

It is also noteworthy that in the Parliamentary Reports of 2014 and 2015, the Public Defender of Georgia recommended to the Minister of Corrections of Georgia to determine the reasonable term of storage of video surveillance recordings (for no less than 10 days).

On 20 March 2017, Order no. 35 of the Minister of Corrections of Georgia, dated 19 May 2015, approving the Procedure, was amended to the effect of providing for 120 hours (five days) as the minimum term of storing video recordings. This change is welcomed by the Public Defender as an obvious step forward. It is however to be noted that the practice studied by the Public Defender has shown that it is necessary to store the recordings at least for ten days. The Public Defender also deems it necessary to ensure unimpeded access to these recordings for members of the Special Preventive Group.

Apart from the foregoing, Article 8 of the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings merely repeats the relevant provision of the Imprisonment Code and states that administrations are entitled to monitor inmates' meetings with the persons⁷⁰ referred to in Article 54.6 of the Code. This monitoring is conducted visually, through observation and recording with technical means from a distance but out of hearing of those monitoring. This was another issue that the Public Defender brought to the attention of the Parliament and the Minister of Corrections and recommended to amend the Procedure to the effect of stipulating that meetings of remand and convicted persons with the Public Defender and members of Special Preventive Group are confidential and eavesdropping or surveillance of any kind are impermissible. This recommendation, however, has not been fulfilled.

The Public Defender requests to amend the above provision with regard to the Public Defender and the members of the Special Preventive Group both in the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings and the Code of Imprisonment. The request is based on Article 19.3 of the Organic Law of Georgia on The Public Defender of Georgia under which 'the meetings of the Public Defender of Georgia/a member of the Special Preventive Group with detainees, prisoners or persons whose liberty is otherwise restrict-

69 Under Article 4.1 of the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings, decisions on conducting surveillance and control through visual and/or electronic means is taken by the director of a penitentiary establishment. The decision is issued in the form of an Order when there are relevant grounds for ordering this measure. Orders are issued for the period the grounds continue to exist but no more than three months.

70 President of Georgia; President of the Parliament of Georgia and the Members of the Parliament authorised by the former; Prime Minister of Georgia; Officials of the Office of the Prosecutorial system vested with the relevant capacity; Public Defender of Georgia; Minister of Corrections and other persons authorised by the former; Members of the Special Preventive Group.

ed, convicted persons, persons in psychiatric facilities, old people's and children's homes shall be confidential. Any kind of eavesdropping and surveillance shall be prohibited.'

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To make a legislative amendment to the Imprisonment Code to the effect of inserting express reference to the confidentiality of the meetings of the Public Defender of Georgia/members of the Special Preventive Group with remand/convicted persons as well as prohibition of any kind of wiretapping or surveillance; to submit the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia;
- To amend the Order issued by the Minister of Corrections approving the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of inserting express reference to the confidentiality of the meetings of the Public Defender of Georgia/members of the Special Preventive Group with remand/convicted persons as well as prohibition of any kind of wiretapping or surveillance;
- To amend the Order issued by the Minister of Corrections approving the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of adding toilets in cells to the list of places where surveillance is prohibited;
- To draft legislative amendment to the Imprisonment Code to the effect of inserting express prohibition of surveillance in toilets in cells; to submit the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia;
- To amend the wording of the Ministerial Order approving the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of providing information about the circumstances warranting the necessity and indispensability of surveillance and control through visual and/or electronic means;
- To take all reasonable measures to ensure that surveillance through electronic means is conducted only in those cases where other measures proved to be ineffective and for the duration strictly necessary in view of particular circumstance; also to ensure that the decisions on conducting surveillance through electronic means are adequately reasoned; and
- To determine by a relevant order a reasonable time (no less than 10 days) for storing the recordings of video surveillance and ensure unimpeded access of the members of the Special Preventive Group to these recordings.

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To amend the Imprisonment Code to the effect of inserting express reference to the confidentiality of the meetings of the Public Defender of Georgia/members of the Special Preventive Group with remand/convicted persons as well as prohibition of any kind of wiretapping or surveillance; and
- To amend the Imprisonment Code to the effect of inserting the prohibition of surveillance of toilets in cells.

3.3.2.3. Separation of Prisoners for Security Reasons

Article 57.1.b) of the Code of Imprisonment of Georgia provides for the grounds of separation of prisoners.⁷¹ The grounds and procedure for the application of this measure are governed by the respective orders issued by the Minister of Corrections approving the statutes of penitentiary establishments. These statutes provide for the similar procedure for all penitentiary establishments.⁷²

The statutes of high risk prison facilities and other establishments provide for different terms for the extension of the duration of separation. In particular, in accordance with the statutes of high risk prison facilities, if needs be, separation of a prisoner from other prisoners may be extended with the decision of the director of an establishment for a reasonable term, until the danger that warranted the isolation does not exist. In accordance with the statutes of other penitentiary establishments, if needed, the term of separation of a convict from other convicted persons may be extended based on the decision of the director of a penitentiary establishment for another thirty days. If these security measures prove to be ineffective, the director of a penitentiary establishment motions before the Director of the Penitentiary Department on transferring a convict or person endangering the former to another prison facility. If there are relevant grounds for this measure, it is not necessary to exhaust the initial term for filing the motion.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure the amendment of the penitentiary establishments' statutes to the effect of determining the maximum term for separation. This recommendation, however, has not been fulfilled.

The inspections conducted by the Special Preventive Group in the reporting period reviewed that the separation of inmates is widely practiced in penitentiary establishments.

71 To avoid self-injury, or damage to other persons and property, to prevent crimes and other offences in the penitentiary institution, to prevent the non-compliance by an remand/convicted person of a lawful demand of an employee of the Special Penitentiary Service, to repel attacks, to suppress collective disobedience and/or mass unrest, the following security measures may be applied, on the basis of a justified decision, to remand/convicted persons: a) isolation from other remand/convicted persons.

72 In particular, the decision about placing a convicted person separately from other convicts for a reasonable time is made by the director of a penitentiary establishment following the request of a convict or on the director's own motion if the statutory grounds are met. In the absence of the director of a penitentiary establishment, an official in charge orders separation of a convict from other convicts for a maximum of 24 hours. The Director decides on the separation of a convict from other convicts in the form of an Order.

In 2016, in accordance with the above procedure, establishment no. 3 separated 1 inmate; establishment no. 6 separated 108 inmates; establishment no. 8 separated 115 inmates; establishment no.11 separated 1 inmate; establishment no. 14 separated 46 inmates; establishment no. 15 separated 38 inmates, establishment no. 17 separated 151 inmates; establishment no. 18 separated 6 inmates; and establishment no. 19 separated 6 inmates.

Solitary confinement of inmates without legal basis and in violation of the above procedure was also systematically practised in penitentiary establishments in 2016. Certain inmates have been separated for years in solitary confinement cells in penitentiary establishments nos. 6, 7, and 9. Some of these prisoners have not used long visit at all. One of them has been in solitary confinement since 2005 and serves a life sentence.

The European Court has consistently stressed that the suffering and humiliation involved must not in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his/her liberty may often involve such an element. Under this provision the state must ensure that a person is detained in conditions that are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him/her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his/her health and well-being are adequately secured.⁷³ The Court also observes that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions as well as of specific allegations made by the applicant.⁷⁴

At the same time, the European Court opined in *Pretty v. The United Kingdom*⁷⁵ that the concept of ‘private life’ is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can sometimes embrace aspects of an individual’s physical and social identity. Article 8 also protects the right to personal development, and the right to establish and develop relationships with other human beings and the outside world.⁷⁶

The European Committee for the Prevention of Torture underlines that it ‘pays particular attention to the convicts under conditions close to separation, despite the reason for placing them under such conditions (disciplinary reasons, the result of their “dangerous” or “difficult” behaviour, interests of criminal investigation, their personal request). The principle of proportionality requires balance between the requirements of the case and the use of the regime of separate placement of the prisoner, which may have grave results. The mere fact of such a placement may in some cases amount to inhuman and degrading treatment. In case, such a measure must be short-term.’⁷⁷

73 See *Valašinas v. Lithuania*, application no. 44558/98, judgment of the European Court of Human Rights of 24 July 2011, para. 102; also, *Kudła v. Poland*, application no. 30210/96, judgment of the para. 94.

74 See *Dougoz v. Greece*, application no. 40907/98, para. 46, ECHR 2001-II.

75 *Pretty v the United Kingdom*, application no. 2346/02, judgment of the European Court of Human Rights of 29 April 2002, para. 61.

76 *Burghartz v. Switzerland*, application no. 16213/90, judgment of the European Court of Human Rights of 22 February 1994, para. 47; and *Friedl v. Austria*, application no. 15225/89, judgment of the European Court of Human Rights of 31 January 1995 para. 45.

77 The Report of the European Committee for the Prevention of Torture, 1998 Report following the visit in Finland, CPC/Inf(96)28).

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, in his report on the mission to Georgia in 2015, discussed the practice of isolation of prisoners in penitentiary establishments of Georgia. The Special Rapporteur wrote that he was informed that, in practice, inmates may spend several months in this form of solitary confinement, and is of the opinion that this may constitute cruel, inhuman or degrading treatment and even torture, and may indeed risk exacerbating the conditions that make these inmates a risk to themselves or others in the first place.⁷⁸

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure mandatory review of solitary confinements after 14 days of the application of this measure and in the same intervals afterwards. This recommendation has not been fulfilled.

The Public Defender's position remains the same that it is important to introduce relevant legal safeguards so that separated inmates do not find themselves in conditions that aggravate the suffering inherent in detention and solitary confinement.

In case of the above convicted persons, it is unclear what the terms of solitary confinement are and upon existence of what circumstances its need ceases to exist. It is likewise unclear why it is impossible to attain the objective sought by the director of a penitentiary establishment – safety of inmates – by means of placing the prisoner concerned with other convicts or transferring to another establishment.

The Public Defender brought this issue to the attention of the Minister of Corrections in his Parliamentary Report of 2015 and recommended to the Minister to ensure immediately that the inmates separated forcefully and in breach of the statutory requirements about grounds and procedure of the application of this measure are placed with other prisoners. The Public Defender also recommended to the Minister to ensure the introduction of the relevant legal safeguards so that separated inmates do not find themselves in conditions that enhance the suffering inherent in detention and solitary confinement. These recommendations have not been fulfilled.

It is impermissible to ignore the approach taken by international human rights law according to which the state has an obligation to review periodically the necessity and proportionality of the measures applied for the safety of a convicted person. Under rule 51.1 of the European Prison Rules, 'the level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.'

In the case of *Ramirez Sanchez*, the European Court of Human Rights emphasised that solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. Moreover, it is essential that the prisoner should be able to have an independent judicial authority review the merits and reasons for a prolonged measure of solitary confinement. The Court found a violation of Article 13 of the Convention in this case. It noted in particular that prisoners in solitary confinement did not have any remedy available to challenge the original measure or any renewal of it.⁷⁹

78 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, A/HRC/31/57/Add.3, para. 85.

79 *Ramirez Sanchez v. France*, application no. 59450/00, judgment of the European Court of Human Rights of 4

As the Public Defender stated in the Parliamentary Report of 2015, the separation of prisoners by prison administration without adequate reasoning and for indefinite period under the pretext of ensuring their safety is in breach of both domestic legislation and the standards established by international instruments. It also undermines the possibility of rehabilitation of the inmates of given penitentiary establishments and such actions may amount to torture or inhuman or degrading treatment.

The position of the Public Defender remains the same that it is impermissible to isolate indefinitely a person in the circumstances where the statutory merits and reasons for such measures are not complied. Indefinite isolation of prisoners violates their basic rights guaranteed, inter alia, by Articles 3, 8, and 13 of the Convention for the Protection of Human Rights and Fundamental freedoms.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To amend the statutes of high risk prison facility and specify the maximum term of separating prisoners from other prisoners;
- To provide for mandatory review of the decision on separation of a prisoner in 14 days after the application of the measure and in the same intervals afterwards;
- To establish relevant legal safeguards to ensure that separated prisoners are not placed under conditions that aggravate suffering inherent in detention and isolation;
- To ensure through supervision and control that prisoners are isolated against their will only for security purposes and based on the grounds and procedures stipulated by the statutes of respective penitentiary establishments; and
- To ensure immediately that the prisoners separated from other inmates against their will and without the merits and procedures provided by the statutes of penitentiary establishments are placed with other prisoners.

3.3.2.4. Use of Special Means

According to the information submitted by the Minister of Corrections of Georgia, in 2016, penitentiary establishments used only handcuffs out of the available special means. In particular, 53 cases of use of handcuffs were identified in establishment no. 2; establishment no. 3 used handcuffs in 82 cases; and establishment no. 8 in 16 cases.

In comparison with 2015, handcuffs were used in fewer cases in establishments nos. 3 and 8, in 2016. Handcuffs were not used in 2016 in establishments nos. 15 and 17. In

July 2006, paras. 145, 152.

comparison with 2015, there were more incidents involving the use of handcuffs in penitentiary establishments nos. 2 and 6 in 2016.⁸⁰

In the Parliamentary Report of 2015, the Public Defender proposed the following to the Parliament to Georgia:

- To amend the Imprisonment Code to the effect of inserting prohibition of the use of tear gas indoors;
- To amend the Imprisonment Code to the effect of determining types of nonlethal weapons; and
- To amend the Imprisonment Code to the effect of inserting prohibition of the use of handcuffs for pinning down a person onto a solid surface.

The above recommendations have not been fulfilled. The Public defender emphasises that the fulfilment of the recommendations at stake is important for securing human rights and legal safeguards when using special means of restriction.

It is noteworthy that the statutes of high risk prison facilities allowed routine use of handcuffs without any justification. The statutes stipulated that removal of a prisoner from the cell and movement on the premises of the establishment before reaching the place of destination during the daytime was only allowed with the use of handcuffs. Following the recommendation of the Public Defender, in December 2016 and January 2017, the statutes of the high risk prison facilities were amended to the effect of changing the aforementioned provision. The statutes in force stipulate that the use of handcuffs is only allowed where a convicted person resists the special penitentiary office's representative and/or disobeys his//her orders, endangers his/her own or another person's life and limb, damages or attempts to damage property of the state or another person and/or there is a reasonable belief for any of the circumstances to arise. The Public Defender welcomes the aforementioned amendment and positively assesses it.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure drafting an amendment to the Imprisonment Code providing the following issues and submitting of the amendment to the Government for its initiation in the Parliament:
 - The types of nonlethal weapons;
 - Prohibition of the use of tear gas indoors; and
 - Prohibition of the use of handcuffs for pinning down a person onto solid surface.

⁸⁰ There were 15 cases of using handcuffs in establishment no. 2; 123 cases in establishment n. 3; 22 cases in establishment no. 6; 55 in establishment no. 8; 1 in establishment no. 15; and 3 in establishment no. 17.

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To amend the Imprisonment Code to the effect of inserting prohibition of the use of teargas indoors; and
- To amend the Imprisonment Code to the effect of determining the types of nonlethal weapons.

3.3.2.5. Screening Procedures

In accordance with the Nelson Mandela Rules, the laws and regulations governing searches of prisoners and cells shall be in accordance with the obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.⁸¹

Due to their intrusive nature, all body searches can be degrading, even humiliating. They should therefore be used only when strictly necessary to maintain order or security in the prison for the persons themselves and for other detainees and staff.⁸²

The Committee emphasises that strip-searches should only be conducted on the basis of a concrete suspicion and in an appropriate setting, and be carried out in a manner respectful of human dignity.⁸³

In the case of *Wainwright v. the United Kingdom*, the European Court of Human Rights observed that there is no doubt that the requirement to submit to a strip-search will generally constitute an interference under the first paragraph of Article 8 and requires to be justified in terms of the second paragraph, namely as being ‘in accordance with the law’ and ‘necessary in a democratic society’ for one or more of the legitimate aims listed therein.⁸⁴

The Georgian legislation, namely the Code of Imprisonment⁸⁵ and sub-legislative normative acts issued based on the former, allows strip-search.⁸⁶ The statutes of penitentiary establishments specify that strip-searches of remand and convicted persons may be full and partial.

81 The United Nations General Assembly, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the Resolution was adopted by the General Assembly of the United Nations on 8 January 2016, A/RES/70/175, Rule no. 50,

82 Association for Prevention of Torture (APT), Detention Focus – Body Searches, available in English at: http://www.apr.ch/detention-focus/en/detention_issues/6/ [Last visited on 10.02.2017].

83 Council of Europe, European Committee for the Prevention of Torture, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 Marc to 3 April 2014, published on 29 January 2015, available in English at: [http://hudoc.cpt.coe.int/eng#{"fulltext":\["squat"\],"CPTSection-ID":\["p-bgr-20140324-en-23"\]}](http://hudoc.cpt.coe.int/eng#{) [Last visited on 10.02.2017].

84 *Wainwright v. the United Kingdom*, application no. 12350/04, judgment of the European Court of Human Rights of 26 September 2006, paras. 42-43.

85 The Code of Imprisonment of Georgia, Article 75.4

86 Article 22.2 of the statute of penitentiary establishment no. 5.

Partial strip search is conducted before and after an remand/convicted person's visits to a dactyloscopy technician, a health-care professional, an investigator; before and after meetings with close relatives or other persons; during transfers to other cell; as well as other instances based on a decision reached by a director or another authorised official.

Unlike partial strip-search, the statutes of penitentiary establishments provide for full bodily searches of remand/convicts for all occasions of the first arrival, temporary leave and return to the penitentiary establishment.⁸⁷ Furthermore, in accordance with the statute of a penitentiary establishment, full strip-search may also be conducted in other cases based on a decision reached by a director or another authorised official.

The Public Defender observes that the regulations under the statutes of penitentiary establishments under which full bodily searches may be administered in all occasions of the first arrival, temporary leave and return to the penitentiary establishment is a blanket provision allowing routine and unjustified strip-searches. The Public Defender is of the opinion that the legislation in force should not allow routine strip-searches and bodily inspections may only be based on individual assessment of the risks posed by a particular inmate, taking into account the principles of proportionality and necessity. It is also important that full bodily searches are only administered in exceptional cases and with adequate written justification. This is essential to avoid unjustified interferences in the right to privacy.

As the result of examination of one of the cases concerning full bodily search of convict G.O. before transportation to a court, the Public Defender found that there was unnecessary and disproportionate interference in the right to private life.

The representatives of the Public Defender of Georgia visited the Ministry of Corrections of Georgia on 9 September 2016, where they examined the recording of visual surveillance administered with regard to G.O. which also included the recording of the full strip-search. After the examination of the video recording, minutes were duly drafted.

It is revealed from the minutes of surveillance that full bodily search of G.O. was administered from 12:16 until 12:24 on 7 September 2016. In this time, there were at least six staff members present apart from the convict in the special quarantine chamber.⁸⁸ G.O. hands over the items from his pocket and in accordance with the statute of the penitentiary establishment, the staff members examine the items, clothes and shoes both manually and with the help of metal detectors. According to the minutes, At 12:21:36, the convict, at the request of the staff, drops his trousers up to his knees and raises his hands, after which a staff member examines him with a metal detector from waist down to the knees. At 12:21:51, the convict is instructed to remove clothes completely from the mentioned part of the body. After a dispute that approximately lasts for a minute, he follows the instruction. It is to be pointed out that if not for G.O.'s objection, other members of the staff were not going to leave the quarantine chamber.

87 Oder no. 149 of the Minister of Corrections of Georgia approving the Procedure for Providing Convoy for Removal/Transfer of Remand/Convicted Persons, Article 29.

88 According to the minutes drafted by the representative of the Public Defender of Georgia, the entrance of the quarantine chamber is not in the field of vision of the camera installed in the chamber. Therefore, there could be other persons too in the chamber. See, the annexed minutes, p. 2.

It is evident from the above case that the strip search conducted therein could not reasonably be considered as necessary and proportional. Nothing in the actions of the prison staff indicates that there was any suspicion that the convict possessed any illegal item or he had breached the law in any way. The strip search was not aimed at a more detailed inspection of the respective part of the body. The minutes show that the staff member did the same (up and down movements with metal detector from the waist down to the knees) before strip search and afterwards.

Stemming from the above-mentioned, the Public Defender found that the request for bodily search did serve a legitimate aim. Special consideration is given to the fact that there were six persons in the cell without any legitimate ground. In such conditions, intrusion into the intimate sphere of a prisoner may additionally amount to inhuman and degrading treatment.

The European Court of Human Rights found in several cases that strip searches amounted to inhuman treatment since no compelling reasons have been adduced to find that this measure was necessary and justified by security reasons. In addition, whilst strip searches may be necessary on occasions to ensure prison security or prevent disorder in prisons, they must be conducted in an appropriate manner.⁸⁹

In terms of ensuring security at a penitentiary establishment, it should also be taken into consideration that security encompasses many other elements such as personal screening of an remand/convicted person and periodic and spontaneous inspections of the premises of an establishment and buildings and constructions located there.⁹⁰ Therefore, security considerations may not always be the basis only for strip searches. It should also be taken into account that in those cases, where a prisoner is under control of the personnel, the high degree of the control from the administration should be borne in mind. This concerns e.g., transfer of an inmate to a courtroom or a hospital.

During full body searches, every reasonable effort should be made to minimise embarrassment and ensure respect for the dignity of a person. The CPT emphasises that prisoners who are searched should not normally be required to remove all their clothes at the same time.⁹¹

These searches must be conducted in private, in a separate room, away from the eyes of inmates and others. There must be adequate conditions of hygiene and cleanliness.⁹² It is important to clean and sterilise the place before each search.

89 *Iwańczuk v. Poland*, application no. 25196/94, judgment of the European Court of Human Rights of 15 November 2001; *El Shennawy v. France*, application no. 51246/08, judgment of the European Court of Human Rights of 20 January 2011; *Valašinas v. Lithuania*, application no. 44558/98, judgment of the European Court of Human Rights of 24 July 2011.

90 Statutes of the Penitentiary Establishments.

91 Council of Europe, European Committee for the Prevention of Torture, Report to the Czech Government on the visit to Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1-10 April 2014, para. 85, published on 31 March 2015, available in English at: [http://hudoc.cpt.coe.int/eng#{"fulltext":\["squat"\],"CPTSection-ID":\["p-cze-20140401-en-30"\]}](http://hudoc.cpt.coe.int/eng#{) [Last visited on 10.02.2017].

92 Association for Prevention of Torture (APT), Detention Focus – Body Searches, available in English at: http://www.apr.ch/detention-focus/en/detention_issues/6/ [Last visited on: 10.02.2017].

The Public Defender deems that, apart from full strip-search, it is also problematic that the law does not differentiate between full strip search and body cavity search and there are no procedures prescribed for each type of bodily search. It is therefore impossible to determine which measure should be used in a particular situation. This lack of distinction increases the risk of unjustified resort to invasive measures even more.

The Public Defender considers it necessary that statutes of the penitentiary establishments should clearly differentiate between strip search and body cavity search and stipulate a specific procedure for each measure.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to replace aggressive (invasive) bodily search with an alternative such as scans in establishment no. 5.

The above recommendation was based on the monitoring carried out in establishment no. 15 in 2015. According to the results, women prisoners were ordered to strip and perform squats. The women prisoners explained that these procedures were degrading and morally damaging. Furthermore, due to the fact that these procedures were obligatory to be carried out whenever leaving/returning to the prison, the women prisoners refused to leave the establishment even for getting medical services or appearing before a court.

The Recommendation of the Public Defender on the use of scans as an alternative measure to the full bodily search of women prisoners was based on the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), under which alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches to avoid the harmful psychological and possible physical impact of invasive body searches.⁹³

The Public Defender welcomes the steps taken in fulfilling the above recommendation. In particular, a scanner was installed at establishment no. 5 and the statute of penitentiary establishment no. 5 was amended to the effect of providing its women prisoners the right to undergo personal screening with a scanner.

The monitoring carried out in 2016 showed that, in no. 5 penitentiary establishment for women, scanning was not used as the alternative method of search. In particular, scanning was used as an additional, and not as an alternative measure, along with the full bodily search. This is in clear violation of the standards established by the Bangkok rules. The Public Defender observes that in cases, where scanners are used as an alternative method of screening, additional measures should not be used.

During the visits of the Special Preventive Group, carried out in 2016 in various penitentiary establishments, prisoners pointed out the problem of full (strip) body searches and squats. According to the prisoners, these procedures were degrading.

According to the information received from the Ministry of Corrections, a scanner has been purchased for establishments nos. 2, 6, 8, and 17. However, as it turns out, this

93 The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 6 October 2010, A/C.3/65/L.5, Rules nos. 19-20.

equipment is not designated for screening remand/convicted persons.⁹⁴

The Public Defender recommends to the Minister of Probations to ensure the use of scanning as an alternative method of screening in all penitentiary establishments and have the relevant obligation in place by the statutes of penitentiary establishments.

In contravention to the statements made by the Ministry of Corrections at various meetings, according to which the representatives of the Ministry attributed strip searches to the need to document injuries. Hereby the Public Defender wishes to emphasise that the aforementioned statement is inaccurate since strip search in its nature is a completely different procedure that has nothing to do with documenting injuries. Strip search by the security unit personnel of an establishment aims at seizing banned items, materials and food products. Whereas, documenting aims at registering by a health-care professional, in confidentiality and with the informed consent of the patient concerned, the incidents of alleged torture and other cruel, inhuman or degrading treatment.

The series of monitoring carried out by the Special Preventive Group revealed that there is no uniform practice with regard to the screening of the persons authorised to enter a penitentiary establishment. According to the information obtained during the monitoring, those visiting short-term and long-term are inspected differently. Short-term visitors are inspected while dressed, with a pat down on their clothes and by using a metal detector. Long-term visitors have to remove clothes from different parts of body at a time (apart from underwear) and are inspected with a metal detector.

Several prisoners at establishment no. 5 expressed their indignation to the members of the Special Preventive Group that visiting minors were strip-searched. Under the Nelson Mandela Rules, body cavity searches should be avoided and should not be applied to children.⁹⁵

In this context, it should be noted that in accordance with the statutes of penitentiary establishments, screening of those authorised to enter implies inspection of personal items and clothes. It is also stated that the inspection of a visitor may only be carried out when there is a reasonable suspicion that the person concerned intends to smuggle illegal items, material and food products in or take illegally purchased valuables from the penitentiary establishment.

The aforementioned regulations state nothing about the obligations to carry out full searches or scanning of those who are authorised to enter a penitentiary establishment. However, according to the well-established arbitrary practice, both short and long-term visitors of prisoners are obliged to undergo full searches in a brazen breach of the legislation in force.

The existence of the practice of using scans as a screening method of those authorised to enter a penitentiary establishment and the full search as an alternative method is further

94 Letter no. MOC 717 00104588 of the Ministry of Corrections of Georgia dated 2 February 2017 (registered under no. 03-3/1748 in the Public Defender's Office).

95 The Nelson Mandela Rules, Rule no. 60.2.

proved by the fact that the members of the Special Preventive Group themselves were subjected to the screening procedure.

In accordance with the Imprisonment Code, the members of the Special Preventive Group do not need to present a special authorisation to enter and their admission is governed by a different rule. However, the members of the Special Preventive Group agreed to undergo illegal and unjustified inspection requested by the prison staff. The members agreed so that they could document the practice of illegal and unjustified inspection of those who are authorised to enter a penitentiary establishment. The interesting circumstances of this incident are described below.

On 26 January 2017, in establishment no. 5, the members of the Special Preventive Group were requested to undergo full bodily search. The director of the establishment explained to them that they had to undergo inspection with a special scanner when entering and leaving the premises of the establishment. When the Group members declined, the administration offered them full bodily search as an alternative. The director, the deputy director and the establishment's lawyer invoked some ambiguous order that was put up in a visible spot at the entrance. According to the document, if a person at the control area of the penitentiary establishment refused to undergo screening with the use of a scanner, he/she had to undergo full search when entering and leaving the establishment.

As it was found out later, the document put up in the visible sport was not an order but a draft order, which has not been approved to date. For the monitoring purposes, the members of the Special Preventive Group obliged with the requests and underwent screening with a scanner. In the noon, when temporarily leaving and returning establishment no. 5, due to their refusal to go through screening by the scanner, the members of the Special Preventive Group were requested to undergo the following inspection. In an isolated room equipped with a surveillance camera, the female members of the group were asked to remove their shoes, turn their pockets inside out and stretch their brassieres to allow inspection; while dressed they were patted down manually and checked with a metal detector. The male members of the group were asked to remove their shoes, turn their pockets inside out and have them examined. The members of the Special Preventive Group were told that considering their status an exception was made and as an alternative to screening by a scanner full body search was used, which implies taking off the clothes.

The Public Defender observes that the above incident proves the fact that the provisions of the statutes of penitentiary establishments concerning those entering the establishments are not followed in practice. The utmost concern of the Public Defender is caused by the fact that prisoners' short- and long-term visitors are subjected to routine checks of their personal items and clothing rather than basing inspections on reasonable suspicion. Particularly alarming is the fact that those entering the penitentiary establishment are illegally requested to undergo partial (strip) searches.

After the above-mentioned incident, the Public Defender addressed the Minister of Corrections in a letter and requested an appropriate follow-up.⁹⁶ In response to the letter, the

⁹⁶ Letter of the Public Defender of Georgia sent to the Minister of Corrections of Georgia on 13 March 2017 (registered under no. 03-3/3330 at the Office of the Public Defender).

Public Defender was notified by the Ministry of Corrections that efforts on improving legal regulations were underway in the Legal Department to avoid similar incidents in future.⁹⁷

The Public Defender points out that the whole idea of National Preventive Mechanism is based on unimpeded access of the members of this mechanism to the places of detention, deprivation of liberty and other places of restriction of liberty and carrying out spontaneous monitoring (without prior notifications) of these places, which in turn aims at preventing torture and ill-treatment. The objective and spirit of both the Optional Protocol of the United Nations Convention against Torture and the Organic Law of Georgia on the Public Defender of Georgia clearly show that unrestricted access of Special Preventive Group members to all places of detention and their installations and facilities is essential for the effective fulfilment of their mandate and functions.

In this regard, the Imprisonment Code (Article 60.1.g) is in full compliance with international regulation, as under the Code, the members of the Special Preventive Group do not need any special permission to access penitentiary establishments; a different procedure regulates their admission.

Therefore, a member of the Public Defender's Special Preventive Group, due to his/her mandate, is not to be requested to undergo inspection of any kind. Moreover, they are not to be obliged to undergo screening by a scanner or full body search. However, as the practice has been established, the members of the Special Preventive Group showed good will and agreed to be subjected to inspection with metal detectors despite having no such obligations.

In the light of the above-mentioned, the Public Defender stresses the importance of the fact that the personnel of the Ministry of Corrections should be adequately informed about the legal regulations in force to avert obstruction of the National Preventive Mechanism and unreasonable restriction of the rights of ordinary citizens.

The Public Defender emphasises the importance that the Inspectorate General of the Ministry of Corrections should pay special attention to the monitoring of inspection of the visitors to penitentiary establishments. It is important in terms of eradicating arbitrariness of the personnel and ensuring that inspection is carried out in accordance with the existing legislation and international standards.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure the review of the legal framework governing screening of remand/convicted persons to bring it in compliance with international standards and striking a fair balance between the safety/security and human rights protection interests;

⁹⁷ Letter no. MOC 917 00201654 of the Ministry of Corrections dated 16 March 2017 (registered under no. 03-3/3330 at the Public Defender's Office).

- To ensure that full body search of remand/convicted persons is carried out only based on individual risk assessment of a particular prisoner, with due account to the principles of proportionality and necessity; furthermore, when requesting full body search it is necessary to offer scanning as an alternative screening method which will be defined by the statutes of penitentiary establishments;
- To take all the measures to ensure that the statutes of penitentiary establishments clearly differentiate between strip-searches and body cavity searches and appropriate procedures are determined for each measure;
- To take all measures that during full body searches stripping different parts of body at once is not requested and the so-called 'doing squats' practice is eradicated;
- To take all the measures to eradicate the practice of full body search of minors visiting inmates in establishment no. 5 for women prisoners;
- To take all the measures to ensure that where scanning has been used as an alternative method of screening, other measures of inspection are not additionally used;
- To ensure monitoring by the Inspectorate General of the procedures for admission of visitors to a penitentiary establishment for averting arbitrariness of the personnel and that the inspection is carried out in accordance with the legislation in force and international standards; and
- To take all measures to ensure that the personnel of the Ministry of Corrections are adequately informed that the Public Defender/members of the Special Preventive Group, due to their status, are not required to undergo inspection of their personal items and clothing, and to undergo scanning, and full body search.

3.4. PERSONNEL: WORKING CONDITIONS, TRAINING AND ACCOUNTABILITY

In accordance with the Nelson Mandela Rules, the prison administration shall provide for the careful selection of every grade of the personnel, since it is upon their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends.⁹⁸

The penitentiary establishments employ personnel in administrative, social security, security, legal regime and special registration units. Furthermore, there is a health-care unit employing civil servants of the ministry's civil service and visiting specialists.⁹⁹ The personnel of the administrative and social security units are civil servants and the Law of Georgia

⁹⁸ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 74.1.

⁹⁹ See the statutes of penitentiary establishments.

on Civil Service applies to them. Officers and privates of the special penitentiary service are the personnel of security, legal regime and special registration units.

Due to the fact that penitentiary establishments had been a part of a military system for years, the management of which was based on the punitive and strict regime concept, according to perceptions formed in the public over years, working in a penitentiary establishment was not prestigious.

The Public Defender positively assesses the division of civil and penitentiary services as a step forward. Against the existing background, the Public Defender deems it necessary that the Ministry of Corrections should actively pursue the policy of recruiting new staff. This should imply actively informing the public about job openings at penitentiary establishments and working conditions in prisons. The Public Defender observes that active dissemination of information about the working conditions in prisons will promote the public's interest in the penitentiary system and attract potential human resources.

In parallel to attracting and recruiting professional resources, it is important that the establishments should maintain the existing well-qualified resources. Salaries should be adequate to attract and retain suitable men and women and working conditions should be favourable to remunerate hard and labour-consuming work.¹⁰⁰

The monitoring carried out by the Special Preventive Group revealed that the health-care personnel of the penitentiary establishments do not have medical insurance. The working conditions of on-duty doctors and nurses are quite hard as they have to work busy night shifts. Paramedics attending to serious patients and doing hard work receive low remuneration.

Psychologists and social workers face hard working conditions in the penitentiary establishments. Considering the high demand for psychologists and social workers and the volume of work they perform in penitentiary establishments, it is important to take additional measures for recruiting adequate human resources.¹⁰¹

Most of the penitentiary establishments are located outside the city. The personnel, however, are not provided with transportation; appropriate meals for staff are not provided in these establishments. Therefore, the personnel have to buy mostly dry food from these establishments' shops at their own expenses.

Despite stressful and strained working environment, the personnel of penitentiary establishments do not benefit from advice as to how to avert professional burnout. There are no training sessions on stress management for staff.

Under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any

100 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 74.3.

101 Further details see in subchapter – Daily Schedule and Rehabilitation Activities.

form of arrest, detention or imprisonment. This implies the obligation of the state to elaborate a human rights oriented curriculum.

Under Rule 75 of the Nelson Mandela Rules, 'All prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner. 2. Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be reflective of contemporary evidence-based best practice in penal sciences. Only those candidates who successfully pass the theoretical and practical tests at the end of such training shall be allowed to enter the prison service. 3. The prison administration shall ensure the continuous provision of in service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.'

Under Rule 76.1, 'training ... shall include, at a minimum, (a) relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates; (b) rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment; (c) security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation; (d) first aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.'

According to the information received from the Ministry of Corrections, in 2016, 1,205 members of legal regime unit, 236 staff members of the security unit, 15 staff members of fast response unit and 76 staff members of the special registration unit have undergone a certified course.¹⁰²

The Public Defender welcomes the completion of the certified course of mandatory retraining for the personnel in legal regime, security, fast response and special registration units.

The Office of the Public Defender requested the information from the Ministry of Corrections, on 20 January 2017 by letter no. 03-4/910, regarding ongoing educational programmes and training sessions. The copies of detailed syllabi were requested through the aforementioned letter. As the result of the examination of the course descriptions sent by letter MOC 617 00143412 of the Ministry of Corrections on 23 February 2017 and its annexes, the methodology of curricula is of general nature and needs further improvement. The course syllabus does not give information about the teaching format to be used during each session and what particular topics are going to be covered within each session. There are references only to international and national legislation without further details on specific topics under each session.

102 Letter no. MOC 617 00143412 of the Ministry of Corrections of Georgia, dated 23 February 2107 (registered under no. 03-4/910 at the Office of the Public Defender of Georgia).

Despite the fact that the training program starts with the methodology, there is no detailed methodology mentioned under any of the session. It is therefore hard to make out what methodology is used for this training programme. There is no specific information about the teaching format in terms of any of the sessions, whether these sessions are going to be conducted in the form of lectures or interactive discussion; and whether a session is going to include group work or presentations of case-study. While there is an examination provided as a means to check knowledge obtained, the training programme does not specify the format of that examination.

It is not clear from the training programme if any of the sessions includes feedback. There is no information, in particular, whether participants evaluate sessions and provide information about their further educational needs. It is also important to have the session evaluated by trainers and receive information whether they are satisfied with the training outcomes and what additional resources are needed to improve the programme further.

The Public Defender welcomes training sessions, conducted for the health-care professionals of penitentiary establishments, funded by the Council of Europe and the European Union concerning documented injuries in accordance with recently established forms. The health-care professionals interviewed by the Special Preventive Group positively evaluate the training session. They mentioned, however, that they still have numerous questions concerning documenting procedures.

The Public Defender deems it important that the Ministry continues regular retraining of health-care professionals. It is also important that the Medical Department ensures active communication with the doctors of establishments in order to have their questions promptly answered. It is also important at the same time that the guidelines are accessible for health-care professionals.

The inclusion of human rights issues in the training programme should also be noted. The time allocated for teaching human rights does not sufficiently ensure covering theoretical and practical discussion on human rights. The three hours allocated for human rights in the training programme are more likely aimed at providing a general overview of the issues rather than comprehension of principles.

It should be positively assessed that for the personnel of penitentiary legal regime, the training programme provides for the sessions on national and international monitoring mechanisms, professional ethics, dynamic and static security. It is, however, a negative fact that similar topics are not included in the sessions for the personnel of security unit.

The Public Defender emphasises the importance of including the topics of management of violent offenders through the means of preventive and diffusing techniques such as negotiation and mediation in the certified training programme.

In accordance with the information submitted by the Ministry of Corrections, in 2016, the personnel of the penitentiary establishments underwent additional training sessions on the following topics: Preventing Suicide, Comprehending a Crime by Adults; Initial Training Course for the Personnel of Penitentiary Office Appointed for Probation Term; Juvenile Justice, Psychology, Methodology of Interaction with Juveniles; Positive Thinking; Man-

agement of High Risk Prison Facilities; Organising Elections (ToT); Organising Elections in Penitentiary Establishments; The Right to take Photos in a Penitentiary Establishment; Suicidal Adult Assessment Protocol (SAAP); and Working with Asylum Seekers, Refugees, Stateless Persons and IDPs in Penitentiary Establishments.

The Public Defender welcomes conducting the above training sessions. However, it is also important to include in the programme such topics as the personnel's rights and duties in the discharge of official responsibilities, including respect for the dignity of all prisoners, prohibition of torture, other cruel, inhuman and degrading treatment or punishment; concept of dynamic security; the use of force and means of restraint; management of resistance and preventive and diffusing techniques of negotiation and mediation; psycho-social needs of prisoners and appropriate dynamics of prisons; and social care and assistance, early diagnostics of mental health problems.

The Public Defender recommended in 2015 concerning the evaluation of effectiveness and sustainability of training outcomes as well as elaboration of effective mechanisms for supervising the practical use of obtained knowledge and skills.

According to the information received from the Ministry of Corrections, the Systematic Monitoring Division of the Inspectorate General is in charge of monitoring the practical application of the knowledge and skills obtained through trainings. The Public Defender welcomes the fact that the Monitoring Division of the Inspectorate monitors the practical application of obtained knowledge. The Public Defender, however, deems it important that the methodology of each programme and training session should provide for the evaluation and examination of the practical application of the knowledge received by trainees. This should include evaluation of the personnel through observation of their participation in various simulated practical situations and role-plays.

Accountability of penitentiary personnel is essential for ensuring human rights, security and order in penitentiary establishments. Prison management should create a set of internal indicators, processes and structures that enable internal and external assessment and monitoring of the performance of the prison as a whole, staff performance and the ability of the prison to maintain good order. The creation of such a legal framework will enhance transparency, accountability and credibility of penitentiary establishments.¹⁰³

The Law of Georgia on the Special Penitentiary Service defines principles, rules and competences of the Special Penitentiary Service of the Ministry of Corrections, the status of its employees, the system of continuous professional training, legal, security and social protection safeguards. Furthermore, Order no 144 of the Minister of Corrections of 19 October 2015 approved Disciplinary Regulations for officers and privates (hereinafter referred to as 'employees') of the Penitentiary Service of the Ministry of Corrections, incentive rules, the Code of Ethics defining grounds of disciplinary responsibility and for incentives, types of disciplinary penalties and incentive measures, and rules for imposing disciplinary penalties upon the employees. The Code of Ethics defines standards and rules of behaviour that facilitate reinforcement of principles of fairness and responsibility, adequate performance, human rights protection, and enhance public trust and respect.

103 The United Nations Prison Incident Management Handbook, 2003, p. 13.

It is regrettably noted that the administrations of penitentiary establishments have not elaborated the evaluation system of performance that would include predetermined indicators. This issue was addressed by the Public defender in his Parliamentary Report of 2015. The recommendation was issued for the notice of the Minister of Corrections to set up legal regulation to evaluate both the administration of a penitentiary establishment as well as each member of the staff in terms of performance and ability to maintain order, based on predetermined indicators and other data of internal and external monitoring. This recommendation has not been fulfilled.

It is also noteworthy that in the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to elaborate clear and mandatory job descriptions, standard operational procedures and guidelines for incidents management to ensure adequate performance and accountability of the penitentiary personnel. In 2015, job descriptions of penitentiary personnel were being drafted in the Ministry of Corrections, covering rights and duties of each position of employees. However, these job descriptions have not been approved by the Ministry to date.

The position of the Public Defender remains the same that due to the absence of such guidelines and lack of necessary qualification of the staff, the personnel faces difficulties in taking decisions promptly which increases the risk of use of excessive force and ill-treatment.

As regards individual accountability of the staff members, apart from accountability to immediate supervisor, alleged breaches of personnel are examined by the Inspectorate General of the Ministry of Corrections. The Office of the Public Defender requested information from the Ministry of Corrections on disciplinary breaches and penalties imposed on penitentiary personnel in 2015. The office of the Public defender of Georgia has not received this information yet.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To take all measures for executing the policy of attracting new resources, and widely inform the public on job openings and working conditions in penitentiary system ;
- To take all measures to ensure that the personnel have worthwhile remuneration and adequate working conditions, and hard and labour-consuming work is adequately compensated;
- To take all measures to ensure that the personnel is provided with transportation to penitentiary establishments;
- To take all measures to provide personnel with advice on professional burnout and stress management issues;

- To take all measures to ensure that within the methodology of training programme, when defining a session, to provide information on specific topics to be covered and teaching format to be used during each session;
- To take all measures that each session is based to the maximum degree on interactive teaching methods, among them, group work, presentations and case-study;
- To take all measures to ensure that the training programme determines examination type and format;
- To take all measures to ensure that the training programme provides for getting adequate feedback from participants, in particular, participants should be able to evaluate training sessions and identify their further needs;
- To take all measures to ensure that the training programme provides for getting adequate feedback from trainers; in particular, trainers should be able to evaluate training sessions, their outcomes and identify what additional recourses are needed for the future improvement of the programme;
- To take all measures to ensure that the training programme allocates more time for human rights so that personnel of penitentiary establishments are able to cover and comprehend important topics of theory and practice of human rights;
- To take all measures to ensure that the training programme covers the topic of management of violent offenders through preventive and diffusing techniques such as negotiation and mediation;
- To take all measures to ensure that there are training sessions conducted for penitentiary establishments, covering personnel's rights and duties when discharging official capacities; prohibition of torture, or other cruel, inhuman and degrading treatment of punishment, concept of dynamic security, use of force and means of restrains, management of violent offenders through the preventive and diffusing techniques such as negotiation and mediation, psycho-social needs and adequate dynamics of prison facilities, social care and assistance, and early diagnostics of mental health problems;
- To take all measures to ensure that there is a methodology within each training programme and training sessions which allow evaluation of practical application of knowledge obtained by participants and evaluation through observation of their participation in various practical simulated situations and role plays;
- To introduce legal regulation allowing internal and external monitoring based on pre-determined indicators and evaluation of the capacity to maintain order in a penitentiary establishment and performance by administration and personnel; and

- To create clear job descriptions, standard operational procedures and guidelines for managing incidents for maintaining adequate performance and accountability of the employees of penitentiary establishments.

3.5. PRISON CONDITIONS

3.5.1. PHYSICAL ENVIRONMENT, SANITATION AND HYGIENE CONDITIONS

In comparison to previous years, in a number of penitentiary establishments, physical environment, sanitation and hygiene conditions have been considerably improved. However, the situation in some of the penitentiary establishments still needs serious improvement and compliance with international standards. Notwithstanding the existing difficulties, the state is under an obligation to promptly eradicate shortcomings and create adequate prison conditions.

Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.¹⁰⁴

3.5.2. LIVING SPACE

In accordance with the Imprisonment Code, living space standard per a convicted person in all types of prison facilities shall not be less than 4 m²;¹⁰⁵ and living space standard per an remand person in a detention facility shall not be less than 3 m².¹⁰⁶

It was revealed during the visits made in 2016 that all prisoners are not provided with 4 m² of living space in establishments nos. 2, 7, 8, 12, 14, 15, and 17. In establishment no. 7, e.g., prisoners enrolled in economic service, live in two cells (two inmates in each cell). The space of one cell is approximately 5 m² and another is 7.5 m².

Certain prisoners¹⁰⁷ live in double cells in establishment no. 8. The size of a cell is approximately 7.38 m² (isolated WC is 1.36 m²). The cell is 4.74 m in length and 1.55 in width which is in violation of the above provisions.¹⁰⁸ In total, there are 14 cells in the establishment.

The European Committee for the Prevention of Torture recommended to the Georgian authorities to continue their efforts to ensure that the minimum standard of 4 m² of living space per prisoner in multi-occupancy cells (not counting the area taken up by any toilet

104 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 5.2.

105 Article 15.2.

106 Article 2.3.

107 20 prisoners as of 1 March 2017.

108 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, CPT/Inf, (2015), para. 48, available in English at : <http://www.cpt.coe.int/en/documents/eng-standards.pdf> [Last visited on 13.02.2017].

facility located within the cell) is duly respected in all penitentiary establishments.¹⁰⁹ The Public Defender of Georgia numerous times addressed, in his Parliamentary Reports, the issue of providing the minimum standard of 4 m² of living space per prisoner.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to take all measures ensuring each prisoner with the minimum standard of 4 m² of living space in establishments nos. 2, 3, 7, 8, 12, 15, and 17. It should be noted that the recommendation was fulfilled only with regard to establishment no. 3. According to the information received from establishment no. 3,¹¹⁰ in the course of 2016, the cells on the ground floor have been remodelled into single or double cells and unnecessary inventory has been removed from the cells. Accordingly, presently all prisoners in establishment no. 3 are ensured with 4 m² of living space. As regards the establishments nos. 2, 7, 8, 12, 15, and 17, the problem has not been resolved. Besides, in establishments nos. 2 and 8, remand and convicted persons are placed together in some occasions, which is in breach of the Imprisonment Code.

In establishment no. 2, the space of solitary confinement cells, except for those in D wing, is 4.5-5.5 m². These cells are cramped in violation of the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹¹¹

In establishments nos. 14 and 17, some prisoners live in the so-called barrack-type accommodations.¹¹² In establishment no. 14, there are three two-storey buildings, where prisoners live in common dormitories for 26, 59 and 70 persons respectively. As regards establishment no. 17, there are common dormitories for 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 30, 32 and 34¹¹³ persons. The cells designed for multiple inmates are of barrack type. In establishment no. 17, living space per prisoner in cells meant for 20 and more persons is up to 2.5 m². The situation is no better in cells designed for less than 20 prisoners.

There is no respect for private space in barrack-type dormitories; smokers and non-smokers are accommodated together; it is hard to follow sanitation and hygiene rules and the risk for spreading infectious diseases is high. Furthermore, such accommodations pose additional and serious challenges in terms of security.

Paragraph 6 of the Draft Law of Georgia on Amending the Imprisonment Code provides for the new wording of Article 15.2 of the Code, according to which living space standard per convicted person in medical and prison facilities shall not be less than 4 m². The provision in force refers to all types of prison facilities. It is also noteworthy that the amendment

109 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, CPT/Inf, (2015), para. 48.

110 According to letter no. MOC 717 00043478 of the director of establishment no. 3 of the Penitentiary Department of the Ministry of Corrections of Georgia, dated 18 January 2017.

111 'Whilst confessing that it was a "difficult question", the Committee from the outset of its work has expressed its thoughts on what it considers to be a reasonable size for a police cell "intended for single occupancy for stays in excess of few hours", this being a desirable objective, rather than a minimum standard: cells should be of the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling.'

112 There are tens of prisoners placed in barrack-type dormitories. In such conditions, it is impossible for prisoners to have respect for private space.

113 The total living space per 34 persons of establishment no. 17 amounts to approximately 77 m².

does not concern the provision according to which living space standard per an remand person in a detention facility shall not be less than 3 m².¹¹⁴ The Public Defender is of the opinion that placement of remand/convicted persons in such conditions is in breach of the standards established by the European Committee for the Prevention of Torture (CPT).

The CPT developed a strict standard for the minimum amount of living space that a prisoner should be afforded in a cell. According to this standard, 6m² of living space should be afforded for a single-occupancy cell. 4m² of living space should be afforded per prisoner in a multiple-occupancy cell. As the CPT has made clear in recent years, the minimum standard of living space should exclude the sanitary facilities within a cell.

When devising the standard of 4m² of living space, the CPT had in mind, on the one hand, the trend observed in a number of western European countries of doubling up 8 to 9m² cells that were originally designed for single occupancy, and, on the other hand, the existence of large-capacity dormitories in prison establishments (colonies) in various central and eastern European countries.

CPT has decided to promote a desirable standard. According to CPT, it would be desirable for a cell of 8 to 9m² to hold no more than one prisoner, regarding multipleoccupancy cells of up to four inmates by adding 4m² per additional inmate to the minimum living space of 6m² of living space for a single-occupancy cell.¹¹⁵

Therefore, the Public Defender of Georgia observes that the penitentiary establishments should afford the following standards: multiple occupancy cells for up to four inmates by adding 4m² per additional inmate to the minimum living space of 6m² for a single-occupancy cell.

3.5.3. PHYSICAL ENVIRONMENT

In accordance with the Nelson Mandela Rules, all accommodation provided for the use of prisoners and, in particular, all sleeping accommodation shall meet all the requirements of health, with due regard being paid to UN Standard Minimum Rules for the Treatment of Prisoners; climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.¹¹⁶

In all places where prisoners are required to live or work: (a) the windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow circulation of fresh air irrespective of whether there is artificial ventilation; (b) sufficient artificial light shall be provided s for the prisoners to read or work without injury to eyesight.¹¹⁷

114 See, Article 15.3 of the Imprisonment Code.

115 See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Living space per prisoner in prison establishments", Strasbourg, 15 December 2015, paras. 9-18; available at: <<http://www.cpt.coe.int/en/working-documents/cpt-inf-2015-44-eng.pdf>> [Last visited on 22. 02. 2017].

116 Rule 13.

117 Rule 14.

The cells in establishment no. 3 have their small windows rather high and the walls are half a metre thick. Therefore, sunrays do not reach the cells properly. There is no sufficient natural light and ventilation in accommodation cells. The windows in de-escalation and solitary confinement rooms would not open. Accordingly, natural ventilation is not available for prisoners in these cells.

The small windows in the cells of establishment no. 7 are covered by several layered grating (75x43 cm), due to which neither air nor sunrays can properly reach into cells. The ventilation system of the establishment cannot ensure artificial airing of the accommodation cells.¹¹⁸ There is insufficient natural light in the cells.

Artificial ventilation is not installed in the sanitary facilities of accommodation cells of establishment no. 6 and ventilation in the cells is insufficient. It is stifling and smells bad in the cells. Common showers in the second accommodation building are only ventilated naturally. There is no natural ventilation in the short visits booths (windows are locked with a padlock).

There is a malfunctioning artificial ventilation system in the accommodation, waiting (quarantine) cells and investigative rooms of establishments nos. 5 and 8 as well as in the room for meeting with lawyers in establishment no. 15. Similar conditions were observed in accommodation, waiting, solitary confinement rooms and shower rooms at establishment no. 2. Artificial ventilation system is not installed at all in the solitary confinement cells at establishment no. 8.

Dampness is noticeable in some cells of penitentiary establishments nos. 2¹¹⁹, 8, and 17. The waiting rooms of establishment no. 8 are partially underground and, therefore, there is insufficient light and ventilation in these cells; the windows would not open in de-escalation rooms. Hence, natural ventilation is not accessible for prisoners. The light switches and plugs are ripped out in shower rooms and electricity system fails to comply with safety rules. Artificial light is insufficient. There are no benches and hangers for personal items (clothes, towels, etc.) in the shower rooms.

Artificial ventilation system is not functioning in the accommodation cells of penitentiary establishments nos. 9, and 15. The existing ventilation system in the accommodation cells of establishment nos. 17 similarly cannot provide proper ventilation. There is no artificial ventilation in the cells of closed type building of the same establishment and natural and artificial light is insufficient.

The central heating system in establishment no. 15 does not provide sufficient heating in the cells. There is a concrete floor in accommodation cells in penitentiary establishments nos. 2, 3, 5, 6, 8, 14, and 15, which may have ramifications for prisoners' health.

It is necessary to repair electrical equipment in all the accommodation cells of the main accommodation building of establishment no. 12 since the wiring does not comply with safety rules.

118 The cells located on the ground floor are especially problematic.

119 Dampness was particularly obvious in the ground and first floor cells of accommodation buildings.

In 2015, in the Parliamentary Report, the Public Defender recommended to the Minister of Corrections to ensure adequate ventilation in the accommodation cells in penitentiary establishments nos. 2, 3, 6, 8, 9, 12, 15, and 17; to ensure instalment of central ventilation system in the investigative rooms in penitentiary establishments nos. 5, and 8; and to ensure adequate natural and artificial ventilation in confinement, quarantine, investigative and showers rooms at penitentiary establishments nos. 2, 5, 6, 12, 14, 15, and 17.

The aforementioned recommendations have not been fulfilled.

3.5.4. SANITATION AND HYGIENE CONDITIONS

In accordance with the Imprisonment Code, the premises allocated to an remand/convicted person shall comply with hygiene and sanitary norms established by a joint order of the minister and the Minister of Health, Labour and Social Affairs of Georgia, and shall ensure the preservation of the health of an remand/convicted person.¹²⁰

The sanitation and hygiene conditions of both solitary confinement and quarantine cells, as well as shower rooms, in establishments nos. 2, 8, 15¹²¹, and 17 are unsatisfactory.

There is dampness in the majority of cells in establishment no. 2. The nightstands in some accommodation cells (on the ground floor of building C) are corroded. Inmates have to keep their clothes, personal items and kitchen utensils in the said conditions.

There are insects in some cells in establishments nos. 2, and 8. The sanitation and hygiene conditions in the solitary confinement cell of establishment no. 3, accommodation cells of establishment no. 5 (detention facility), establishments nos. 7, 12, and 14 (closed type building) are unsatisfactory.

The accommodation cells in establishment no. 12 are outdated and need repairs. The sanitation and hygiene conditions in corridors and staircases of the accommodation building of establishment no. 15 are unsatisfactory. There are cigarette boxes, cigarette butts and other waste scattered around the corridors and staircases.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure that sanitation and hygiene standards are complied with in the de-escalation rooms of establishment no. 8 and to take measures to ensure hygiene in the corridors and staircases of the accommodation building of establishment no. 15. Out of the said recommendations, the one concerning the de-escalation rooms in establishment no. 8 has been fulfilled.

Sinks in some of the cells in establishment no. 6 are blocked. Water flushing tanks are not there in toilets. Sewers in some of the cells of detention facility in establishment no. 5 are out of order causing water to back-up.

¹²⁰ Article 15.1 of the Imprisonment Code.

¹²¹ The recommendation concerning isolation of WC of solitary and quarantine cells in establishment no. 15 was also made in the Parliamentary Report of 2015. It seems, however, that the recommendation has not been fulfilled.

Water is blocked in the drains of shower rooms in establishments nos. 2, and 5. Some of the showers do not have valves in the shower rooms in establishment no. 8.

In 2015, the Public Defender recommended to the Minister of Corrections to take all the measures to eradicate the water supply problem in establishment no. 3. The recommendation, however, has not been fulfilled yet. Water is still supplied to prisoners according to the schedule in the said establishment.

3.5.5. PRIVACY IN TOILET AREAS

Under Article 3.5 of the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings approved by the Order of the Ministry of Corrections of Georgia of 19 May 2015,

‘Electronic surveillance and control of remand/convict persons cannot be extended to showers, toilets, rooms for long visits, except for the procedure and cases prescribed by Georgian legislation.’

With regard to the aforementioned reservation, as early as on 19 December 2014, the Public Defender of Georgia proposed to the Minister of Corrections to add toilets in prison cells to the list of places that cannot be under surveillance. This proposal has not been fulfilled. The European Committee for the Prevention of Torture (CPT) regularly reiterates in its reports, based on visits to various countries, that it is essential ‘that the privacy of detained persons be preserved when they are using a toilet and washing themselves’.¹²²

According to the CPT standards, ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a human.¹²³

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.¹²⁴ As a rule, an remand/convicted person shall be provided with a shower twice a week and with a barber’s service at least once a month. The administration may not require an remand/convicted person to have his/her hair shaved off unless so requested by the doctor or caused by hygienic necessity.¹²⁵

The monitoring has revealed that the water closet is not isolated in solitary confinement and safe rooms¹²⁶ of establishment no. 3, safe rooms of no. 6, and de-escalation rooms of establishment no. 8. There are visual surveillance systems (video cameras) installed in cells so that toilet areas are within the camera’s scope. Privacy is, therefore, not respected in these establishments. Similar situation is seen in quarantine and solitary confinement cells in the accommodation building of establishment no. 15.

122 See <http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf> p. 19, para. 31, also: <http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.pdf> p. 30, para. 60 [Last visited on 20.01.2017].

123 P. 25, para. 49.

124 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 15.

125 Article 21.2 of the Imprisonment Code.

126 Presently de-escalation rooms.

The toilet areas in the cells of establishment no. 7 are small; there is no ventilation and flushing tanks are not installed. While toilets are isolated from the rest of the cell, unpleasant smell escapes from the open area above the upper part of the door and stays in the cell due to non-existent ventilation. The toilet areas vary from 0.4 (0.63X0.69) m² to 0.5 (0.62X0.78) m². According to prisoners, some of them, due to their physical appearance, are unable to answer the call of nature in normal conditions as the toilet areas are cramped.

Sometimes, prisoners have to leave the door open and answer the call of nature in such degrading conditions. It is noteworthy that there are beds right in front of the toilet area and it is practically impossible to have a private moment.

Similarly, in establishment no. 6, while the toilet area is isolated from the rest of the cell, unpleasant smell escapes from the open area above the upper part of the door into the cell. There are visual surveillance systems (video cameras) installed in all safe cells and the cells accommodating high risk prisoners, so that toilet areas are within the camera's scope. Therefore, privacy is not respected.

3.5.6. PRISONER'S PERSONAL HYGIENE/CLOTHING/BEDDING

Under the European Prison Rules, prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.¹²⁷ To this end, the prison authorities shall provide them with the means for doing so, including toiletries and general cleaning implements and materials.¹²⁸ Special provision shall be made for the sanitary needs of women.¹²⁹ Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate.¹³⁰ Such clothing shall not be degrading or humiliating.¹³¹ All clothing shall be maintained in good condition and replaced when necessary.¹³²

Under Article 22.1 of the Imprisonment Code, if an remand/convicted person does not have his/her personal clothes, the administration shall provide him/her with special uniforms according to the season, which shall not be degrading to human dignity.

According to prisoners interviewed in establishment no. 2, the administration does not provide them with clothing suitable for the climate and mostly other prisoners (sharing a cell with them) help them out. According to foreign prisoners in establishment no. 5, they did not have additional clothing upon admission. The administration has not provided them with clothing suitable for the climate. As the foreign prisoners explained, other prisoners helped them out with clothes.

According to prisoners in establishments nos. 2, 6, and 18, they are provided with the items of personal hygiene upon admission to the respective establishment only upon re-

127 Rule 19.5.

128 Rule 19.6.

129 Rule 19.7.

130 Rule 20.1.

131 Rule 20.2.

132 Rule 20.3.

quest. On number of occasions, they are told by the administration that there are no more personal hygiene items left in stock. In establishment no. 2, e.g., only one or two bars of soap would be given to a cell upon request despite the fact that there are more than two prisoners in the cell. The prisoners placed in de-escalation rooms in establishment no. 8 are not given the items of personal hygiene (tooth brush, tooth paste, bedding, towel, and a pillow).

The visit to establishment no. 2 revealed that the female prisoners face problems in terms of accessibility to items of personal hygiene. Sanitary pads are not given to them and body and face care products are inaccessible. There is no hot water running in the accommodation cells of the buildings A, B, C and D of the detention facility¹³³ of establishment no. 5.

3.5.7. THE RIGHT TO TIME IN THE OPEN AIR

In accordance with the European Prison Rules, every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.¹³⁴ When the weather is inclement, alternative arrangements shall be made to allow prisoners to exercise.¹³⁵ In accordance with the Imprisonment Code, an remand/convicted person has the right to stay in the open air at least one hour a day (enjoy the right to walk in the open air).¹³⁶

The yards in establishment no. 2 are partially covered; there are long wooden benches and waste bins in the yards; and surveillance cameras are installed.

The conditions in yards of penitentiary establishments nos. 2, 6, 8, 9, 5,¹³⁷ and 17¹³⁸ do not enable prisoners to exercise properly. There is no exercise equipment in the yards. There is only one pull up bar installed in the yard of establishment no. 3. It is important to provide the yards with sporting equipments in penitentiary establishments so that prisoners could do physical exercises.

The football stadium in establishment no. 14¹³⁹ is ill-equipped; there is no synthetic turf on asphalt; there are no goals; and basketball backboard is damaged.

The prisoners of establishment no. 7 complain about the location and organisation of yards. They are small and located in a place with virtually no natural ventilation. The walking area is only 13 m² (4.2x3.1). There are, in total, four such walking areas in the establishment. The walking area is surrounded by approximately three-metre high walls and covered by gratings and metal mesh. Due to this and because the area is wedged among buildings, sunrays and fresh air do not reach it.

133 The following reside in this facility: convicts under quarantine regime; convicts serving sentence in closed-type institutions; prisoners in solitary confinement cells/in cell-type accommodations; convicts serving life sentence; convicts who were transferred to the detention facility upon their request.

134 Rule 27.1.

135 Rule 27.2.

136 Article 14.1.g).

137 Detention facility.

138 Closed-type building.

139 In the yard of establishment no. 6.

The Public Defender issued recommendations regarding the organisation of yards in establishments nos. 3, and 8 in the Report of 2015 too. It has not been fulfilled yet.

According to the information submitted by the medical personnel of establishment no. 3, prisoners of the said establishment experience lower back pain (which they call ‘prison bed syndrome’) due to immobility and lying in a small bed¹⁴⁰ in the same position. Furthermore, the prisoners suffer from gastric and intestinal ailments also caused by immobility and disorderly dietary and sleeping arrangements; prisoners have frequent headaches, which the medical personnel relate to the lack of fresh air/oxygen. According to the medical personnel, there are frequent occasions of prisoners having rashes, which they were unable to treat medically. The doctors assume that the rashes are caused by the conditions existing in cells and lack of fresh air since inmates in closed type establishments do not spend more than one hour in the open air¹⁴¹ and there are problems related to natural and artificial ventilation in the cells.

In his Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Corrections to close establishment no. 7 due to the dire living conditions there. While, in 2016, the number of prisoners has considerably decreased in the said establishment, it continues to be operational. Therefore, the recommendation of the Public Defender concerning its closure remains the same. Despite the infrastructural and dire living conditions, according to information received from the establishment’s director,¹⁴² no repairs were conducted in establishment no. 7 in 2016. According to the statements of the representatives of the Ministry of Corrections, it is planned to close establishment no. 7 in the near future.

3.5.8. INFRASTRUCTURE

There is no infrastructure for long visits in penitentiary establishments nos. 7, 8, 9, 18, and 19. The Public Defender recommended to the Minister of Corrections regarding this issue more than once. Except for the prisoners of establishment no. 7, the prisoners of other establishments listed above are periodically transferred to other establishments for long visits. It is, however, necessary that the appropriate infrastructure for long visits is provided in the above establishments.

In the investigative and meetings rooms of penitentiary establishments,¹⁴³ apart from representatives of investigative authorities, prisoners meet lawyers, clerics, representatives of the Public Defender and international organisations. The law ensures the confidentiality of conversations with these persons. As there are surveillance cameras installed in these rooms, the majority of prisoners believe that visual and audio recordings of their conversations are made by these cameras installed in investigative rooms, which negatively affects their openness and discourages them to certain degree during the conversations.

140 Size of the bed is 63x189 cm.

141 Under the Imprisonment Code, an remand/convicted person has the right to stay in the open air at least one hour a day (to enjoy the right to walk in the open air).

142 Letter no. MOC 2 1700041592, dated 18 January 2017.

143 In establishment no. 8, one room is designated for the representatives of the Red Cross and it allows meeting with prisoners without eavesdropping. The representatives of the Public Defender use this room as well.

In the Parliamentary Reports of 2013, 2014, and 2015, the Public Defender recommended to the Minister of Corrections to designate a room in all penitentiary establishments, where the Public Defender/members of the Special Preventive Group would have a possibility to meet a prisoner at any time without eavesdropping and surveillance of any kind. The recommendation has not been fulfilled to date.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure improvement of infrastructure in penitentiary establishments. Concerning the Recommendations Determined by the Resolution of the Parliament of Georgia Adopted with Regard to the Report of the Public Defender of Georgia on Human Rights Situation in Georgia in 2015, the Ministry of Corrections of Georgia submitted detailed information about infrastructural projects implemented in penitentiary establishments in 2016 as follows:

According to the information submitted by the Ministry, repairs have been carried out in penitentiary establishments nos. 3, 2, 5, 6, 8, 9, 12, 14, 16, 17, and 19. The works on gratings, doors and windows and facade are underway in the main regime building of the Laituri penitentiary establishment, which is under construction.

The cells located on the ground floor of penitentiary establishment no. 3 have been repaired; the bunk beds of remand and convicted persons have been reconstructed into one-level beds, which will eradicate the problem of overcrowding in the cells.

The cells, shower rooms, and short visit rooms have been repaired in establishment no. 2; four de-escalation rooms have been provided; the evacuation staircases in the regime building D have been reconstructed; the additional security barrier around the premises of the establishment, the so-called 'buffer zone', have been set up; medical rooms have been repaired; and new dental rooms, x-ray room, sterilisation room, etc., have been arranged. New, completely refurbished rooms have been arranged for the convoy service located in the establishment.

The new building for long-term visits started functioning in penitentiary establishment no. 5. Shower rooms, cells, medical rooms, the administrative building, etc., have been completely repaired; fitness rooms have been provided.

Modern cells, including for disabled prisoners, shower rooms have been arranged in penitentiary establishment no. 6; a modern electronic surveillance system has been installed.

A bread baking building has been set up in establishment no. 8; medical rooms have been refurbished according to the relevant standards, dental rooms, x-ray room, sterilisation room, etc., have been arranged. Works on providing infrastructure for long visits will begin in the near future.

Shower rooms and medical rooms have been completely repaired in establishment no. 9; dental and sterilisation rooms have been arranged; the establishment's pharmacy has been repaired; the parcels room has been repaired too and rooms for personal screening have been arranged at the entrance of the establishment.

The accommodation building for those prisoners involved in economic services has been completely repaired; shower rooms and dining-room have been set up.

The premises of establishment no. 14 have been equipped with modern electronic surveillance systems and new rooms for electronic surveillance have been set up. Construction works on public reception rooms have been completed. Presently, equipment and amenities services on the building and yard are underway; medical room located on the premises of the establishment has been completely repaired; construction work on bread bakery on the premises of the establishment has been completed; administrative building has been refurbished, among them, the rooms of external security service have been repaired.

The bread bakery in establishment no. 16 has been refurbished and it is already functional. Medical rooms have been arranged according to the relevant standards; construction works on a gym on the establishment premises have been completed; there is infrastructure for culinary courses in the dining room; and shower rooms have been repaired.

Dining room project documentation has been drafted for establishment no. 17; complete overhaul works on the dining room are underway; medical rooms have been refurbished; the additional security barrier around the premises of the establishment; and the so-called 'buffer zone', has been arranged.

Accommodation rooms for those prisoners involved in economic services have been completely repaired in establishment no. 19.

The works on gratings, doors and windows and facade are underway in the main regime building of the Laituri penitentiary establishment which is under construction.

The Public Defender welcomes the overhaul of infrastructure and repairs of accommodation facilities in penitentiary establishments in 2016. It is noteworthy that in comparison to the previous years, the physical environment, sanitation and hygiene conditions in a number of penitentiary establishments have been improved. However, the conditions existing in penitentiary establishments still require considerable improvement and needs to be brought closer to international standards.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To shut down establishment no. 7;
- To ensure 4m² of living space is provided per prisoner in a multiple-occupancy cell in establishments nos. 2, 7, 8, 12, 14, 15, and 17;
- To ensure in establishments nos. 2 and 8 that remand persons are isolated from convicted persons at least by separate living spaces;
- To take all measures for abolishing barrack-type accommodation facilities in establishments nos. 14, and 17;

- To ensure that adequate artificial ventilation is installed in the accommodation and waiting cells of establishments nos. 2, 6, 5, and 8; in waiting, solitary confinement rooms and shower rooms of establishments nos. 2 and 8; in investigative room of establishment no. 8; and in the room for meeting with lawyers in establishment no. 15;
- To ensure artificial ventilation is installed in the accommodation cells of establishments nos. 8, 9, and 15; and in shower rooms and short visits rooms in establishment no. 6;
- To ensure natural ventilation is provided in the de-escalation cells of establishment no. 8 and accommodation cells of establishment no. 17;
- To ensure adequate heating is provided in the accommodation cells in establishment no. 15;
- To ensure the concrete floor in accommodation cells of penitentiary establishments is replaced with other healthy material;
- To take all the measures to ensure that adequate sanitation and hygiene conditions are provided in the accommodation, solitary confinement and waiting cells in establishments nos. 2, 8, 15, and 17;
- To ensure sanitation and hygiene standards are upheld in solitary confinement cells of establishment no. 3 and accommodation cells of establishments nos. 5¹⁴⁴, 7, 12, and 14¹⁴⁵;
- To ensure that the outdated accommodation cells in establishment no. 12 are repaired;
- To ensure that sanitation and hygiene standards are upheld in the corridors and staircases of accommodation building in establishment no. 15;
- To provide nightstands in the accommodation cells in establishment no. 2;
- To ensure that water closets are arranged outside the camera scope and isolated enough to provide privacy, in the closed type cells in establishment no. 15; solitary confinement cells and safe cells¹⁴⁶ in establishment no. 3; accommodation and safe cells of establishment no. 6 and de-escalation cells in establishment no. 8;
- To take all measures to ensure proper functioning of drains in establishments nos. 2, and 5;
- To repair water regulation devices in the shower rooms of establishment no. 8 as well instalment of switches and plugs in accordance with safety standards in establishments nos. 8 and 12;

144 Detention facility.

145 Closed-type building.

146 Presently de-escalation rooms.

- To ensure adequate artificial lighting in the shower rooms of establishment no. 8;
- To provide benches and hangers in the shower rooms in establishment no. 8;
- To take all measures to provide prisoners in establishments nos. 2, and 5 with clothing according to the season;
- To take measures to provide prisoners with items of personal hygiene in establishments nos. 2, 6, 8, and 18;
- To provide female prisoners with the necessary hygiene items in establishment no. 2;
- To take all measures that the cells for female prisoners are provided with hot water in establishment no. 5;
- To provide the yards in establishments nos. 2, 3, 6, 8, 9, 5,¹⁴⁷ and 17¹⁴⁸ with exercising equipment;
- To adequately equip the stadiums of establishment no. 14 with artificial turf, goals, and basketball backboard;
- To set up yards in establishment no. 8 so that all convicts are able to exercise the right to stroll;
- To take all measures to eradicate water supply problem in establishment no. 3;
- To provide infrastructure necessary for long visits in establishments nos. 8, 9, 18, and 19; and
- To designate one room in all penitentiary establishments where the Public Defender/members of the Special Preventive Group will have the possibility to meet a prisoner at any time without eavesdropping and surveillance of any kind.

3.5.9. DAILY SCHEDULE AND REHABILITATION ACTIVITIES

In accordance with the Nelson Mandela Rules, every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily, if the weather permits.¹⁴⁹ In accordance with the Imprisonment Code,¹⁵⁰ an remand/convicted person has the right to stay in the open air at least one hour a day (enjoy the right to walk in the open air).¹⁵¹ The prisoners accommodated in semi-open establishments can usually move freely around the walking areas of their respective accommodation building;

147 Of the detention facility.

148 Of the closed-type building.

149 Rule 23.1.

150 Article 14.

151 Para. 1.g).

whereas the inmates of closed-type establishments have the right to spend no more than one hour in the open air.

It should be stressed that the prisoners of closed-type establishments spend 23 hours a day in cells and their walk for only an hour in a cell-type yard with no exercise equipment may have ramifications for their health. It is, therefore, necessary that there should be adequate conditions for spending time in fresh air and exercise in penitentiary establishments. Besides, the daily duration of spending time in the open air should be increased. Due to inadequate arrangement of the walking areas, prisoners forego their right to spend time in the open air in a number of cases. The Public Defender discussed this issue in the Parliamentary Reports of 2014 and 2015; however, this problem continues to exist in penitentiary establishments.

There are 560 accommodation cells in total in establishment no. 8,¹⁵² out of which, 25 cells are occupied by the prisoners enrolled in economic services. These prisoners do not exercise the right to open air.¹⁵³ There are 90 yards in the establishment. The prisoners are taken out according to the cells. In accordance with the establishment's schedule, walking starts from 9 a.m. and continues until 12 noon. In accordance with this schedule, in 3 hours prisoners from only 270 cells manage to leave their cells and have a walk outside.¹⁵⁴ Prisoners from other cells are unable to exercise this right.

According to the prisoners of establishment no. 8, they often decline to exercise their right to leave their cell as they are offered a walk either at 7 a.m. or 8 a.m. Besides, as the convicts from establishment no. 8 are transferred to other establishments on Saturdays, they cannot use their right to walk on this day either. The refusal expressed by the prisoners is registered in the journals of the accommodation buildings of the establishment. The refusals are registered according to the cells without stating the time frame when the walk was offered (only a date is entered). According to well-established practice,¹⁵⁵ a prisoner should not stay alone in either a cell or a yard, which means that a prisoner's wish to have a walk outside depends on his/her cellmate. The Public Defender considers it impermissible and a prisoner wishing to have a walk outside should be given this possibility in any event.

In establishment no. 6, too, prisoners are offered to have a walk at 7 a.m. or 8 a.m., due to which, as the prisoners explain, they decline to go out into a yard. According to the prisoners of establishment no. 18, they are only taken to a yard twice a week for only 15 minutes.

According to the recommendations given in the Parliamentary Reports of 2014 and 2015, the prisoners in establishment no. 8 were to be given a possibility to exercise their right to walk in the open air during the period defined by the daily schedule. However, the same problem was raised, in the reporting period, with regard to establishments nos. 6 and 18.

152 As of 1 March 2017, there were 2 324 prisoners in establishment no. 8 and only 16 cells were vacant.

153 The prisoners enrolled in economic service can freely move on the establishment premises during the day, therefore they do not need to have a daily walk in the yard.

154 Within this period, excluding the time spent on taking prisoners out of cells and bringing them out in the yard.

155 According to the establishment personnel, this practice is aimed preventing suicide.

The Public Defender has repeatedly emphasised in his numerous reports that the conditions in penitentiary establishments should ensure prisoners' public re-socialisation and reintegration. During serving a sentence, a convict should receive or enhance education and skills that are desirable and accessible; they should be enabled to take part in sporting, art, intellectual or other activities. All this is necessary so that a convict who served his/her sentence returns to the public as a wholesome personality.

Under the Nelson Mandela Rules, the purposes of a sentence of imprisonment or similar measures that deprive a person's liberty are primarily to protect society against crime and reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.¹⁵⁶

Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners.¹⁵⁷ Every prison shall seek to provide all prisoners with access to educational programmes that are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.¹⁵⁸ A systematic programme of education, including skills training, with the objective of improving prisoners' overall level of education as well as their prospects of leading a responsible and crime-free life, shall be a key part of regimes for sentenced prisoners.¹⁵⁹

According to the Ministry of Corrections of Georgia's published¹⁶⁰ report on its annual activities of 2016,¹⁶¹ the Individual Sentence Planning (ISP) mechanism has been successfully implemented for juvenile convicts since 2009. In 2015, the ISP approach was also introduced in establishments nos. 5, and 16. In 2016, the Ministry of Corrections launched a pilot programme of the Individual Sentence Planning at establishments nos. 6, 12 and 17. ISP will have covered all penitentiary establishments by 31 December 2017, which is welcomed by the Public Defender of Georgia.

Individual sentence planning implies the development of individual sentence plans for convicts. The purpose of individual sentence planning is to carry out proper assessment of individual risks of possible recidivism, create appropriate healthy environment in a penitentiary establishment and promote inmates' participation in rehabilitation programmes. Individual sentence planning implies evaluation of the inmates' needs in parallel to serving sentence in order to determine his/her specific requirements for psycho-social/rehabilitation programmes. The outcomes of the programme will have an impact on the risk assessment of an individual convict and decision about his/her early release.¹⁶²

In 2016, various rehabilitant activities were carried out in penitentiary establishments; some of them are still ongoing. In the course of the year, prisoners could take part in cultural and sporting events, pursue general/professional education and study various trades. In this regard, establishment no. 5 sets the best example.

156 Rule 4.1.

157 Rule 105.

158 European Prison Rules, Rule 28.1.

159 *Ibid.*, Rule 106.1.

160 Available at: <http://www.moc.gov.ge/ka/saqmianoba/angarishebi>

161 Available at: <http://www.moc.gov.ge/images/catalog/items/zzzz.pdf>, p. 32.

162 Available at: <http://www.moc.gov.ge/images/catalog/items/zzzz.pdf>, p. 32.

Activities Carried out in Establishment no. 5	Number of Participants
Psycho-Social Rehabilitation Programmes	
Atlantis	16
Preparations for release	11
Coping with the difficulties in the family	6
Cognitive skills	18
Training session on stress	6
Sporting /Cultural Activities	
Competition in intellectual skills and creativity	100
Activity – A Woman Hoping for the Future	150
Pantomime	12
Play – The Man Who Adored Literature	100
Play – Until the Prince Kills Himself	100
Play – Come and Visit, I am Settled Here and I have Stopped the Sun	33
Participated in a programme – Knowledge is Money	2
Club of the Funny and Inventive People	100
Re-write the Knight in the Panther’s Skin	3
Evening of poetry	50
Literature competition	4
Musical concerts	150
Movie show	80
Professional/Vocational Courses/Training Sessions	
Training programme for guides (tourism)	11
Training of hotel personnel	9
Hotel manager	10
Tour-operator course	9
Lecture on Conversations on Translation	40
Lecture/seminar on religious and theological topics	90
Rights of remand/convicted persons	176
Training session on fighting human trafficking	36
Training session on reproductive health	7

Sewing	12
Stylist	28
Felt	13
Course to study massage	18
Course to study the Georgian language	24
Course to study the English language	28
Course to study the German language	17
Computer graphics	4
Course to study computer office programmes	10

Apart from the activities given in the above table, establishment no. 5 also arranged a movie show and conducted concerts.

In the course of 2016, the inmates of rehabilitation establishment no. 11 were involved in the process of pursuing general education. The detailed information on the activities conducted within the said establishment is given in the below table:

Name of the Rehabilitation Activity	Period	Participants
Psycho-Social Rehabilitation		
Preparations for release	January-March, May-July	18
Art therapy	January-March, April-May	15
Stress Management	February	4
Anger Management	April	4
Music therapy	April-October	17
Development of useful skills	April-October	6
Cultural Activities		
Funny quiz	1.11.2016	6
What? Where? When?	2.1.2016	9
	2.10.2016	10
	4.23.2016	11
	5.30.2016	11
	8.24.2016	8
	11.29.2016	9
	8.31.2016	8
Movie quiz + What? Where? When?	8.31.2016	8

Intellectual game ETALONI	3.16.2016	9
	6.22.2016	5
	9.12.2016	7
	10.3.2016	11
	12.7.2016	11
	12.8.2016	11
New Year quiz	12.30.2016	11
Readers' club	Once a week	-
Until the Prince Kills Himself	6.15.2016	11
Poetry evening, meeting with poets	11.4.2016	13
Presentation on Georgian Junkers	2.25.2016	9
Activity dedicated to the Children's Day	6.1.2016	11
Activity dedicated to the mother tongue	4.25.2016	4
Presentation on 26 May – the Day of Regaining Independence		2
Sporting Activities		
Checkers club	Once a week	16
Cess club	Once a week	22
Fitness exercises	5.4.16-20.12.16 three times a week	15
Football club	10.5.16-24.12.16 Twice a week	13
Table tennis club	3.30.2016	8
	4.6.2016	8
	8.18.2016	8
	8.22.2016	8
	11.25.2016	8
Tournament in checkers	4.14.2016	7
	9.2.2016	5
Friendly game in football	12.1.2016	9

Apart from the activities given in the tables, in the course of the year, the juveniles could meet celebrities and watch numerous movies (fiction/cognitive).

Find below the information about the activities conducted in detention and closed penitentiary establishments.

Rehabilitation Activities Conducted in Detention and Closed Penitentiary Establishments	Number of Inmates Involved in Activities According to Establishments			
	no. 2		no. 8	
	Adult	Juvenile	Adult	Juvenile
Sporting Events				
Tournament in checkers	8	-	-	-
Tournament in table tennis	-	-	8	-
Tournament in arm-wrestling	-	-	18	8
Tournament in checkers	-	-	26	8
Weight lifting tournament	-	-	14	-
Vocational/Professional Course				
Wood carving	8	-	-	-
Embroidery	7	-	-	-
Enamel	4	-	-	-
The English language Course	12	-	22	-
The Georgian language Course	11	-	14	-
Computer graphics course	13	-	7	-
Computer office programmes course	-	-	19	-
Driving licence (Theory)	19	-	26	-
Management of a family guesthouse	6	-	-	-
Introduction to Juvenile Justice Code	-	3	-	-
Introduction to history of Georgia	-	6	-	-
Seven wonders of the world	-	4	-	-
Rights of remand/convicted persons	-	-	40	-
Psycho-Social Rehabilitation				
Atlantis	6	-	-	-
Art therapy	-	8	-	5
Healthy lifestyle	-	5	-	-
Cognitive and social skills	-	4	-	-
Module on penitentiary stress management	-	1	-	-
Training module on anger management	-	3	8	-
Library therapy	-	-	-	11
What? Where? When?	-	-	12	-

Apart from the data given in the tables, various social activities were carried out in penitentiary establishments, among them, prisoners met celebrities, had evenings dedicated to poetry and competitions in literature.

It was only possible to study foreign languages and attend IT classes in establishment no. 9.

In establishments nos. 2, 8, and 11, juveniles were involved in the process of receiving general education. Unfortunately, it should be noted that female prisoners in establishment no. 2 did not benefit from rehabilitation activities of any kind.

It should be pointed out with regard to juvenile rehabilitation programme available in establishment no. 2 that a psychologist uses the method of art therapy. An anti-social behavioural prevention programme is available here. Juveniles are shown films that are not thematically selected and there is no ensuing discussion on the films, while it could indirectly work towards the moral evolvement of beneficiaries, change of their attitude towards crime, contribute to their personal growth and increase of self-esteem, as well as improvement of social adaptation and competences. It is clear that the activities carried out in 2016 in penitentiary establishments nos. 2, 8, and 9 need further improvement.

As regards the activities in high risk prison facilities, in 2016, there were only two prisoners involved in rehabilitation activities in establishment no. 7. In one case, the work of one prisoner was exhibited and in the other case, a prisoner took part in a literature competition with an original poem. In the course of the year, a suicide prevention programme involving seven prisoners was implemented in establishment no. 6. Besides, there was a checkers tournament engaging twelve convicts. As regards establishment no. 3, there were only eight rehabilitation activities carried out there in 2016, among them were the following courses: hotel management, guide (tourism), IT support specialist, computer graphics, web specialist, small business management, driving licence and web design. Four convicts took part in these programmes.¹⁶³

The availability of diverse rehabilitation programmes tailored to the individual needs of prisoners is particularly important in high risk prison facilities. According to the information given above, the degree of involvement of prisoners in rehabilitation programmes in these facilities is very low. This creates an unhealthy environment in these establishments and negatively affects the relationship between prisoners and administration, as well as order and security. Without rehabilitation programmes, the objectives of re-socialisation and prevention of reoffending cannot be attained.

It is necessary that prisoners in closed-type establishments, at least in their cells, are given a possibility to be engaged in the activities that are interesting for them and has art, labour or comprehension value. It is important that individual sporting activities were encouraged, even within the limited possibilities of the establishments. For example, upon request, prisoners should be able to have additional time to spend in the open air where they could individually exercise. To this end, basic sporting equipment could be provided in the yards.

¹⁶³ Response received from establishment no. 3 on 18 January 2017, letter no. MOC 7 1700043478.

As it was mentioned in the Parliamentary Reports of the past years, despite establishments nos. 18, and 19 being medical establishments, prisoners are placed in various units of these establishments for long periods. Accordingly, it is important to implement certain rehabilitation activities in these establishments too. The Public Defender pointed out in his Parliamentary Report of 2015 that while both establishments made steps towards the implementation of rehabilitation activities, it was necessary to offer prisoners more and diverse programmes. In 2016, the prisoners in establishment no. 18 participated in psycho-social rehabilitation course offered by the social worker and psychologist of the establishment on the following topics: strategies to overcome suicidal impulse, development of skills for coping with emotion and stress (13 beneficiaries); and art therapy course (four convicts in a group) and movie show. The prisoners of establishment no. 19 were able to learn icon carving and wood carving (3 convicts) and participated in art therapy course (16 convicts).

Rehabilitation Activities Conducted in Semi-Open Penitentiary Establishments	Number of Inmates Involved in Activities According to Establishments			
	no. 12	no. 14	no. 15	no. 17
Vocational/Professional Course				
Church singing courses	13	-	-	-
Course on psalm reading	13	-	-	-
The Georgian language course	-	-	-	14
The English language course	74	-	13	26
The German language course	20	-	-	19
Computer graphic	14	-	20	18
Software access	-	-	10	19
Computer office programmes study	8	-	-	6
Web design study course	-	-	12	17
Guide (tourism)	24	-	-	-
Hotel manager	7	-	-	14
Small business manager	41	-	6	15
Lecture – Conversations on Translation	18	-	-	-
Educating equals and HIV/AIDS	30	-	-	-
Lecture/seminar on religious and theological topics	89	-	-	55
Training session on the rights of the remand/convicted persons	-	-	-	49
IT support specialist	16	-	5	8
Driving licence (theory)	22	-	14	44

Wood carving	-	-	-	33
Icon carving	-	-	-	7
Tour-operators	7	-	4	-
Electrician	-	8	-	-
Tile layer	-	9	-	-
Mason	-	8	-	-
Carpenter	-	3	-	-
Psycho-Social Rehabilitation				
Preparation for release	23	-	-	10
Penitentiary stress	-	-	-	13
Anger management	10	-	-	-
What? Where? When?	12	-	-	-
Impact of positive behaviour on family relationships	16	-	-	-
Development of positive thinking skills	-	-	-	8
Library therapy	9	-	-	8
Cognitive and social skills programme COSO	26	-	-	-
Nursing a trauma	12	-	-	-
Theatrical troop	-	-	-	15
Art therapy	-	-	-	11

Apart from the activities given in the table above, the following activities have been carried out in semi-open establishments: meetings with celebrities,¹⁶⁴ evening of poetry,¹⁶⁵ concerts,¹⁶⁶ movie showing,¹⁶⁷ Re-write the Knight in the Panther's Skin,¹⁶⁸ celebrating the World Book Day,¹⁶⁹ chess tournament,¹⁷⁰ football match,¹⁷¹ world record tournament in weightlifting,¹⁷² exhibition of convicts' works,¹⁷³ and meetings of Christian clerics with Muslim convicts.¹⁷⁴

As the tabled data shows, the rehabilitation activities carried out in penitentiary establishments nos. 14, and 15 in 2016 are scarce and the degree of the convicts' participation

164 Establishments nos. 12, 17.

165 Establishment no. 15.

166 Establishment no. 12.

167 Establishments nos. 12, 14, 15, and 17.

168 Establishment no. 12.

169 No. 14.

170 No. 14.

171 No. 17.

172 No. 17.

173 No. 17.

174 No. 17.

is low. Therefore, the rehabilitation process in these establishments is unsatisfactory. In 2016, various activities were carried out in low risk prison facility no. 16; tournaments in table tennis, football and volleyball, chess, and basketball were some of the activities that were carried out. The convicts had the possibility to meet celebrities; watch numerous movies, learn wood carving, playing guitar, doing clay work, cooking, painting, computers, running a small business, hotel management, IT, and learn Georgian, English and German. Apart from the above-mentioned, the convicts were involved in various psycho-social rehabilitation programmes such as preparation for release, development of cognitive and social skills, human development in social environment, anger management and stress management, everyday life risks and human resources, a step towards changes (understanding crime), etc.

Unfortunately, foreign prisoners of penitentiary establishments, due to linguistic barriers, face difficulty in communication with personnel, including social workers and, therefore, they are virtually unable to be involved in rehabilitation activities. While foreign prisoners are offered to take the courses in learning Georgian language, such courses are not regularly conducted. For instance, the monitoring visits made to establishment no. 2 revealed that foreign prisoners had not been informed at all about their right to participate in rehabilitation programmes.

In his Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to take all the measures to ensure that diverse rehabilitation activities are carried out in all penitentiary establishments. He also recommended promoting, to a maximum degree, the social units of penitentiary establishments in planning and conducting various activities with adequate participation of prisoners; to ensure that when planning such activities, the interests of prisoners are taken into account and the forms of incentives should be used more often to ensure more involvement. Unfortunately, this recommendation has not been fulfilled. As the result of the monitoring visits, it was found out that the number of personnel in social units is still insufficient.

ESTABLISHMENT	Average Number of Prisoners per Year	Number of Social Workers	Number of Psychologists	Head of Unit	Composition of the Social Service
No. 2	1 218	6	2	1	9 ¹⁷⁵
No. 3	101	3	1	1	5
No. 5	266	7	2	1	11 ¹⁷⁶
No. 6	209	10	3	1	14
No. 7	29	1	1	1	3

175 The table depicts the data as of December 2016; the composition of social units would change in the course of the year.

176 One librarian is including in the staff of a social service.

No. 8	2 370	20	6	1	26
No. 9	39	1	1	1	3
No.11	16	5	2	1	8¹⁷⁷
No.12	280	3	1	1	5
No.14	1 152	11	1	1	13¹⁷⁸
No.15	1 706	13	1	1	15
No.17	1 922	11	2	1	14
No.18	103	3	1	1	5
No.19	101	4	1	1	6

As it is shown from the data in the above table, only two psychologists deal with 1,218 prisoners in establishment no. 2, and two psychologists deal with 1,922 prisoners in establishment no. 17. Only one psychologist works with 1,152 prisoners in establishment no. 14, and 1,706 prisoners in establishment no. 15. Six psychologists work with 2,370 in establishment no. 8, which means one psychologist has to deal with approximately 400 prisoners.

It should be noted that apart from individual meetings with prisoners, psychologists prepare character references for prisoners within the early conditional release procedure, take part in the planning and implementing of rehabilitation activities. Furthermore, they are involved in the suicide prevention programme and have to draft the requisite psychological conclusions within this programme. Some of the psychologists have been regretfully observing that they do not have the requisite resources for psychotherapeutic work.

As regards the employees of social units, while their number in social units exceeds that of psychologists, as monitoring shows, they also face hard working conditions. There is a high demand for social workers among prisoners. In addition, according to some of the prisoners, social workers are unable to perform their duties adequately. It is the assessment of the Special Preventive Group that it is imperative to enhance qualifications of both psychologists and social workers, as well as to ensure the presence of requisite number of psychologists and social workers and creation of adequate working conditions for them.

The psychologists working in penitentiary establishments do not have adequate space where they would be able to work with a convict in a peaceful, therapeutic environment. This problem is especially acute in establishments nos. 2, and 3. The psychologist at establishment no. 2 has to work in a social unit, the library and the meeting room for lawyers.

In some of the establishments, psychologists do not have a logbook to register the applications and the number of single psycho-diagnostic consultations. According to the explanation given by the psychologists, they attempt to conduct psycho-corrective work with

177 Apart from the staff given in the table, two employees of the social service (a psychologist and a social worker) were on maternal leave.

178 There is a vacancy for a social worker in establishment no. 14.

prisoners but no documentation is processed to register the number of sessions, working instruments applied and if there is any positive dynamic as the result of the activity.

According to the response of the Ministry of Corrections, in the first quarter of 2016, social activities needs assessment for planning rehabilitation works was conducted in penitentiary establishments. 1193 convicts took part in the enquiries. Based on the needs assessment, the first taught stage of 2016 was planned. The second stage of the enquiries was conducted in September and 894 convicts took part in it, which in turn will be a basis to plan the following taught stage. According to the total data of 2016, 1325 convicts took part in professional and educational programmes.¹⁷⁹

The Public Defender welcomes the steps made by the Ministry of Corrections towards the implementation of rehabilitation activities. However, it should be noted that rehabilitation activities were scarce in penitentiary establishments nos. 3, 6, 7, 8, 9, 14, 18, and 19; rehabilitation activities implemented in penitentiary establishments nos. 2, 8, and 15 were not diverse and the degree of prisoners involvement was unsatisfactory.

It is noteworthy that, in accordance with the change suggested in the draft law on the Amendment to the Imprisonment Code, which has been introduced to the Parliament of Georgia, a convict placed in an establishment for preparation of release or a low risk prison facility will have the right to obtain the first academic degree of higher education (bachelor's degree). The Public Defender welcomes this legislative amendment.

Under paragraph 61 of the draft law, amending Article 88 is suggested to the effect of limiting the right of a convict to participate in educational process within the period of serving a disciplinary penalty. The Public Defender observes that promotion of educational process should be a priority in the penitentiary system. Therefore, if a convict is involved in the educational programme, he or she should not be restricted in this right while serving a disciplinary penalty.

In accordance with the Nelson Mandela Rules, every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.¹⁸⁰ Prisoners shall be kept informed regularly of the more important items of news by reading newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorised or controlled by the prison administration.¹⁸¹

It is noteworthy that there is a library functioning in all penitentiary establishments. While there is no space for a library in establishment no. 7, the establishment still has some stock of books. There is a problem in a number of establishments regarding books in foreign languages. For instance, there are only Russian and Turkish books in establishment no. 3; there are English and Russian books in establishments nos. 9, 12, and 14; there are Russian, Armenian and Azerbaijani books in establishments nos. 7, and 19; there are

179 The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.

180 Rule 64.

181 *Ibid.*, Rule 63.

English, Russian, and German books in establishments nos. 16, and 18; there are English, Russian, Turkish, German books in establishment no. 2 and there are English, Russian and Azerbaijani books in establishment no. 6.

Unfortunately, establishments nos. 7, 9, and 14 are not provided with magazines and newspapers, and there is only one magazine *Batumelebi* available in establishment no. 3. Magazines and newspapers are not provided in the establishment.

In accordance with one of the positive amendments made to the Imprisonment Code that was pointed out in the Parliamentary Report of 2015 by the Public Defender,¹⁸² a remand/convicted person has the right to carry out individual activities under the supervision and, with the permission of the director of the penitentiary institution. They will have the inventory necessary for those activities and be able to sell the items (manufactured articles) produced as a result of individual activities with the support of a penitentiary institution.

Through the abovementioned changes, in 2016, the prisoners engaged in individual activities in penitentiary establishments were given a possibility to sell their work (crosses, enamel and felt works). These works are sold in online shops¹⁸³ and the sums obtained through sales are directly deposited in the personal bank account of the respective remand/convict.

Apart from the working of the Imprisonment Code, on 4 July 2016, Order no. 85 of the Minister of Corrections approved the Procedure for Employment, Determining the List of Work to be Performed by an Remand/a Convict on the Premises of a Penitentiary Establishment and Outside and its Remuneration. The said order determined the issues related to the employment of remand/convict persons both on the premises of the penitentiary establishments of the Ministry of Corrections and outside, the conditions and terms thereof (including enrolment and striking off the jobs), remuneration, as well as the list of those works (including small-scale repair works in the establishments and delivery and acceptance procedure for these works) for which it is possible to employ remand/convicted persons.

In 2016, the prisoners enrolled in economic services at penitentiary establishments had to do work such as delivery of parcels, distribution of food to prisoners, church service, washing, provision of food and other additional items from the establishment shops, cleaning and tidying up, and working in a library. Employed convicts were remunerated for their work in the form of a salary determined according to their positions.

Remuneration for Economic Services	Net Salary	Gross Salary
Head of Service Group	250	200
Deputy Head of Service Group	225	180
Service Personnel	200	160

182 Imprisonment Code, Article 14.1e).

183 The works of convicts can be bought at: <https://online.moc.gov.ge/>.

See below the information on prisoners employed¹⁸⁴ in penitentiary establishments in 2015 and 2016.

Number of Prisoners Employed in Establishments	No. 2	No. 3	No. 5	No. 6	No. 7	No. 8	No. 9	No. 12	No. 14	No. 15	No. 17	No. 19	Total
2015	101	21	37	26	4	247	7	32	92	60	219	27	873
2016	81	7	36	30	4	109	4	26	100	66	92	28	583

10,333 and 9,601 prisoners were serving sentence in penitentiary establishments in 2015 and 2016, respectively. In 2015, 8.4 % of prisoners were employed out of the aforementioned number and it was 6.1 % in 2016. Unfortunately, it should be noted that in 2016, the number of employed prisoners decreased by 28.1%, in comparison to 2015.

In penitentiary establishments, enrolment of convicts in economic service is regulated by Order no. 157 of the Minister of Corrections of Georgia on Approving the Procedure for Performance of Economic Services by Convicts and their Remuneration. In accordance with the said order, enrolment of a convict in economic service at a penitentiary establishment is made official by the order of the establishment’s director following a written application of the convict.¹⁸⁵ Such orders do not specify the details of the work to be completed, despite the fact that this is a requirement of Article 6¹⁸⁶ of the Labour Code of Georgia and an essential term of a labour contract. The failure to determine the type of work convicts have to do exposes them to the risk of performing such assignments that was unknown before employment.

In 2015, in his Parliamentary Report, the Public Defender recommended to the Minister of Corrections to ensure that respective orders or other attached documents expressly stipulate the job description when enrolling a convict in economic service. However, the monitoring visits made to establishments in the course of 2016 showed that the majority of the prisoners involved in the economic services had to work against their will on the weekends, days off and, if needed, at night. Therefore, it is imperative that orders or other attached documents on enrolling prisoners in economic services expressly stipulate the job description.

Besides, it is important that a uniform registration form is elaborated with the work schedule of convicts working in economic service and work performed by hour for all establishments. It should also consider the remuneration of overtime work in accordance with the labour legislation. Keeping such a journal will enable establishing the hours spent by each convict in economic services, whether they do overtime and how overtime work is remunerated.

184 Unlike other penitentiary establishments, no prisoners have been employed in penitentiary establishment no. 11 (for juveniles) and establishment no. 18 (medical) due to the specific nature of these establishments.

185 Order No. 157 of the Minister of Corrections of Georgia on Approving the Procedure for Performance of Economic Services by Convicts and their Remuneration, Annex 1, Article 2.4.

186 Paragraph 9.d).

During the monitoring visits made to penitentiary establishments in 2016, it was found out that some of the convicts in economic service have to carry heavy loads every day; e.g., they have to take pots full with food to the third floor in penitentiary establishment no. 2.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To take all necessary measures to ensure that the inmates of closed-type establishments are able to spend in the open air more than one hour a day;
- To enable the inmates of establishments nos. 6, 8, and 18 to spend time in the open air every day; to this end, it is advisable to review daily schedules taking into account the prisoners' necessities;
- To take all necessary measures for conducting more diverse rehabilitation activities in all establishments of the Penitentiary Department; to promote the social units of establishments to a maximum degree in planning and conducting various activities with adequate participation of prisoners; to ensure that, when planning such activities, the interests of prisoners are taken into account; also in order to ensure more involvement, the forms of incentives should be used more often;
- To ensure all convicts are given equal opportunities to be involved in rehabilitation activities tailored to their individual necessities;
- To take all necessary measures for recruiting the necessary number of psychologists and social workers in all establishments of the Penitentiary Department;
- To take all necessary measures for arranging offices for psychologists in establishments nos. 2 and 3;
- To take all necessary measures for involving female convicts of establishment no. 2 in rehabilitation activities;
- To take all necessary measures for involving foreign prisoners in rehabilitation activities;
- To take all necessary measures for implementing Individual Sentence Planning (ISP) in all penitentiary establishments;
- To take all necessary measures for providing the libraries of penitentiary establishments with the requisite number of new books, newspapers and magazines in various languages;
- To ensure that when enrolling a convict in economic service, respective orders or other attached documents expressly stipulate the job description;

- To ensure a uniform registration form is elaborated for all establishments with the work schedule of convicts working in economic service and work performed by hour; also to consider the remuneration of overtime work in accordance with the labour legislation; and
- To take all measures for adequate safe working conditions for the prisoners enrolled in economic service.

3.6. REGIME, DISCIPLINARY RESPONSIBILITY AND INCENTIVES

As the Georgian legislation does not determine which disciplinary penalty should be imposed on an offender in each particular case, in his Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to elaborate a guideline on the use of disciplinary penalties. This would enable the uniform imposition of disciplinary penalties in all establishments of the Penitentiary Department. This recommendation was preconditioned by uneven practice of the use of disciplinary penalties, which in the opinion of the Public Defender unjustifiably increased the risk for arbitrariness of the administration of penitentiary establishments.

The practice of imposition of disciplinary penalties at the establishments of the Penitentiary Department of the Ministry of Corrections is given in the below table:

ESTABLISHMENT	Average Number of Prisoners during the Year		Placement in a Solitary Confinement		Other Penalties		Total	
	2015	2016	2015	2016	2015	2016	2015	2016
No. 2	1 487	1 218	143	240	153	377	296	577
No. 3	161	101	85	15	219	909	304	924
No. 5	292	266	1	3	66	31	67	34
No. 6	123	209	16	14	46	466	62	480
No. 7	70	29	0	0	255	46	255	46
No. 8	2 578	2 370	556	391	1 616	1 717	2 172	2 108
No. 9	44	39	0	0	3	2	3	2
No. 11	37	16	0	0	0	0	0	0
No. 12	270	280	6	14	13	18	19	32
No. 14	1 234	1 152	134	57	2	3	136	60
No. 15	1 804	1 706	114	114	287	206	401	320
No. 16	51	89	3	3	10	16	13	19

No. 17	1 949	1 922	126	60	65	43	191	103
No. 18	104	103	0	0	125	78	125	78
No. 19	129	101	17	9	9	6	26	15
Total	10 333	9 601	1 201	920	2 869	3 918	4 070	4 838

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure that disciplinary penalties were used as a last resort. However, the data in the above table shows that, in 2016, the statistics of disciplinary penalties in penitentiary establishments have been increased on average by 16%, whereas the number of placements in solitary confinement cells has decreased by 23%.

The indicator for increased imposition of disciplinary penalties in establishment no. 3 is alarming: two disciplinary penalties per prisoner, in 2015; and 9 in 2016. The similar indicator has increased alarmingly in establishment no. 6 as well: in 2015, a disciplinary penalty was imposed on every second prisoner; and in 2016, two disciplinary penalties per prisoner were imposed. Compared to 2015, the number of disciplinary penalties increased by 2.5% in establishment no. 2. Besides, in comparison to 2015, the number of placement of prisoners in solitary confinement cells increased by 40.4% in establishment no. 2 in 2016.

The Public Defender positively assesses the decrease in the number of imposition of disciplinary penalties in 2016, compared to 2015, in penitentiary establishments nos. 5, 7, 8, 14, 15, 17, 18, and 19, as well as in the number of the placement in solitary confinement cells in establishments nos. 3, 8, 14, 17, and 19. No juvenile has been punished in disciplinary proceedings in establishment no. 11 in the course of the year and disciplinary penalty was imposed on 2 inmates only in establishment no. 9.

In 2016, the solitary confinement cells in establishments nos. 7, and 9 did not function; therefore, disciplinary penalties in the form of placement in solitary confinement were not imposed on any of the prisoners. There are no solitary confinement cells in rehabilitation establishment no. 11 for juveniles and medical establishment no. 18 for remand and convicted persons, due to the specific nature of these establishments.

Under Article 88.2 of the Imprisonment Code, an remand/convicted person placed in a solitary cell may not enjoy short and long visits, telephone conversations or purchase food products.

The European Committee for the Prevention of Torture recommended ‘that the Georgian authorities take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts. Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts.’¹⁸⁷ With regard to this issue, in 2012, the Public Defender proposed to the Parliament of Georgia to amend the Imprisonment Code and in the Parliamentary Reports of 2013, 2014 and 2015 expressly pointed out the necessity to amend the Article concerned. However, the proposed change has not been made to Article 88 of the Imprisonment Code to date.

¹⁸⁷ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 5 to 15 February 2010, para. 115, see the link: <http://www.cpt.coe.int/documents/geo/2010_27-inf-eng.htm> [Last visited on 20.02.2017].

According to the information received from penitentiary establishments, the director of establishment no. 14 uses the placement in a solitary confinement almost in all cases of imposition of a disciplinary penalty. According to the statistics received from this establishment, in 2016, 60 disciplinary penalties were imposed in total. Out of this number prisoners were placed in solitary confinement cells in 57 cases; and in the other 3 cases, they received a reprimand. Similarly, in 2015, out of 136 cases of imposition of disciplinary penalty in this establishment prisoners were placed in solitary confinement cells as a disciplinary penalty in 134 cases.

While there is a considerable decrease in the number of use of disciplinary penalties in establishment no. 14, the orders of the director of the establishment remain in breach of the requirements of the Imprisonment Code,¹⁸⁸ under which, placement in a solitary cell shall be imposed as a disciplinary measure only in special cases. The Public Defender also pointed out this problem in his Parliamentary Report of 2015; however, the situation still has not changed in the establishment concerned in 2016.

Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered the direct result of his or her mental illness or intellectual disability.¹⁸⁹ According to the 2007 Istanbul Statement on the use and effects of solitary confinement,¹⁹⁰ the use of solitary confinement should be absolutely prohibited for mentally ill prisoners. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.¹⁹¹

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Corrections not to allow placement of mentally ill prisoners in solitary confinement cells. However, in 2016, the incidents of placing mentally ill prisoners in solitary confinement were identified in penitentiary establishments nos. 2, 6, and 8.¹⁹²

For instance, in establishment no. 2, out of the total number of 240 cases of placing prisoners in solitary confinement, prisoners having mental problems were placed in solitary cells in 29 cases. Inmate P.F. is diagnosed with mixed and other personality disorders (F61) and, in the course of the year, was placed in a solitary confinement cell on 7 occasions for 5, 7, 10, 14 days. In the reporting period, inmate M.O., diagnosed with mental disorder due to brain damage and dysfunction and to physical disease (F06), was placed in solitary confinement on 6 occasions; once for 10 days, twice for 5 days and thrice for 14 days. D.A., diagnosed with mental and behavioural disorders due to use of cocaine, residual and late-onset psychotic disorder (F14.7), was placed in solitary confinement on two occasions.

188 Imprisonment Code, Article 88.1.

189 The Nelson Mandela Rules, Rule 39.3.

190 International Psychological Trauma Symposium (2007), the Istanbul Statement on the use and effects of solitary confinement.

191 The Nelson Mandela Rules, Rule 45.2.

192 Seven incidents of placing mentally ill prisoners in solitary confinement were identified in penitentiary establishment no. 8.

In establishment no. 6, in the course of the year, out of 14 occasions of placing inmates in solitary confinement, prisoners diagnosed with disorders of personality and impulse control (F60.3), mental and behavioural disorders due to multiple drug use and use of other psychoactive substances (F19), persistent delusional disorders (F22) were placed in solitary confinement in four cases.

According to the prisoners at establishments nos. 3 and 6, there were incidents where the personnel attempted to incite them so as to impose disciplinary penalties on them or to place them in de-escalation rooms.

As it was revealed as the result of the visit to penitentiary establishment no. 3, the prisoners have the feeling that their transfer to de-escalation rooms serves punitive purposes whenever they violate the statute of an establishment and not for security reasons. The Special Preventive Group revealed, as the result of the inspection of documentation in establishment no. 3, that in the course of the first five months of 2016, in 22 cases out of 51 occasions, a disciplinary penalty was imposed on prisoners in the period of their transfer to a de-escalation room or with a day's interval.¹⁹³ In 11 cases of 22 occasions, prisoners had various mental disorders such as persistent delusional disorders (F22), organic personality disorder (F07.0); in two cases - sleep disorders not due to a substance or known physiological condition (F51); and in seven cases, disorders of personality and impulse control (F60.3). Accordingly, the prisoners' behaviour could have been caused by their mental health condition, which was later the basis of the disciplinary penalty imposed on them.

In the opinion of the Special Preventive Group, instead of providing the above eleven persons with the adequate psychiatric service, they were placed in de-escalation rooms and additionally imposed disciplinary penalty on them. Moreover, a psychiatrist did not see these inmates during their time in a de-escalation room. They were provided with psychiatric consultation in some cases before their placement in a de-escalation room or, in other cases, within several days after leaving the de-escalation room.

It is noteworthy that the environment and conditions in the de-escalation rooms are not safe¹⁹⁴ and do not minimise the risk of self-harm.¹⁹⁵ This is confirmed by the incidents of prisoners inflicting self-harm when placed in a de-escalation room.

The similar situation is witnessed in establishment no. 6, where in the course of the year a disciplinary penalty was imposed in 90 cases out of 173 occasions on prisoners in the period of their transfer to a de-escalation room or with one-day interval.¹⁹⁶ Moreover, seven cases out of the 90 occasions, prisoners from de-escalation rooms were directly transferred to solitary confinement cells for punitive reasons.

In the opinion of the Special Preventive Group, it is impermissible to resort to security measures for punitive purposes as such measures should only serve the statutory objective, which is ensuring the safety of people in a penitentiary establishment.

193 One day before the placement in a de-escalation room and the next day after removal from the room.

194 According to the information provided by the Ministry of Corrections, there is no cushioning material available in Georgia for lining the walls in de-escalation rooms.

195 The floor and walls in de-escalation rooms are not cushioned with soft material.

196 One day before the placement in a de-escalation room and the next day after removal from the room.

Under the European Prison Rules, punishment shall not include total prohibition of family contact.¹⁹⁷ Under the Imprisonment Code, the right to telephone conversations, the right to receive and send private correspondence, and short visit privileges may not be restricted at the same time.¹⁹⁸ It was pointed out in the Parliamentary Report by the Public Defender of 2015 that it was revealed based on the study of the case-files on disciplinary penalties in establishment no. 7, on 19 occasions in 2015, prisoners of this establishment were fully banned from contacting the outside world¹⁹⁹; out of this, two prisoners on two occasions. In one case, convict K.D. was prohibited from contacting the outside world for 91 days in total. It should be pointed out that as the result of the monitoring visit of the Special Preventive Group members to establishment no. 7 on 19 June 2015, the Public Defender recommended to the Minister of Corrections to take all necessary measures to ensure that imposition of disciplinary penalty was not followed by the full ban on contacting family. The similar recommendation was given in the Parliamentary Report of 2015 as well.

As the result of the inspection conducted by the Inspectorate General of the Ministry, a disciplinary penalty was imposed on the director of establishment no. 7 and its lawyer on the account of the failure to comply with the requirements of Article 82.5, Article 66⁵.2, Article 66⁵1.b), Article 82.4, and Article 82.l) of the Imprisonment Code. Besides, due to the aforementioned violations, in accordance with Article 60¹.1, 60¹.3, 60¹.7.a), and 60¹.8 of the General Administrative Code of Georgia, 14 Orders of the director of establishment no. 7, taken with regard to ten convicts on application of disciplinary penalty, were annulled.²⁰⁰

The Public Defender hopes that the Inspectorate General, within the systematic monitoring, will continue the examination of the practice of the use of disciplinary penalties in order to prevent their arbitrary imposition.

The Public Defender welcomes the Inspectorate General of the Ministry of Corrections of Georgia conducting an official inspection and expresses his hope that similar inspections will be regularly conducted in all establishments of the Penitentiary Department. It is a positive fact that, there were no incidents of imposing full bans on contacts with relatives in 2016 using disciplinary penalties in establishment no. 7.

Stemming from the above-mentioned, it is imperative to amend Article 82 of the Imprisonment Code and abolish all kinds of bans on contact with outside from the categories of disciplinary penalties such as restriction of the right to telephone conversations,²⁰¹ restriction of the right to receive and send private correspondence,²⁰² and prohibition of short visit privileges.²⁰³

197 Rule 60.4.

198 Article 82.5.

199 Short visit privileges, the right to telephone conversations, the right to receive and send private correspondence.

200 The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.

201 Imprisonment Code, Article 82.1.h).

202 *Ibid.*, para. 1.i).

203 *Ibid.*, para. 1.l)

Concerning the ban on the contact with outside world, the Public Defender made proposals regarding the Draft Law of Georgia on Amendment to the Imprisonment Code.²⁰⁴ In particular, in the opinion of the Public Defender, paragraphs 9.a) and 10.c) of the draft law are problematic. Under the provisions concerned, a convict serving a disciplinary penalty or administrative violation cannot have video visits and long visits. Due to this amendment, convicts at penitentiary establishments will be restricted in these rights for 6 months after serving a disciplinary penalty and for a year - in case of placement in a solitary confinement cell as the term of a disciplinary penalty is extended to 6 months after it is served. Where placement in a solitary confinement cell has been imposed, the term of the penalty is extended to a year after it is served.

The Public Defender observes that maintaining prisoners' contact with their family should be encouraged and ensured to a maximum degree. Therefore, enhancing contacts with the outside world should be considered as a guiding principle. The same position is taken by the European Committee for the Prevention of Torture.²⁰⁵ Furthermore, the UN Special Rapporteur on Torture noted with concern that inmates are only entitled to a long visit once every six months, an entitlement they may lose in the event of disciplinary measures.²⁰⁶

The Public Defender observes that despite the fact formally a prisoner is not limited in long visits as a disciplinary measure, this limitation is a consequence of a disciplinary offence and is practically an additional punishment for the offence for which a concrete punishment was already imposed.

To change this practice that has been well established in the penitentiary system, the Public Defender proposed to the Parliament of Georgia to delete from the Imprisonment Code the provision prohibiting long visits for certain period for the convicts that have been imposed with a disciplinary penalty. The Public Defender welcomes the fact that his proposal was accepted by both the author of the draft law (the Ministry of Corrections) and the Parliament during committee deliberations. When this report was underway, the change provided in the draft law on the Amendment to the Imprisonment Code was already adopted in the first hearing, which is positively assessed. The Public Defender hopes that this change will also be adopted in the subsequent hearings and eventually enforced.

The European Committee for the Prevention of Torture pointed out among its standards that a prisoner should be informed in writing of the reasons for the measure taken against him, given an opportunity to present his/her views on the matter, and be able to contest the measure before an appropriate authority.²⁰⁷

204 See the legislative initiative of the Government of Georgia on the Draft Law of Georgia on Amendment to the Imprisonment Code and other Related Amendments, drafted by the Ministry of Corrections of Georgia, 02. 02. 2017, available at: <<http://info.parliament.ge/#law-drafting/13389>> [last visited on: 23.02.2017].

205 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 18, para. 51 available in English at: <http://agent.echr.am/resources/echr//pdf/ba2e-032f91eb6673220a419b698fd89c.pdf> [Last visited on 22.02.2017].

206 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia in 2011, A/HRC/31/57/Add.3, para. 97.

207 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 19, para. 55, available in English at: <http://agent.echr.am/resources/echr//pdf/ba2e-032f91eb6673220a419b698fd89c.pdf> [Last visited on 20.02.2017].

It is also in the interests of both prisoners and prison staff that clear disciplinary procedures be both formally established and applied in practice; any grey zones in this area involve the risk of unofficial (and uncontrolled) systems developing. Usually, according to the existing practice, a disciplinary penalty is applied without an oral hearing and an order on its application is only substantiated with explanations and reports submitted by the personnel. Prisoners practically do not participate in disciplinary proceedings. This increases the risk for the imposition of arbitrary disciplinary penalties.

It is therefore imperative that prisoners are adequately informed about the disciplinary procedure and their rights. Prisoners should be afforded sufficient time and opportunity to defend themselves, hire lawyers and offered explanations. Prisoners should be able to bring witnesses and adduce evidence (among them, they should be able to request surveillance recordings and their examination), and pose questions to those employees whose reports served as the basis for instituting disciplinary proceedings.

Under the Nelson Mandela Rules, prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.²⁰⁸

In 2016, in total, 4,838 disciplinary penalties were imposed on prisoners in penitentiary establishments. Out of this number, 43 decisions²⁰⁹ were contested before a court. In 2015, prisoners contested 38 decisions.²¹⁰

Out of the above-mentioned 43 cases of contesting the decisions about disciplinary penalties by prisoners, on 7 occasions a court partially upheld a claim and fully upheld a claim on 4 occasions. Furthermore, 9 claims have been rejected; 7 claims have not been admitted for the consideration of merits; on 2 occasions, claims have not been admitted due to a defect in application; in 4 cases, proceedings were discontinued; the outcomes of three cases are unknown; and the consideration of 7 claims is still pending.

Stemming from the above-mentioned, it can be concluded that while, compared to the previous year, the practice of contesting disciplinary measures by prisoners before a court is slightly increased. Prisoners still rarely challenge decisions about imposition of disciplinary penalties. This can be preconditioned by several factors such as lack of information about their rights, failure to involve prisoners in disciplinary proceedings, lack of legal aid, court fees, and most importantly by hopelessness. Such a situation increases the risk of arbitrariness on the part of the administration of a penitentiary establishment.

The European Committee for the Prevention of Torture observes that the possibility to listen to radio and watch television should not be regarded as a privilege and should be afforded to each prisoner.²¹¹ Under Article 20.2 of the Imprisonment Code, 'remand/convicted persons, except for those placed in a solitary cell, may be granted the right to listen to radio and watch TV during non-work times, as determined by the internal regulations of the detention/prison facility. With the consent of the administration and according to

208 Rule 41.4.

209 7 decisions from establishment no. 2 were contested before a court; 8 from establishment no. 3; 2 from establishment no. 5; 22 from establishment no. 6; 2 from establishment no. 7; 1 from establishment no. 9; and 1 from establishment no. 16.

210 From establishments nos. 2, 3, 5, 7, and 9.

211 Available at: <<http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf>> [Last visited on 20.02.2017]

the restrictions of the detention/prison facility, a remand/convicted person or a group of remand/convicted persons may have personal radio or TV sets if their use does not violate the internal regulations of this facility or disturb other remand/convicted persons. Remand/convicted persons may purchase these devices at their own expense or receive them in the form of a parcel.’

Under Articles 63.e),²¹² 66.e),²¹³ and 66⁴.e)²¹⁴ of the Imprisonment Code, the right to use a personal television or radio set is a form incentive. The same provision features in the statutes of penitentiary establishments approved by the orders of the Minister of Corrections of 2015. The Public Defender observes that the use of television and radio sets should not depend on the good will of the administration. All remand and convicted persons should have the right to use television and radio sets without prior authorisation and the director of an establishment, only in certain exceptional cases and based on clear statutory grounds, can restrict this right for certain period by a substantiated decision.

Furthermore, in such conditions, where prisoners share one television or radio set in a cell, deprivation of these items as a disciplinary penalty can amount to collective punishment if the other prisoners in this cell are not allowed for certain period to purchase a television/radio set. The use of this penalty²¹⁵ may have particular ramification for the well-being of an isolated prisoner (placed in a solitary confinement cell). Considering the scarce availability of rehabilitative, sporting and cultural activities in closed type penitentiary establishments, a television/radio set is the main enjoyment and source of information for prisoners. It should be positively mentioned that, in 2016, only two instances of deprivation of television/radio took place in establishment no. 2.

In 2015, the Public Defender proposed to the Parliament of Georgia and requested to determine the possession of a television and a radio as a right instead of a privilege and to strike off the possession of a television and a radio from the forms of incentives. To this end, the Public Defender proposed amending the relevant provisions of the Imprisonment Code (Article 63.e), Article 66.f), and Article 66.e). Furthermore, the Public Defender proposed the amendment of Article 82 of the Imprisonment Code to the effect of prohibiting the possession of a television/radio as a disciplinary sanction. Unfortunately, these changes have not been made to the relevant provisions of the Imprisonment Code to date.

In 2015, administrative detention was imposed on 3 prisoners (each several times) only in establishment no. 7. On 8 occasions, administrative detention was determined for 1 day; on 1 occasion, it was determined for 3 days. The ground for administrative detention, on all three occasions, was covering the electronic and surveillance eye with an object. As regards 2016, it should be positively mentioned that there were no administrative detentions imposed on any prisoners.

212 Subparagraph e).

213 Subparagraph f).

214 Subparagraph e).

215 Article 82.1.d) of the Imprisonment Code: a type of disciplinary measures is: d) restriction of the right to use allowed items for not more than six month.

Paragraph 64 of the draft law on Amendment to the Imprisonment Code proposes a new wording of Article 90 of the Imprisonment Code to the effect of limiting the term of administrative detention (the proposed amendment uses the term *disciplinary detention*). The Public Defender welcomes decreasing the term of administrative detention. This issue is discussed in detail in the Parliamentary Reports by the Public Defender of 2014 and 2015.²¹⁶

It is the position of the Public Defender that disciplinary detention as an ineffective method of ensuring order and security of a penitentiary establishment should be abolished altogether. This standard was established by the European Court of Human Rights in the case of *Ezeh and Connors v. the United Kingdom*.²¹⁷

Furthermore, the Public Defender observes that, in case disciplinary detention is maintained as a form of punishment in the Imprisonment Code, it is imperative to provide all procedural safeguards that are afforded in criminal proceedings to inmates. Under the case-law of the European Court of Human Rights, deprivation of liberty liable to be imposed as an administrative punishment is, in general, a penalty that belongs to the 'criminal' sphere for the purposes of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.²¹⁸ Therefore, the person facing proceedings on imposition of administrative (disciplinary) penalty should be afforded the minimum rights under Article 6.3 of the Convention. Among others, he/she should have adequate time and facilities for the preparation of his/her defence.

The maximum term of 72 hours stipulated by the provisions of the Imprisonment Code, both those in force and suggested under draft laws, is not enough for a convict to get in touch with a lawyer, plan defence strategy, obtain evidence and prepare defence position to present it before a court.

Therefore, the Public Defender observes that administrative (disciplinary) detention, as a punishment, should be abolished altogether. In case, this punishment is still maintained, its maximum duration should be limited to 15 days and convicts should be afforded the possibility to avail themselves fully of procedural safeguards provided for in the criminal procedure.

The administration of a penitentiary establishment may use various incentives with regard to those prisoners who show exemplary behaviour and good faith towards the fulfilment

216 See the Parliamentary Report of 2014 by the Public Defender, p. 81, available at: <http://www.ombudsman.ge/uploads/other/3/3509.pdf> [Last visited on 22.02.2017]; the Parliamentary Report of 2014 by the Public Defender, p. 83, available at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf> [Last visited on 22.02.2017].

217 *Ezeh and Connors v. the United Kingdom*, applications nos. 39665/98, 40086/98, judgment of the Grand Chamber of the European Court of Human Rights of 9 October 2003, para. 88. In this case, the Government's central submission was that the necessity of maintaining an effective prison disciplinary regime had to weigh heavily in determining where the dividing line between the criminal and disciplinary lay. The European Court noted that other sanctions were available to governors at the relevant times and considered that it had not been convincingly explained why these other sanctions would not have an impact comparable to awards of additional days in maintaining the effectiveness of the prison disciplinary system, including the authority of the prison management.

218 See, e.g. *Campbell and Fell v. the United Kingdom*, applications nos. 7819/77 7878/77, judgment of the European Court of Human Rights of 28 June 1984.

of their duties. The decision about giving incentives to prisoners is taken by the director of an establishment. As an incentive, a prisoner can be commended, afforded short and long visits, exempted from a reprimand or other disciplinary penalty, etc.

Under the Imprisonment Code, the participation of a convicted person in rehabilitation programmes shall be taken into account when assessing the degree of his/her rehabilitation and when granting an incentive to him/her.²¹⁹

See the statistics of giving incentives to prisoners in penitentiary establishments in 2015 and 2016 in the below table.

Penitentiary Establishments	Number of Occasions of Giving Incentives 2015	Number of Occasions of Giving Incentives 2016	Number of Occasions of Giving Incentives to Participate in Rehabilitation Activities in 2015	Number of Occasions of Giving Incentives to Participate in Rehabilitation Activities in 2016
No. 2	270	95	17	0
No. 3	47	7	10	0
No. 5	147	51	26	33
No. 6	127	99	12	3
No. 7	0	5	0	0
No. 8	359	243	0	0
No. 9	6	8	0	0
No. 11	42	24	31	16
No. 12	33	33	0	0
No. 14	184	59	0	0
No. 15	579	463	11	32
No. 16	52	38	0	11
No. 17	462	292	0	0
No. 18	8	19	0	0
No. 19	8	24	0	0
Total	2 324	1460	107	95

According to the data in the table above, it is evident that the occasions, where prisoners were given incentives in penitentiary establishments, decreased by 37.2 in 2016

According to the explanation given by the Ministry of Corrections, in 2016, 1325 convicts took part in professional and educational programs in total.²²⁰ Out of this number, in 105

²¹⁹ Imprisonment Code, Article 117.2.

²²⁰ The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.

occasions, prisoners were given incentives to participate in rehabilitation activities. Accordingly, it turns out that out of 1325 convicts only 8% were given incentives for participating in rehabilitation activities, which is a rather low indicator. Furthermore, it is unclear why incentives were not given in other cases.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure that the incentive forms were more frequently used in establishments nos. 3, 7, 9, 11, and 19. However, the cases of giving incentives even went down in establishment no. 3 in 2016. The incentive indicator increased in establishments nos. 7, 9, 18, and 19. The same indicator remained the same in establishment no. 12. As regards other establishments, the incentive indicator decreased there in 2016, which is negatively assessed.

The Public Defender observes that frequent incentives will weaken the influence of the criminal subculture in penitentiary establishments and will contribute to prisoners' re-socialisation. It is, therefore, imperative to strengthen the incentive system in all penitentiary establishments and, among others, enhance the incentives of prisoners for taking part in rehabilitation activities.

RECOMMENDATION

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To elaborate guidelines for the use of disciplinary penalties in order to ensure uniform practice of the imposition of disciplinary penalties in all establishments of the Penitentiary Department;
- To take all necessary measures to ensure that prisoners are adequately informed about the disciplinary procedure and their rights; that they are afforded sufficient time and facility to defend themselves; have lawyers and are given explanations; can bring witnesses and adduce evidence (among them, they should be able to request surveillance recordings and their examination); can pose questions to those employees whose reports served as the basis for pending disciplinary proceedings;
- To ensure disciplinary penalties are used as the last resort;
- To ensure placement in a solitary confinement cell, as a disciplinary penalty, is used only in exceptional cases;
- To take all necessary measures to ensure that prisoners with mental problems are not placed in a solitary confinement cell;
- To take all necessary measures to ensure that during imposition of a disciplinary penalty, contact with family is not completely banned;
- To take all necessary measures to ensure that a multidisciplinary group, with its relevant strategy, works with prisoners in de-escalation rooms and disciplinary

penalties are not imposed on these prisoners during their time in de-escalation rooms;

- To ensure that the Inspectorate General, within the systematic monitoring framework, examines the practice of placement in de-escalation rooms for preventing placement of prisoners in de-escalation rooms for punitive reasons (as an alternative to placement in solitary confinement cells as a disciplinary penalty);
- To ensure drafting amendment to the Imprisonment Code under which prisoners imposed with a disciplinary penalty will not be restricted to use video visits; to introduce the draft amendment to the Government for its imitation before the Parliament;
- To ensure drafting amendment to the Imprisonment Code to the effect of abolishing administrative (disciplinary) detention as a form of punishment; in case this form of punishment is maintained, to ensure that its maximum duration is limited to 15 days; to introduce the draft amendment to the Government for its imitation before the Parliament.
- To ensure increased use of incentives in all establishments of the Penitentiary Department;
- To take all necessary measures to ensure increased use of incentives for participation in rehabilitation activities;
- To ensure that the Inspectorate General, within the systematic monitoring framework, regularly inspects penitentiary establishment for preventing arbitrary and illegal imposition of disciplinary penalties, disproportionate use of penalties as well as full ban on the contact with the outside world;
- To ensure drafting an amendment to the Imprisonment Code to the effect of deleting the restriction of the right to telephone conversations, the right to receive and send private correspondence, as well as forfeiture of short visit privileges as a disciplinary penalty; to introduce the draft amendment to the Government for its imitation before the Parliament;
- To ensure drafting an amendment to the Imprisonment Code under which a prisoner placed in a solitary confinement cell is not restricted in short and long visits, telephone conversations, purchasing food; to introduce the draft amendment to the Government for its imitation before the Parliament;
- To ensure drafting an amendment to the Imprisonment Code under which the possession of a television/radio is a prisoner's right and the use of this right does not depend on the consent of the establishment's director; to introduce the draft amendment to the Government for its introduction before the Parliament; and

- To ensure drafting an amendment to the Imprisonment Code on prohibiting the use of television and radio as a disciplinary penalty and to introduce the draft amendment to the Government for its initiation before the Parliament.

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To amend the Imprisonment Code to the effect of deleting the restriction of the right to telephone conversations, the right to receive and send private correspondence, as well as forfeiture of short visit privileges as a disciplinary penalty;
- To amend the Imprisonment Code to ensure that a prisoner placed in a solitary confinement cell is not restricted in short and long visits, telephone conversations and purchasing food;
- To amend the Imprisonment Code and guarantee the possession of a television/radio is a prisoner's right and to ensure that the use of this right does not depend on the consent of the establishment's director;
- To amend the Imprisonment Code and prohibit the ban on the use of television and radio as a disciplinary penalty;
- To amend the Imprisonment Code to the effect of ensuring those prisoners imposed with a disciplinary penalty are not restricted in their right to video visits; and
- To amend the Imprisonment Code to the effect of abolishing administrative (disciplinary) detention as a form of punishment; in case this form of punishment is maintained, to ensure that its maximum duration is limited to 15 days.

3.7. CONTACTS WITH THE OUTSIDE WORLD

The European Committee for the Prevention of Torture places a particular emphasis in its recommendations on ensuring contacts with the outside world for each person deprived of his/her liberty. Restriction of this right in any form should be based on weighty security considerations and problems related to existing material resources.²²¹

Under Paragraph 24.1 of the European Prison Rules, prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons. Under Paragraph 24.5 of the Rules, prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so. Under Article 46.3 of the Imprisonment Code, a convicted person shall, as a rule, serve his/her sentence in a prison facility of the

²²¹ Operative parts of the General Reports of the European Committee for the Prevention of Torture (CPT), Strasbourg, 18 August 2000, p. 37.

relevant type, located closest to the place of his/her residence or to the place of residence of his/her close relative, except as provided for by paragraph 4 of this article.

Under Article 46.4 of the Imprisonment Code, by decision of the Director of the Department, a convicted person may be transferred for further service of the sentence to a prison facility of the same or different type in cases where he/she regularly violates the internal regulations of the facility; is ill and/or in cases where it is necessary to ensure his/her safety taking into account risk factors; also in cases of reorganisation, liquidation or overcrowding of the facility or in circumstances specified in Article 58.1 of this Code; or in other important, reasonable circumstances and/or in the case of a consent of the convicted person.

The monitoring visits conducted by the Special Preventive Group in the reporting period revealed that the use of the right to meet with family members is affected by several factors. There is a window shield in the meeting room; the place of the residence of the family is not taken into account during placement of prisoners; problems related to ensuring a confidential environment during a visit of a family member; besides, prisoners are not allowed to have a long visit and a video visit if there is a disciplinary penalty and/or administrative detention imposed on them.

3.7.1. SHORT VISITS

The European Committee for the Prevention of Torture in its report to the Georgian Government on the visit to Georgia in 2014²²² observes that all convicts should have an equal possibility to maintain family contacts irrespective of the type of penitentiary establishment in which they are serving sentence.

A juvenile convict may enjoy 4 short visits a month and 2 additional short visits a month as an incentive.²²³ A prisoner serving a sentence in a low risk prison facility may enjoy 4 short visits a month, and 2 additional short visits a month as an incentive.²²⁴ A prisoner serving a sentence in a semi-open type prison facility may enjoy 2 short visits a month, and 1 additional short visit a month as an incentive.²²⁵ A convicted woman may enjoy 3 short visits a month, and 1 additional short visit a month as an incentive.²²⁶ A prisoner serving a sentence in a closed type prison facility may enjoy 1 short visit a month, and 1 additional short visit as an incentive.²²⁷ A convict serving a sentence in a high risk prison facility may enjoy 1 short visit a month, and 1 additional short visit as an incentive.²²⁸

The Public Defender observes that the number of short visits allowed for prisoners serving sentence in closed type and high risk prison facilities is extremely limited. One short

222 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, CPT/Inf, 2015, available in English at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806961f8> [Last visited on 22.02.2017].

223 Juvenile Justice Code, Article 87.1.a).

224 Imprisonment Code, Article 60².b).

225 Imprisonment Code, Article 62.2.b).

226 Imprisonment Code, Article 72.5.

227 Imprisonment Code, Article 65.1b).

228 Imprisonment Code, Article 66³.2.b).

visit in a month cannot ensure maintaining solid ties between convicts and their family members. Therefore, it is imperative to amend the Imprisonment Code for allowing more short visits for prisoners serving sentence in closed type and high risk prison facilities. The Public Defender recommended concerning this issue to the Minister of Corrections in the Parliamentary Report of 2015. However, this recommendation has not been fulfilled by the time of submission of this Report.

Under Article 17.7 of the Imprisonment Code of Georgia, a short visit is held for one to two hours. A short visit shall take place only under the visual control of a representative of the Administration, except as provided for by the legislation of Georgia.

It is noteworthy that in the majority of penitentiary establishments, short visits are held in rooms with window partitions. This does not allow a prisoner to have any physical contact with family members. However, in exceptional cases, such as serious health condition of a convict, meeting with a child under seven, etc., a short visit allowing immediate contact may be arranged with the consent of the director of an establishment. Despite the fact that in some cases it is necessary to have physical partitions in place, it is important to ensure that the immediate physical contact should be the rule. Any decision allowing restriction of physical contact should be reasonable, justified and proportionate with the attainment of the aim sought by the restriction. Besides, the decision on restricting physical contact should be subject to regular revision. Otherwise, interference in the right to respect for private and family life of prisoners will be unjustified. The Public Defender has been making recommendations to the Minister of Corrections regarding this issue for years. Unfortunately, this recommendation has not been fulfilled to date.

The penitentiary establishments do not allow short visits on weekends. Within the monitoring conducted in establishment no. 15, the Special Preventive Group members talked with parents and spouses of the convicts waiting at the public reception room of this establishment. According to them, it is important to allow short visits in the days off, as they often have to take leave during the working days, which causes them problems with their employers.²²⁹

As of 1 January 2016, a remand person may enjoy not more than 4 short visits a month.²³⁰ This is clearly a positive change and is positively reflected on maintaining family ties as well as stress reduction. This right may be restricted based on a resolution of the investigator or prosecutor. For the purposes of investigation and safety, an employee of the facility who carries out a visual surveillance of a short visit of a remand person may immediately terminate the visit.

3.7.2. LONG VISITS

Convicts' right to use long visits contributes to their right to respect for private and family life by maintaining close ties with their family and contributes to reintegration process with the family and society after release.

229 In 2016, in total 38,897 short visits were made to penitentiary establishments; In 2015 – 40,897 short visits. In 2016, compared to 2015, along with the decrease in the total number of prisoners, the indicator for the use of short visits decreased too.

230 Imprisonment Code, Article 77.

A convicted person serving a sentence in a low risk prison facility may have 6 long visits a year, and 3 additional long visits a year as an incentive.²³¹ A convicted person serving a sentence in a semi-open type prison facility may enjoy 3 long visits a year, and 2 additional long visits a year as an incentive.²³² A convicted person serving a sentence in a closed type prison facility may enjoy 2 long visits a year, and 1 additional long visit as an incentive.²³³

There is no infrastructure for long visits in penitentiary establishments nos. 7, 8, 9, 18, and 19. It should be positively mentioned that, in 2016, the prisoners of establishments nos. 8, 9, 18, and 19 were periodically transferred to other establishments for long visits. As regards the prisoners of establishment no. 7, they are not transferred to other establishments for long visits.

In the Parliamentary Reports of 2014 and 2015, the Public Defender of Georgia recommended to the Minister of Corrections to ensure requisite infrastructure for long visits in penitentiary establishments.

Concerning the Recommendations Determined by the Resolution of the Parliament of Georgia Adopted with Regard to the Report of the Public Defender of Georgia on Human Rights Situation in Georgia in 2015, the Ministry of Corrections of Georgia submitted that the necessary measures under underway for arranging the infrastructure in establishment no. 8, which is welcomed. However, it remains problematic to provide infrastructure for long visit in closed-type establishments²³⁴ and medical establishments.²³⁵

Maintaining family ties is a fundamental human right, which means that the visit of family members is not prisoners' privilege. Under Rule 43.3 of the Nelson Mandela Rules, disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited period and strictly for the maintenance of security and order.

Under Article 17².6 of the Imprisonment Code, convicted persons placed in a high risk prison facility shall not be granted the right to a long visit. This clause of the Imprisonment Code prohibiting convicts in high risk prison facilities to use long visits is a blanket restriction not leaving room for factoring a legitimate aim.

In the case of *Khoroshenko v. Russia*, the Grand Chamber of the European Court of Human Rights held that the prison regime that only allowed two short visits during ten years was in violation of a prisoner's right to respect for private and family life. The Court has particularly pointed out that, as is well established in the Court's case-law, during their imprisonment prisoners continue to enjoy all fundamental rights and freedoms, save for the right to liberty. The principle of proportionality requires a discernible and sufficient link between the application of such measures and the conduct and circumstances of the individual concerned.

231 Imprisonment Code, Article 6022.e).

232 Imprisonment Code, Article 62.2.e).

233 Imprisonment Code, Article 65.1.d).

234 Penitentiary establishments nos. 7, 8, 9.

235 Penitentiary establishments nos. 18 and 19.

In its Report to the Georgian Government on the visit to Georgia in 2015, the European Committee for the Prevention of Torture reiterated its view that any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts and only for the shortest time possible (days rather than weeks or months).²³⁶ The prohibition of the Imprisonment Code is more punitive than security-related. Accordingly, it is imperative to make the necessary amendment to the Imprisonment Code for comprehensive reflection of the above principles therein.

As it has become known for the public, the Ministry of Corrections shares this position and it is planned to amend Imprisonment Code to the effect of allowing convicts serving sentence in high risk prison facilities one long term visit in a year and one additional visit as an incentive.^{237[2]} The Public Defender welcomes this initiative and considers it a step forward. It is, however, needs mentioning that, while this information was made known during the deliberations on draft law on Amendment to the Imprisonment Code in the Parliament of Georgia, there was no such change displayed in the draft law in the period this Report was being prepared. The Public Defender expresses his hope that this initiative will be realised within the draft law on the Amendment to the Imprisonment Code and eventually the convicts in high-risk prison facilities will be able to avail long visits.

Concerning the use of long visits, it should be noted that in those cases where a convict has been placed in a solitary confinement cell to serve disciplinary penalty, the prisoner forfeits his/her right to long visits for a year. Under Article 17².6 of the Imprisonment Code, convicted persons placed in a high risk prison facility, and convicted persons who are in quarantine, or those upon whom disciplinary measures and/or administrative detentions are imposed, shall not be granted the right to a long visit. The Public Defender observes that there is clearly a wrong interpretation of the aforementioned provision as this paragraph applies to the cases where a disciplinary penalty is imposed on a convict (the term of the disciplinary penalty has not expired). Accordingly, the restriction of the right to long visit should not apply to those cases where the penalty has been served even if the convict is still deemed to be a person upon whom disciplinary penalty is imposed.

The Public Defender reiterates that maintaining family ties is not a privilege of a convicted person, therefore, enhancing contacts with the outside world should be considered to be a guiding principle. The same position is shared by the European Committee for the Prevention of Torture.²³⁸ Furthermore, the UN Special Rapporteur on Torture noted with concern that inmates are only entitled to a long visit once every six months, an entitlement they may lose in the event of disciplinary measures.²³⁹

236 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 5 to 15 February 2010, CPT/Inf, 2015, para. 119, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806961f8> [Last visited on 24.03.2017].

237 <http://www.moc.gov.ge/ka/pressamsakhuri/akhali-ambebi/article/22394-kakha-kakhishvili-msjavrdebuli-bi-ajakhthan-kavshirs-sheinarchuneben> [Last visited on 28.03.2017].

238 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 18, para. 51.

239 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia in 2011, A/HRC/31/57/Add.3, para. 97.

The existing practice amounts to disproportionate restriction of a convicted person's contacts with the outside world. In particular, in case of imposition of any disciplinary penalty on a convict, it means that he/she is automatically restricted in the right to video visits and long visits from 6 months up to a year (depending on a disciplinary penalty). This restriction does not serve any legitimate aim and is practically an additional punishment.

The Public Defender addressed the issue in 2015 Parliamentary Report as well.²⁴⁰ Accordingly, the Public Defender again reiterates that no restriction of the contacts with the outside world as a disciplinary penalty or an ensuing consequence to this measure should be allowed.

Paragraphs 9.a) and 10.c) of the draft law on the Amendment to the Imprisonment Code do not essentially change the above situation and those convicts upon who disciplinary penalty or administrative detention have been imposed are restricted in the right to video visits and long visits. The convicts at penitentiary establishments will be restricted in these rights for 6 months after serving a disciplinary penalty and for a year - in case of placement in a solitary confinement cell as the term of a disciplinary penalty is extended to 6 month after it is served and where placement in a solitary confinement cell has been imposed, the term of the penalty is extended to one year period after it is served.

For changing the practice that is well established in the penitentiary system, the Public Defender proposed to the Parliament of Georgia to delete the provision of the Imprisonment Code that prohibits convicts upon which a disciplinary penalty has been imposed to have long visits for a certain period. The Public Defender welcomes the fact that during the committee deliberations, the proposal of the Public Defender has been shared by both the authors of the draft law (the Ministry of Corrections) and the Parliament. During the period this Report was being developed, the draft law on Amendment to the Imprisonment Code that has been passed within the first hearing already contains the change at stake, which is positively assessed. The Public Defender expresses his hope that this change will be adopted in subsequent hearings as well and will eventually be enforced.

The Public Defender positively assesses the exemption of those guests that are registered in the unified base of socially vulnerable families from the statutory fees for long visits.²⁴¹ However, dire economic situation of families still prevent some of the prison population to exercise their statutory right to long visits.

Along with to the decrease in the total number of convicts, similar to short visits, the number of long visits also decreased in 2016 in comparison with the indicators of 2015.²⁴² It is noteworthy that establishment no. 2 received 963 long visits in 2015 and 548 in 2016. The study of disciplinary penalties showed that placement in a solitary confinement cell was used in 240 cases. Accordingly, those upon whom disciplinary penalty was imposed could not use long visits.

240 2015 Parliamentary Report by the Public, p. 81, available at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf>.

241 Order no. 132 of the Minister of Corrections of Georgia, of 22 July 2014, paragraph 4.

242 In 2015, 5,959 visits were made and in 2016, 5,731.

3.7.3. VIDEO VISITS

The significance of video visits²⁴³ in terms of maintaining a convicted person's contact with the outside world is important as not only family members but also friends and closed ones can use it.

Under Paragraph 2 of Order no. 55 of the Minister of Corrections of Georgia of 5 April 2011, video visits can be made no more than once within ten calendar days, within the working hours from 10:00 to 18:00. A single video visit to a convict should not exceed 15 minutes. The amendment made to the Imprisonment Code on 27 April 2016 is positively assessed as it stipulates that video visits for convicted persons shall be held free of charge.²⁴⁴

It is noteworthy that infrastructure is available for video visits only in five penitentiary establishments (nos. 5, 11, 15, 16, and 17). In 2016, 369 video visits were made in total.

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Corrections of Georgia to ensure that requisite infrastructure for video visits is available in all penitentiary establishments. According to the information received from the Ministry of Corrections,²⁴⁵ it is possible to arrange video visits in establishments nos. 5, 8, 11, 14, 15, 16, and 17. It should be positively mentioned that requisite infrastructure for video visits was provided in establishments nos. 8, and 14. The Public Defender welcomes the efforts of the Ministry and observes that the requisite infrastructure for video visits should be provided in all penitentiary establishments.

3.7.4. TELEPHONE CONVERSATIONS

The right to telephone conversations is one of the most important entitlements of a remand/convicted person and contributes to prisoners maintaining close ties with their family members and friends. Under Article 14.1.a.d), a remand/convicted person has the right to telephone conversations and correspondence.

A convicted person serving a sentence in a low risk prison facility may enjoy an unlimited number of telephone conversations during one month at his/her own expense, each lasting for not longer than 15 minutes, and telephone conversations of unlimited duration at his/her own expense as an incentive.²⁴⁶ A convicted person serving a sentence in a semi-open type prison facility may enjoy 4 telephone conversations a month at his/her own expense, each lasting for not longer than 15 minutes, and, as an incentive, an unlimited number of telephone conversations, each lasting for not longer than 15 minutes.²⁴⁷ A convicted person serving a sentence in a closed type prison facility may enjoy 3 telephone

243 Imprisonment Code, Article 17¹.

244 Imprisonment Code, Article 17¹.4.

245 The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.

246 Imprisonment Code, Article 60².2.c).

247 Imprisonment Code, Article 62.2.c).

conversations a month at his/her own expense, each lasting for not longer than 15 minutes, and, as an incentive, an unlimited number of telephone conversations, each lasting for not longer than 15 minutes.²⁴⁸

A convicted person serving a sentence in a high risk prison facility may enjoy 1 telephone conversation a month at his/her own expense, lasting for not longer than 10 minutes, and, as an incentive, 1 additional telephone conversation not longer than 10 minutes at his/her own expense.²⁴⁹ Prisoners serving their sentence in a high risk prison facility, in their conversations with the members of the Special Preventive Group, expressed their indignation concerning the mere 10 minute telephone conversation in a month. Against the background, where the prisoners of a high risk prison facility are not allowed to a long visit and can only have one short visit in a month, one telephone conversation will not enable them to maintain adequate contact with their family. It is therefore imperative to make relevant changes to the Imprisonment Code and increase the number of telephone calls for the prisoners of this category.

According to Letter no. MOC31700081256 of the Ministry of Corrections of 20 February 2017, there are two, so-called 'old' and 'new', telephone companies that provide services for prisoners in penitentiary establishments. The telephones of the so-called 'old' provider are gradually switched off in the penitentiary establishments.

When making calls from 'old' telephones, the prisoners face problems regarding conversation limits. In particular, if a prisoner does not use talking limit on a telephone card, the rest of the limit is blocked. Accordingly, he/she will have to purchase a new card, which involves extra expenses. The telephone cards also get blocked whenever a prisoner fails to talk after dialling the number (telephone line was cut off, or wrong number was dialled or, other reasons)

As regards telephone calls made from the 'new' phones, according to prisoners in a closed type establishment, they could only call five telephone numbers previously agreed with the administration within a month. In an open type establishment, ten such telephone numbers could be called. It was possible to replace the phone numbers only after a month; a prisoner could not call the numbers which had not been previously notified to the administration, as well as the numbers that were not registered to the persons, prisoners wanted to reach. According to the convicts, the restrictions also applied to calls made to public agencies, including the Public Defender, as well as to the calls made to lawyers. Regarding this issue, the Office of the Public Defender addressed the Ministry of Corrections with the letter no. 11-2/9578 on 19 August 2016. According to Letter no. MOC01600728661 received from the Ministry of Corrections on 25 August 2016, the Ministry had selected a new telephone company through a tender and it is obliged to redeem all the shortcomings identified in providing telephone services until now and offer quality services to prisoners. To this end, the company works in beta phase and to provide quality services it needs the list of pre-determined telephone numbers. This is a temporary measure and will discontinue as soon as the beta phase is completed. It should be noted that the company that must eradicate the existing shortcomings in providing telephone

248 Imprisonment Code, Article 65.1.c).

249 Imprisonment Code, Article 66²2.c).

services, in reality creates even more significant problem that prevent prisoners from exercising their statutory right. Concerning this issue, the Office of the Public Defender again sent letter no. 03-1/1084 to the Ministry of Corrections on 24 January 2017. According to Letter no. MOC3170008156 of the Ministry of Corrections received on 20 February 2017, the so-called 'new' provider completed beta phase and remand/convicted persons are able to use the services of both 'old' and 'new' companies, in accordance with the procedure determined by legislation of Georgia.

It should be positively mentioned that in penitentiary establishments, except for high risk prison facilities, prisoners do not have to indicate the pre-determined amount of telephone numbers. However, it should be noted that during the monitoring visits made to establishments nos. 5, 8 and 11, the representatives of the Public Defender tried several times to call the hotline (1481) of the Office of the Public Defender but the calls could not go through. It is also noteworthy that prisoners cannot call the Office of the Public Defender or other organs of inspection at night.

CPT emphasises that effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them both inside and outside of the context of the prison system, including the possibility to have confidential access to an appropriate authority.²⁵⁰

There are frequent occasions in practice where prisoners placed in solitary confinement cells cannot call the Office of the Public Defender.

Under Article 88.2 of the Imprisonment Code of Georgia, 'an remand/convicted person placed in a solitary cell may not enjoy short and long visits, telephone conversations or purchase food products.' During the monitoring visits made to penitentiary establishments, prisoners mentioned to the members of the Special Preventive Group that the restriction on telephone conversations was also extended to the phone calls made to the Office of the Public Defender and other inspection agencies. Access to the Public Defender is a significant safeguard against ill-treatment, especially for those placed in solitary confinement as their complete social isolation involves great risks of ill-treatment. Under Article 98.5 of the Imprisonment Code, an remand/convicted person may, at any time, file a complaint with the Public Defender of Georgia/Special Preventive Group. Furthermore, under Article 82 of the Code, the restriction of the right to receive and send private correspondence for a disciplinary violation shall not apply to the correspondence the addressee or sender of which is the Public Defender of Georgia. It should be pointed out that there is no similar clause concerning telephone calls. It is imperative to amend the legislation to allow a prisoner placed in a solitary confinement cell to reach the Public Defender in any form, including by telephone.

Placement in a de-escalation room is not the ground for automatic restriction of any statutory rights of an remand/convicted person.²⁵¹ However, in practice, a prisoner placed in a de-escalation room is completely restricted in terms of contacts with the outside

250 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, para. 54, p. 19.

251 Orders nos. 119, 116, and 117 of the Minister of Corrections of Georgia of 27 August 2015, Article 17.4.

world. For instance, during the visit to establishment no. 8, prisoners mentioned in their conversation with the Special Preventive Group members that they are unable to send correspondence, use telephone and have visitations during their time in a de-escalation room. Furthermore, during the visit²⁵² made to establishment no. 3, the Group studying the documentation of the establishment revealed that in 44% of placements in a safe room, disciplinary penalties were imposed on the prisoners (restriction of telephone conversations, visits and personal correspondence) during their time in the safe room.

The Public Defender observes that it is impermissible to resort to security measures for punitive purposes as such measures should only serve the statutory objective of ensuring the safety of people in a penitentiary establishment. Furthermore, a multidisciplinary group should be actively working with a prisoner placed in a de-escalation room, in accordance with a relevant strategy.

The prisoners in semi-open type establishments face particular problems when making phone calls, as there are not enough telephone devices available. In their conversations with the Special Preventive Group members, the prisoners said that they had to stand in lines for telephones and often some of the prisoners are unable to exercise their statutory right in time. As regards the closed-type penitentiary establishments, as the telephone devices are placed in guard's room, it is impossible to have a confidential conversation.

3.7.5. CORRESPONDENCE

In 2016, 19,821 personal correspondences in total were dispatched from penitentiary establishments.

Under Article 16.1 of the Imprisonment Code, a remand/convicted person, as determined by this Code, has the right to send and receive an unlimited number of letters, except as provided for by this Code. Under Article 16.4 of the Code, the correspondence of a remand/convicted person is subject to inspection, which includes visual inspection without reading its content. In cases of extreme necessity, when there is a well-grounded belief that the dissemination of information will pose a threat to public order, public security or rights and freedoms of other persons, the administration may read the correspondence and, if necessary, not send it to the addressee. The sender shall be immediately notified of this action.

Paragraph 7 of the draft law of Georgia on Amendment to the Imprisonment Code proposes the new wording of Article 16 of the Code to the effect of prohibiting correspondence among remand/convicted persons placed in penitentiary establishments. The Public Defender does not approve of such a blanket restriction. Communication among remand/convicted persons placed in penitentiary establishments can be restricted only in exceptional conditions, upon the existence of concrete facts and circumstances that are substantiated in each individual case. Besides, it should be noted that the explanatory memorandum of the draft law does not explain the necessity warranting the adoption of such a restrictive provision. The Public Defender of Georgia observes that the blanket

252 Visit was made on 23-25 May 2016.

restriction proposed by the draft law is disproportionate in relation to the aim sought by the author of the draft law.

3.7.6. THE MEANS OF MASS MEDIA

In the Opinion of the European Committee for the Prevention of Torture, the possibility of prisoners to be able to listen to radio and watch television should not be deemed to be a privilege but instead should be a right for all prisoners.²⁵³

An remand/convicted person may have access to the press and other mass media. As a rule, radio and TV programmes are broadcast in a detention/prison facility.²⁵⁴

Access to the means of mass media has particular importance for maintaining contact with the outside world. It is similarly important that a prisoner had information about the social events outside a penitentiary establishment. During the monitoring visits made to penitentiary establishments, prisoners mention to the members of the Special Preventive Group that they do not have access to some of the top-rated Georgian channels. Besides, representatives of ethnic minorities cannot listen to the TV programmes in the language that is understandable to them.

As regards the press, according to the analysis of the official information received from penitentiary establishments, establishments nos. 7, 9, 12, and 14 are not at all provided with newspapers and magazines. There are mostly church magazines available in establishments and establishment no. 3 only received newspaper *Batumelebi*. However, this newspaper is not published anymore. It should be noted that there are newspapers available in Azerbaijani and Armenian in establishments nos. 8, 11, 17, 18, and 19. There is a newspaper in Azerbaijani available in establishment no. 6 and a newspaper in Turkish in establishment no. 5. It is imperative that newspapers and magazines provided in establishments are diverse and available in various languages so that all prisoners could read them.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure that, when deciding about placement of a convict in a penitentiary establishment, the place of residence of his/her family should be taken into account for facilitating the unimpeded exercise of the right to visits;
- To ensure short visits without window partitions;
- To ensure requisite infrastructure for long terms in all penitentiary establishments;

253 Available at :< <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf>> [Last visited on 20 January 2017].

254 Imprisonment Code, Article 20.1.

- To ensure drafting an amendment to the Imprisonment Code with the effect of increasing the number of short visits allowed for prisoners serving sentence in closed type and high risk prison facilities; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;
- To ensure drafting of an amendment to the Imprisonment Code with the effect of regulating the right to long visits for prisoners serving sentence in high risk prison facilities; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;
- To ensure drafting of amendment to the Imprisonment Code with the effect of increasing the number of short and long visits; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;
- To ensure drafting of amendment to the Imprisonment Code with the effect of increasing the number of telephone calls allowed for prisoners serving sentence in closed type and high risk prison facilities; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;
- To draft an amendment to the Imprisonment Code for ensuring that prisoners placed in solitary confinement cells can use their right to call the Office of the Public Defender or other organs of inspection; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;
- To take all necessary measures to ensure that prisoners placed in penitentiary establishments can call without impediment the hotline of the Office of the Public Defender or other organs of inspection at any time of the day, if needs be;
- To ensure that prisoners' statutory right to make phone calls is fully respected in all penitentiary establishments;
- To ensure that telephones in closed type establishments are installed at such places where personnel cannot overhear prisoners' telephone conversations;
- To ensure there are more telephones provided in the semi-open type establishments to enable all prisoners to exercise their statutory rights;
- To ensure that there is requisite infrastructure for video visits in all penitentiary establishments;
- To take all necessary measures to ensure the availability of the Georgian channels that are in demand and top-rated in penitentiary establishments; and
- To take all necessary measures for taking into account the interests of various linguistic groups when selecting TV channels.

3.8. THE MECHANISM FOR CONSIDERING APPLICATIONS/ COMPLAINTS IN THE PENITENTIARY SYSTEM OF GEORGIA

The prohibition of torture is absolute, not allowing any exception or derogation. However, the realisation of the right not to be subjected to torture can be undermined when it comes to those who due to their being vulnerable are most likely to be susceptible to become victims of torture and inhuman treatment without safeguards to their right to prompt and impartial consideration of their complaints against representatives of the state authorities.

The Public Defender, in the Parliamentary Report of 2015, pointed out that an effective mechanism of monitoring and consideration of applications/complaints in penitentiary establishments ensures respect for prisoners' rights and is a fundamental safeguard against ill-treatment. Therefore, in 2015, the Public Defender recommended to the Minister of Corrections to ensure adequate awareness of prisoners about their rights in general, as well as the right to lodge an application/complaint and consideration procedure in particular.

The Public Defender welcomes the steps made towards the fulfilment of this recommendation. In particular, it should be positively mentioned that, in the course of 2016, there were training sessions held in penitentiary establishments about the rights of the remand/convicted, the procedure for lodging complaints as well as disciplinary and administrative proceedings.²⁵⁵ The Public Defender welcomes the improvement of the practice of displaying information about prisoners' rights on various premises of establishment and disseminating brochures in several establishments. Among them, the publication of special brochures on prisoners' rights for foreign inmates is positively assessed.

Despite the above-mentioned, there are still considerable problems concerning adequate degree of awareness among prisoners in penitentiary establishments and the Public Defender's recommendation cannot be considered to have been fulfilled without eradicating these issues.

In particular, access to information brochures on the rights is not ensured in all penitentiary establishments. The existing practice of dissemination of information about prisoners' rights does not ensure their adequate awareness about their rights in general as well as the right to lodge an application/complaint and consideration procedure in particular. In the opinion of the Special Preventive Group, it is less likely that, considering the stressful situation during admission to a penitentiary establishment, a prisoner could concentrate on the list of the rights and duties and memorise the imparted information. Therefore, the existing practice, whereby an remand/convicted person is given information about his/her rights and duties on the single occasion of admission to a penitentiary establishment, is more of a formal nature and fails to ensure the awareness of a prisoner about his/her

²⁵⁵ Letter no. MOC 317 00036373 of the director of penitentiary establishment no. 5, dated 16 January 2017 (registered under no. 03-3/193 in the Office of the Public Defender of Georgia); Letter no. MOC 317 00037804 of the director of penitentiary establishment no. 16, dated 17 January 2017 (registered under no. 03-3/210 in the Office of the Public Defender of Georgia); Letter no. MOC 617 00046221 of the director of penitentiary establishment no. 8, dated 20 January 2017 (registered under no. 03-3/273 in the Office of the Public Defender of Georgia).

entitlement appropriately. It is, therefore, imperative that prisoners had access on later stages too to the information about their rights in general as well as the right to lodge an application/complaint and consideration procedure in particular.

The Public Defender deems it important that a social worker should be more involved in the process of explaining prisoners about their rights and ensuring their adequate awareness. In particular, the social worker, a few days after a prisoner's admission to a penitentiary establishment, should explain to him/her the rights and duties in detail; should submit information about lodging an application/complaint and procedure for its examination; explain the competence of a social worker; and submit all necessary key documents. Within reasonable intervals, social workers should carry out individual and group works with prisoners on the topic of their rights and duties, and the procedure of lodging an application/complaint as well as its examination.

In the Parliamentary Report of 2015, the Public Defender of Georgia recommended to the Minister of Corrections to improve the procedure for lodging prisoners' applications/complaints. To this end, the Public Defender recommended to the Ministry to increase the role of social workers in drafting the wording of applications/complaints and selecting its relevant recipient; to provide a translator for the prisoners without the command of the Georgian language; and to develop and disseminate to prisoners brochures containing practical information in various languages explaining in detail and in simple terms the procedure for lodging an application/a complaint as well as for its consideration.

The Public Defender of Georgia observes that this recommendation has not been fulfilled. The monitoring conducted by the Special Preventive Group revealed that prisoners face difficulties in formulating their claims and define the recipients for their complaints. This is particularly problematic when prisoners are unable to properly read and write in Georgian. According to the existing practice, in such cases, prisoners ask other inmates for help. In the opinion of the Special Preventive Group, social workers should be more involved in the process of lodging an application/a complaint to enhance the practical realisation of these rights by inmates. Social workers should extend qualified assistance to inmates. Those prisoners who do not have the command of the Georgian language should be provided with a translator's services. Furthermore, brochures containing practical information in various languages explaining in detail and in simple terms the procedure for lodging an application/a complaint as well as for its consideration should be developed and disseminated to prisoners.

In the Parliamentary Report of 2015, the Public Defender of Georgia recommended to the Minister of Corrections to make accessible for prisoners in cells all legislative acts and information about the procedure for lodging an application/a complaint as well as for its consideration

The Public Defender considers that this recommendation has not been fulfilled. In particular, the statutes of penitentiary establishments still contain a statutory prohibition for remand/convicted persons about keeping any papers, including official documents exceeding 100 pages. This does not include copies of court sentences and decisions, one copy of receipts for money, items and valuables that have been handed in for storage.

During the monitoring carried out by the Special Preventive Group, some of the prisoners complained about the lack of access to normative acts in penitentiary establishments.²⁵⁶ There have been occasions where prisoners applied to the Office of the Public Defender of Georgia and requested a particular normative act.

The Public Defender considers it imperative to ensure prisoners' access to automatically updated and codified bases of normative acts and to register the acceptance and delivery of normative acts by prisoners in penitentiary establishments.

In 2015, the Public Defender of Georgia recommended to the Minister of Corrections of Georgia to take all necessary measures to ensure that prisoners always received the registration number of their applications/complaints lodged in a timely manner. In the opinion of the Public Defender, this recommendation has been partially fulfilled. In particular, the monitoring conducted by the Special Preventive Group in 2016 showed that the majority of the prisoners were informed about the registration number of their applications/complaints lodged. However, some of the prisoners in the closed-type penitentiary establishments mentioned that in cases where they sent an open letter, no registration number was provided. In such cases, it is difficult to track the letter, whether it was registered or dispatched to the respective recipient. Besides, the monitoring showed that in penitentiary establishment no. 3, registration number is only provided to a prisoner if the latter submits an application and requests it. Such practice is impermissible. The statute of penitentiary establishment no. 3 stipulates that an application is registered with an administrative unit of the penitentiary establishment and the registration number is given to the remand/convicted person having lodged the application.²⁵⁷ The statute nowhere stipulates the need for submitting a separate application by the prisoner to obtain the registration number.

During the monitoring conducted by the Special Preventive Group, some of the prisoners expressed their concern that despite having had submitted a letter to a social worker, they did not have any information about this communication. According to the prisoners, they do not have a written document by which they would be able to prove the fact that the letters had been handed to social workers.

As the fact of handing open letters to social workers is not corroborated by any written document that would be accessible for the prisoners submitting those letters, it is difficult to establish whether a prisoner gave correspondence to a social worker. Therefore, the Public Defender of Georgia deems it reasonable to ensure that during delivery and accep-

256 In order to inspect the issue at stake, monitoring was conducted in penitentiary establishments and the results show that there are indeed problems related to the accessibility of legislative/normative acts in establishments. For instance, as of 12-13 January 2017, when the Special Preventive Group visited penitentiary establishment no. 6, its library had four copies of the establishment's statute; ten copies of the changes made to the statute on 27 December 2016; ten copies of the Imprisonment Code (not updated); four copies of the Constitution of Georgia (as of 2016); one copy of the statute of the closed-type penitentiary establishment; one copy of Order no. 70 of the Minister of Corrections of Georgia of 9 July 2015; one copy of the Criminal Code of Georgia (as of 2005); and one copy of the Code of Criminal Procedure of Georgia (as of 2006, hence, invalidated). As of 17 February 2017, there was only one old copy of the Imprisonment Code in the library of penitentiary establishment no. 11.

257 Order no. 109 of the Minister of Corrections of Georgia on approving the statute of penitentiary establishment no. 3 of the Ministry of Corrections of Georgia, Article 63.3.

tance of an open letter by a social worker, there should be two copies of a document certified by a stamp. The following information should be written in the presence of the prisoner in this document: a) the name and surname of the author of the letter; b) the name and surname of the social worker to whom the letter has been submitted; c) the date of submission of the letter; d) the recipient of the letter; and e) the number of pages of the letter. Both copies should be signed by the prisoner and the social worker concerned. One copy should be given to the prisoner and another should remain with the social worker.

In the Parliamentary Report of 2015, the Public Defender of Georgia recommended to the Minister of Corrections of Georgia to take all necessary measures for ensuring free accessibility of envelopes for confidential complaints at such places (e.g. a library) where the prisoners would not be dependent on the establishment's personnel to obtain envelopes, and prisoners could take them without being identified by the administration. The Public Defender also recommended ensuring the availability of certain number of envelopes for prisoners in cells.

The Public Defender observes that this recommendation has not been fulfilled. In particular, the monitoring of the Special Preventive Group conducted in penitentiary establishments in 2016 showed that sending a confidential complaint from closed-type penitentiary establishments is still problematic. In particular, it is impossible to obtain the requisite envelope for writing a confidential complaint without being identified. A prisoner has to apply to a social unit to get the envelope.

The monitoring visits made to penitentiary establishments showed that in closed-type establishments prisoners do not have the possibility of writing a complaint confidentially in those cases where they need the assistance from a social worker in writing an application. This is caused by the fact that social workers do not enter cells and they speak with the inmates through a small window in the cell door. Even if the social worker enters the cell, due to security reasons, a staff member of the security/legal unit would accompany him/her. These circumstances violate the confidentiality of the contents of a complaint and give rise mistrust towards the social services of penitentiary establishments.

Despite the recommendation given by the Public Defender of Georgia in the Parliamentary Report of 2015, it was still problematic in 2016 for the prisoners of closed-type penitentiary establishments to use complaints box without the surveillance of an accompanying person (staff member of either security or regime units). Similarly, in a number of penitentiary establishments, complaints box is within the scope of surveillance cameras.

During the interviews carried out within the monitoring visits by the Special Preventive Group in 2016, some of the prisoners would mention that after the submission of a confidential complaint, the registration numbers and the respective code of an envelope were not displayed near the complaints box.²⁵⁸ The practice in penitentiary establishments remains the same, whereby prisoners are given registration number directly in their cells, which makes it possible to identify the author of a confidential complaint.

²⁵⁸ In accordance with the statutes of penitentiary establishments, no later than the second working day from dispatching a complaint, the registration number and the respective envelope code shall be displayed near the complaints box.

It is impossible to obtain an envelope for writing a confidential complaint without being identified. It is a clear violation of confidentiality that when requesting the envelope a staff member of the social service registers the envelope code and the prisoner's name and surname.

The Public Defender welcomes the increase in the number of inspections carried out by the Division of Systemic Monitoring of the Inspectorate General in comparison to 2015. However, the Public Defender observes that spontaneous monitoring is more effective as it is the surprise factor that allows more problematic areas to be identified. During planned monitoring, the personnel of penitentiary establishments have more time to cover up breaches, if there are any.

It is noteworthy that the Ministry has not published until now the report on monitoring conducted in 2016. Accordingly, this report will be assessed after its publication.

The Public Defender made a recommendation in the Parliamentary Report of 2015 concerning determination of reasonable terms by the Imprisonment Code for consideration of applications/complaints of medical nature by the Medical Department of the Ministry of Corrections of Georgia. This recommendation has not been fulfilled to date.

The Public Defender also made a recommendation in the Parliamentary Report of 2015 concerning introduction by the Imprisonment Code of reasonable terms for the consideration of applications/complaints by the Inspectorate General of the Ministry of Corrections of Georgia. This recommendation has not been fulfilled yet.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To take all necessary measures to ensure that prisoners are handed information on their rights, including the right to lodge an application/complaint and the procedure for lodging an application/ complaint, as well as for its consideration. To this end ensure handing special brochures to prisoners;
- To take all necessary measures to ensure that, a few days after a prisoner's admission to a penitentiary establishment, a social worker explains to him/her the rights and duties in detail; provides information about lodging an application/ complaint and procedure for its examination; and explains the competence of social workers and provides all necessary key documents. Within reasonable intervals, social workers should carry out individual and group works with prisoners on the topic of their rights and duties, and the procedure of lodging an application/complaint as well as its examination;
- To take all necessary measures to ensure the availability of brochures containing practical information for all foreign prisoners, in a language they understand, explaining in detail and in simple terms the procedure for lodging an application/ complaint as well as for its consideration;

- To take all necessary measures to ensure that prisoners can fully realise their right to lodge an application/complaint; to this end to increase the role of the social worker in drafting the wording of applications/complaints and selecting its relevant recipient; and to provide a translator for the prisoners who do not have the command of the Georgian language;
- To take all necessary measures to ensure prisoners' access in penitentiary establishments to automatically updated and codified bases of normative acts; to ensure all that prisoners have access in their cells to the Imprisonment Code, the statute of the establishment and updated and codified copies of other normative acts, at the same time to ensure that the acceptance and delivery of normative acts by prisoners is documented;
- To take all necessary measures to ensure that prisoners are always provided with the registration number of an application/a complaint in a timely manner;
- To take all necessary measures to ensure that during delivery and acceptance of an open letter by a social worker there are two copies of a document certified by a stamp. The following information in the presence of the prisoner should be written in this document: a) the name and surname of the author of the letter; b) the name and surname of the social worker to whom the letter has been submitted; c) the date of submission of the letter; d) the recipient of the letter; and e) the number of pages of the letter. Both copies should be signed by the prisoner and social worker concerned. One copy should be given to the prisoner and another should remain with the social worker;
- To take all necessary measures to ensure that after dispatching confidential complaints, the registration numbers are always placed by complaints box;
- To take all necessary measures to ensure that complaints boxes are placed at easily accessible areas where there is no visual and/or electronic surveillance and control and accordingly the chances for identifying a complaining prisoner are less ;
- To take all necessary measures to ensure free accessibility of envelopes for confidential complaints at such places (e.g. a library) where the prisoners would not be dependent on the establishment's personnel to obtain envelopes, and prisoners could take them without being identified by the administration; to ensure availability of certain number of envelopes for prisoners in cells;
- To take all necessary measures to ensure that a social worker assists in composing a confidential complaint without the presence of security personnel;
- To take all necessary measures to ensure that the personnel of penitentiary establishments are prohibited to write down the code of an envelope and prisoners details when providing him/her with an envelope;

- To take all necessary measures to ensure that the practice of opening envelopes containing responses to confidential complaints before handing to the recipient prisoners;
- To take all necessary measures to ensure that the responses in closed envelopes are handed to the recipient prisoners confidentially so that the establishment's administration could not read their contents;
- To ensure drafting of amendment to the Imprisonment Code with the effect of determining reasonable terms for the consideration by the Medical Department of the Ministry of Corrections of Georgia of applications/complaints of medical nature; to ensure its submission to the Government of Georgia for its initiation before the Parliament of Georgia; and
- To ensure drafting of amendment to the Imprisonment Code with the effect of determining reasonable terms for the consideration of applications/complaints by the Inspectorate General of the Ministry of Corrections of Georgia; to ensure its submission to the Government of Georgia for its initiation before the Parliament of Georgia.

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To amend the Imprisonment Code to the effect of determining reasonable terms for the consideration of applications/complaints of medical nature by the Medical Department of the Ministry of Corrections of Georgia; and
- To amend the Imprisonment Code to the effect of determining reasonable terms for the consideration of applications/complaints by the Inspectorate General of the Ministry of Corrections of Georgia.

3.9. PENITENTIARY HEALTH-CARE SYSTEM

The right to health is an inclusive right²⁵⁹ extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, adequate supply of safe food and nutrition, housing, healthy occupational and environmental conditions, access to health-related education and information, and gender equality.

The right to health also includes the right to be free from interference, such as the right to be free from non-consensual medical treatment and experimentation, torture, or other cruel, inhuman and degrading treatment or punishment. It includes the right to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable level of health, appropriate treatment for prevalent diseases, illnesses; ensures

²⁵⁹ Right to Health, Fact Sheet No. 31, Office of the United Nations High Commissioner for Human Rights and World Health Organization, available at: <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> [Last visited on 17.03.2017].

accessibility of essential drugs, reproductive health, equal and timely access to basic preventive, curative, rehabilitative health services and health education; and access to goods and services that are scientifically and medically appropriate and of good quality.²⁶⁰

Preventive health care has particular importance for the realisation of the right to health, which implies promotion of health and general living conditions, nutrition, sanitation, physical and mental activity, implementation of target-oriented activities in prisons aimed at prevention of pathologies such as infectious diseases, mental health, substance-dependence and violence.

The Special Preventive Group, within the monitoring conducted in penitentiary establishments in 2016, paid particular attention to the effectiveness of the penitentiary health care system and existing challenges. During the monitoring, the group interviewed prisoners and personnel of the penitentiary establishments and inspected situation in the medical units of penitentiary establishments. It is noteworthy that the Public Defender, with the financial support of the Open Society Georgia Foundation, carries out research on the promotion of the right to health in penitentiary establishments. The report on this issue is underway and will be published.

3.9.1. FINANCING THE GEORGIAN PENITENTIARY HEALTH CARE, ITS ORGANISATIONAL ASPECTS AND THE REFORMS ACCOMPLISHED

In 2016, significant structural changes were made; in particular, the Medical Regulation Division was separated from the Medical Department of the Ministry of Corrections and moved under the Inspectorate General of the Ministry as the Division for Controlling the Quality of Medical Services. The terms of references of the Division are stipulated in the statute²⁶¹ of the Inspectorate General of the Ministry of Corrections and have been in force since 26 December 2016.

The work performed by the Medical Regulation Division of the Medical Department of the Ministry of Corrections is positively assessed. The Division inspected nutrition, sanitation and hygiene conditions, medical units, x-ray equipment, waste management, and processing of medical and archive documentation.

The approval of job descriptions for the Medical Department staff of the Ministry of Corrections is positively assessed. The job descriptions clearly stipulate the duties and functions of the personnel of structural and territorial units of the department.²⁶²

The Public Defender of Georgia welcomes the approval of the procedure for documenting bodily injuries that could have been caused due to torture and other cruel, inhuman or degrading treatment in penitentiary establishments. The procedure has been developed based on the recommendations of the Istanbul Protocol.²⁶³ Besides, for improving the

260 General comment no. 14 (2000) on the right to health, adopted by the Committee on Economic, Social and Cultural Rights.

261 Approved by Order no. 55 of the Minister of Corrections of Georgia of 25 June 2015.

262 Approved by Order no. 2255 of the Minister of Corrections of Georgia of 6 May 2016.

263 Approved by Order no. 131 of the Minister of Corrections of Georgia of 26 October 2016.

quality of medical services and ensuring patients' safety, the system for quality management has been regulated statutorily,²⁶⁴ which is also positively assessed.

According to the information received from the Ministry of Corrections of Georgia, the cost of equivalent medical services for remand and convicted persons amounted to 2,178,441 GEL in 2016, which is lower by 1,854,193 GEL compared to 2015. As regards the administrative expenditure of the Medical Department, according to the received information, in 2016, the administrative expenditure (salaries of the medical personnel, office expenditure, etc.) has been allocated from the programme code of equivalent medical services for remand and convicted persons to another programme code of another administrative expenditure of the Ministry. Therefore, the information about the said expenditure has not been provided.

3.9.2. MEDICAL INFRASTRUCTURE OF PENITENTIARY ESTABLISHMENTS

There are 37 first aid health-care groups and 2 medical establishments providing medical services in penitentiary establishments. In 2016, there was still a problem with providing medical services in former cells of medical units, which adversely affects the quality of provided services. In medical rooms, ventilation remains out of order and the veneer of the walls and the floor does not allow wet cleaning and hence observance of sanitation and hygiene standards.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections of Georgia to ensure compliance of medical units of penitentiary establishments with the standards afforded in the country. It was recommended, among others, to ensure availability of adequate equipment in these units and control of medical equipment, adjustment of ventilations system and laying antistatic linoleum flooring. According to the information received from the Medical Department of the Ministry of Corrections,²⁶⁵ the items and equipments in all penitentiary establishments that are out of order, or in need of repairs or replacement, have been inventoried. Based on the inventory, medical units are being gradually equipped with new purchases (items and equipment). The monitoring visits carried out by the Special Preventive Group have revealed that there are cases where it is impossible to place the purchased items in penitentiary establishments as there is not enough space. It should be noted that, during the visit made by the Special Preventive Group to penitentiary establishment no. 18,²⁶⁶ the biochemical analysis equipment of the establishment was out of order and, therefore, the test material had to be taken to a civil hospital for analysis. This is again related to additional time and costs.

In 2015, the Public Defender of Georgia also recommended to the Minister of Corrections concerning bringing the medical units in compliance with the standards afforded in the country. According to the response received from the Medical Department of the Ministry of Corrections, dentists' rooms in penitentiary establishments nos. 2, 5, 6, 7, 8,

264 Approved by Order no. 2361 of the Minister of Corrections of Georgia of 6 May 2016.

265 Letter no. MOC01700166123 of the Medical Department of the Ministry of Corrections, dated 6 March 2017.

266 17-18 January 2017

14, 16, 17, 18, and 19 have been repaired and equipped in accordance with the general standards. Repair and reconstruction works in other penitentiary establishments are underway and they are being gradually equipped. These changes are welcome. It is however imperative to repair medical units completely. It is also noteworthy that there is no tap in the dentist's room in establishment no. 11. Therefore, it is impossible to have the used instruments washed on the spot. The personnel use running water from the personnel's toilet.²⁶⁷

During the visit²⁶⁸ of the Medical Regulation Division to penitentiary establishment no. 5, the two rooms arranged for x-ray examination were inspected. There is a sink installed in the examination room; however, hot water is not provided. The walls are not covered with barite to block x-ray emissions. Besides, the surface is rough and therefore impossible to be wet-cleaned. Where films are developed, there is no container to collect the waste liquid, which the waste disposing company would remove. The requisite means designed for radiation safety are not used in the working process. Besides, an x-ray technician/x-ray laboratory technician, after the examination, does not register a patient's individual effective dose in a specified sheet (in the section of effective dose registration) or x-ray examination registration journal. It should be noted that there is no such journal present in any of the penitentiary establishments.

The visits of Medical Regulation Division to penitentiary establishments have showed that there are no x-ray rooms in penitentiary establishments nos. 7, 11 and 12. In penitentiary establishment no. 7, x-ray scan is performed in a small manipulation room and films are developed and dried in a similarly small dentist's room. In establishment no. 11, x-ray scan is performed in a corridor wedged between AIDS room and the space arranged for juveniles for computer use. In penitentiary establishment no. 12, x-ray scans are performed in the first aid room and films are taken to establishment no. 19 for development. The x-ray rooms in these penitentiary establishments fail to comply with any of the requirements set for x-ray scan rooms.²⁶⁹ In particular, adequate space and a sink with cold and hot water plumbing are absent; there is no space arranged for developing films; the intensity of exposure of the patients and personnel to radiation is not controlled with an individual dosimeter; and individual radiation safety and transportation safety means are not used in the working process. The Public Defender observes that this problem should be addressed promptly and an x-ray room should be arranged in all penitentiary establishments.

The arrangement of a medical waste storage room in penitentiary establishments in 2016 is positively assessed. However, there are certain problems in this regard. For instance, in penitentiary establishment no. 3, medical waste was stored in the toilet of the medical unit of the establishment and there was horrible smell in that area. A specially arranged room to store the containers of medical waste in penitentiary establishment no. 11 is absent; therefore, the medical personnel's toilet is used for this purpose. According to the

267 Order no. 309/n of the Minister of Health, Labour and Social Affairs of Georgia, dated 5 November 2002 Approving the Sanitation Rules for Ambulatory and Polyclinic Establishments of Dental Profile, Article 8.

268 20 October 2016.

269 Resolution no. 317 of the Government of Georgia, dated 7 July 2016: Technical Regulations – Approving the Radiation Safety Requirements in the Sphere of Medical Radiation.

information received from the Medical Department of the Ministry of Corrections, rooms are not arranged for storing medical waste in penitentiary establishments nos. 7 and 12. It is noteworthy that a contractor company removes medical waste once a week from the penitentiary establishments.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure the compliance of medical units of penitentiary establishments with the general standards in the country, including the equipment of this units and control of the medical equipment; adjustment of ventilation system and laying antistatic linoleum flooring;
- To take all necessary measures for arranging and equipping x-ray rooms in all penitentiary establishments; the equipment should include individual dosimeter controlling the dosage of the patients' and personnel's exposure to radiation, and all items and materials necessary for developing films; and
- To ensure that waste storage rooms are arranged in all penitentiary establishments, equipped with a large urn, a sink for washing hands and running water at required temperature.

3.9.3. ACCESSIBILITY OF MEDICINES

The timely provision of medicines is a necessary precondition for successful treatment. A remand/convicted person has the right to use necessary medical services. If necessary, a remand/convicted person shall have access to medical products allowed in a penitentiary institution. If so requested, a remand/convicted person may purchase at his/her own expense medical products with similar properties or more valuable medical products than those procured by the penitentiary institution. In the case of a reasonable request, with the permission of the Director of the Department, a remand/convicted person may invite a personal physician at his/her own expense.²⁷⁰

There is a dispensary in all penitentiary establishments and there is a person in charge of a dispensary in each penitentiary establishment.²⁷¹ Drug stocks are provided every month by the Logistics Department of the Ministry of Corrections. In those cases where a medicine is not on the basic drugs list of the penitentiary health-care, the medicine is bought through simple purchase procedure based on the individual request of a senior doctor.²⁷² Drugs are taken from the drugs stock based on a doctor's prescription.

270 Article 24 of the Imprisonment Code.

271 Pharmacist/a person with higher medical education.

272 Order no. 2547 of the Government of Georgia, dated 30 December 2014, on Simple Purchase Procedure of State Purchase of Medicines, Medical Products and Care products by the Ministry of Corrections of Georgia issued in accordance with Article 10¹.1 and Article 10¹.2.d) of the Law of Georgia on State Purchase.

The basic drugs list of the penitentiary health-care system²⁷³ determines the list of those medicines, which the Ministry of Corrections took commitment to provide at its own expense. The Medical Department of the Ministry of Corrections spent 2,210,020 GEL on medicines and other medical expenses in 2016. It is noteworthy that compared to 2015, the sums spent on medicines is less by 1, 65, 214 GEL.

In the Parliamentary Report of 2015, the Public Defender pointed out the problem of replacing prescribed medicines as well as the deficit of medicines in penitentiary establishments, including the medicines for cold.²⁷⁴ The same problems persist in 2016 as well.

It is noteworthy that penitentiary establishments order three-month stock of drugs in November. The reason for this practice is the difficulty related to drug supply at the end of the year caused by tender related issues. During a visit²⁷⁵ to penitentiary establishment no. 3, the members of the Special Preventive Group inspected the supply of drugs prescribed for patients. The members of the Special Preventive Group established that in general the drug supply is satisfactory. However, there were certain shortcomings identified. It has turned out that whenever a particular medicine was out of stock, a doctor would cancel the prescription or replace the prescribed medicine with another drug that was available at the material time in the given penitentiary establishment.

During the visits made by the Medical Regulation Division in 2016 to penitentiary establishments nos. 2, 5 and 7, the balance between the remaining and issued medicines was inspected. The inspection results showed that, on several occasions, the precise quantity of drugs issued was not registered in the relevant documentation. For instance, in establishment no. 2, a nurse failed to document the use of 30 pills of apalin in the drug registry journal.

During the visit²⁷⁶ made by the Medical Regulation Division in 2016 to penitentiary establishment no. 5, it was found out that among the medicines stored on the drugs shelves, there was expired pharmaceutical product called ultracaine 1.7 ml (no. 100) that had expired in Jun 2016; three boxes of digoxin 0.25 mg (no. 40) was to expire in November 2016. The person in charge of the drug stock did not have any information regarding this. It should be noted that among the expired medicines, there were drugs (moditen depo no. 5, pletoz 50 mg, trenatal 5ml, and symbicort aerosol 60) which could have been issued in case of timely notification to the drug stores of other penitentiary establishments. The person in charge of the drug stores could not present any information in writing which would certify the supply of the medicines being in surplus, or with a short shelf-life, to the drug stores or health care professionals of other penitentiary establishments. It should be positively mentioned that there is a practice of exchanging information among penitentiary establishments regarding the medicines in surplus. Persons in charge of drug stores sends the list of medicines in surplus to other penitentiary establishments every month and upon request provides drugs to those establishments in need.

273 Approved by Order no. 31 of the Minister of Corrections of Georgia, dated 22 April 2015.

274 The Parliamentary Report of 2015, p. 91, see at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf>.

275 2-4 February 2017.

276 20 October 2016.

In 2015, the Public defender of Georgia recommended to the Minister of Corrections of Georgia to take necessary measures for ensuring that prescribed medicine was made available for prisoners. Furthermore, to ensure that doctors, upon necessity, were free to prescribe brand name drugs. According to the response received from the Ministry of Corrections on 25 November 2016, various health-care professionals prescribe medicines to prisoners in accordance with the basic drugs list elaborated within the penitentiary health-care system. In this list, the drugs are named according to the active ingredient for a particular disease. This means that both the active ingredient of the drugs with a generic name and other medicines with the same composition; both drugs have the same composition and treat the same disease. The difference is only in the name of the producing country and the name of a drug. Health-care professionals are not limited to prescribing the medicine that is on the basic drugs list elaborated by the penitentiary health-care system. Upon necessity and within their competence, doctors can also prescribe medicines that are not on the basic drugs list of the penitentiary health-care system. In such cases, a senior doctor files an individual request with the Medical Department of the Ministry of Corrections and the requested medicine is bought through a simple purchase procedure.²⁷⁷ A convict, in case of refusal to take provided medication, can, according to a doctor's prescription, buy at his/her own expense the medication of the same clinical indications, among them, a medicine of a particular brand.

As the monitoring of penitentiary establishments showed, medical personnel mostly prescribes to prisoners those generic medicines that are already available in the given penitentiary establishment, at the state's expense. It is imperative that prisoners are allowed to purchase, with a doctor's consent, a particular brand of medicine that corresponds to the initially prescribed medicine, in the given penitentiary establishment's drug store or, if there is none, to get it through family members. It should be pointed out that there is a drug store in penitentiary establishments nos. 8 and 15 where prisoners can buy medicine on their own. As regards receiving medicine through a parcel, according to the information received from the Ministry of Corrections, the elaboration of the procedure for sending medicines in a parcel is under consideration.

RECOMMENDATION

TO THE MINISTER OF CORRECTIONS OF GEORGIA

- To take necessary measures to ensure that prisoners have unimpeded access to prescribed medicine; to ensure that doctors are not limited to the medicines available in a penitentiary establishment and upon a prisoner's request, with a doctor's consent and at the prisoner's expense, make immediately accessible medicines of particular brands; in those penitentiary establishments where there is no drug store, introduce a clear procedure for sending in medicines in a parcel; and
- To take necessary measures to organise the provision of medicines in to eradicate shortcomings in the existing practice of supplying penitentiary establish-

²⁷⁷ The Law of Georgia on State Purchase, Article 10¹.

ments with drugs; to this end, to ensure that particular attention is paid to the analysis of the use of drugs in the previous period and these results are taken into account both during the wholesale purchase of drugs and when supplying a particular penitentiary establishment.

3.9.4. ACCESSIBILITY AND QUALITY OF MEDICAL SERVICES

3.9.4.1. Accessibility of Doctors and Helping Staff

Under Article 12.1 of the International Covenant on Economic, Social and Cultural Rights, the States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.²⁷⁸ In accordance with CESCR General Comment No. 14, the right to health contains the following four elements: availability of medical services in sufficient quantity; accessibility of medical services; acceptability of medical services; and quality medical services.²⁷⁹

These principles equally apply to all those persons in custody. The persons deprived of their liberty maintain their fundamental rights related to health. A prison health care service should be able to provide medical treatment and nursing care, appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community.²⁸⁰

When a state deprives people of their liberty, it takes on the responsibility to look after their health in terms of both the conditions under which it detains them and the individual treatment that may be necessary.²⁸¹ Under the European Prison Rules, enforcement of custodial sentences and the treatment of prisoners necessitate ensuring prison conditions that do not infringe human dignity and prepare them for their reintegration into society.²⁸²

Under the case-law of the European Court of Human Rights,²⁸³ Article 3 of the Convention (prohibition of torture) imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty; e.g., by providing them with the requisite medical assistance. The lack of appropriate medical care may amount to treatment contrary to Article 3.²⁸⁴

278 The United Nations, International Covenant on Economic, Social and Cultural Rights, 16 December 1966.

279 Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000.

280 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards p. 40, para. 38, available in English at: <http://agent.echr.am/resources/echr//pdf/ba2e-032f91eb6673220a419b698fd89c.pdf> [Last visited on 10.02.2017].

281 World Health Organisation, A WHO guide to the essentials in prison health, Health in prisons, available in English at: http://www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf [Last visited on 10.02.2017].

282 Council of Europe, Recommendation *Rec (2006)2* of the Committee of Ministers to member states on the European Prison Rules, 11 January 2006, Preamble.

283 *Dybeku v. Albania*, application no. 41153/06, judgment of the European Court of Human Rights of 18 December 2007, para. 41.

284 *Poghosyan v. Georgia*, application no. 9870/07, judgment of the European Court of Human Rights of 24 May 2009, paras. 47-49.

According to the information submitted by the Medical Department of the Ministry of Corrections of Georgia, as of 31 December 2016, there were 9,334 prisoners (remand/convicted persons) in the penitentiary system; there were 190 doctors (among them 15 senior doctors) and 265 nurses employed in penitentiary establishments. It should be noted that the total number of medical personnel did not change significantly.²⁸⁵

The number of doctors and nurses employed in the penitentiary system is given in the table below:

N	Establishment	Doctor	Nurse	Person in Charge of Drugs Store
1.	no. 2 Establishment	11	16	1
2.	no. 3 Establishment	6	5	1
3.	no. 5 Establishment	7	9	1
4.	no. 6 Establishment	7	11	1
5.	no. 7 Establishment	4	4	1
6.	no. 8 Establishment	28	44	1
7.	no. 9 Establishment	4	9	1
8.	no. 11 Establishment	3	4	1
9.	no. 12 Establishment	3	6	1
10.	no. 14 Establishment	10	11	1
11.	no. 15 Establishment	10	18	1
12.	no. 16 Establishment	2	5	1
13.	no. 17 Establishment	10	19	1

In 2016, the correlation, according to penitentiary establishments, of the number of prisoners and number of doctors and nurses employed as staff members in penitentiary establishments is given in the table below:

No.	Establishment	Correlation of the Number of Prisoners ²⁸⁶ and Doctors	Correlation of the Number of Prisoners and Nurses
1	no. 2 Establishment	106	73
2	no. 3 Establishment	7	7
3	no. 5 Establishment	35	27
4	no. 6 Establishment	30	19
5	no. 7 Establishment	4	4

²⁸⁵ In 2015, 191 doctors (among them 15 senior doctors) and 261 nurses were employed in penitentiary establishments.

²⁸⁶ The correlation given in the table is calculated according to the number of prisoners (remand/convicted persons) in penitentiary establishments as of December 2016.

6	no. 8 Establishment	80	51
7	no. 9 Establishment	10	4
8	no. 11 Establishment	4	3
9	no. 12 Establishment	95	47
10	no. 14 Establishment	119	108
11	no. 15 Establishment	174	98
12	no. 16 Establishment	48	19
13	no. 17 Establishment	189	99

The above table shows that, in penitentiary establishments nos. 2, 14, 15 and 17, the correlation of the number of prisoners with the number of doctors and nurses is high. It should be mentioned that when calculating the correlation, the schedule of shifts of doctors and nurses is not taken into account.

According to the European Committee for the Prevention of Torture, staffing levels should ideally be equivalent to roughly one medical doctor for 300 prisoners and one qualified nurse for 50 prisoners.²⁸⁷ In 2014 and 2015, the Public Defender of Georgia recommended to the Minister of Corrections to ensure sufficient number qualified doctors and nurses in all penitentiary establishments for timely and adequate provision of medical services. According to the response received from the Medical Department of the Ministry of Corrections,²⁸⁸ based on the recommendation of the International Committee of the Red Cross,²⁸⁹ the correlation of doctors and prisoners in small establishments is from 50 to 150; and from 300 to 500 in large establishments. The Public Defender of Georgia does not share the position of the Minister of Corrections and observes that there should be sufficient number of doctors and nurses provided in all penitentiary establishments so that each remand/convicted person receives timely and adequate medication services.

The European Committee for the Prevention of Torture²⁹⁰ points out that, while in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime. The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay. It is noteworthy that prisoners mentioned, during their conversations with the members of the Special Preventive Group, the problem of unavailability of medical personnel as well as the lack of attention on their part. According to prisoners, they often have to wait for the preliminary medical assistance. Besides, prisoners mention that, after prescribing medication, the medical personnel do not show further interest in their health condition.

287 Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 27 February 2007, para. 52, available in English at: <http://www.cpt.coe.int/documents/grc/2008-03-inf-eng.htm> [Last visited on 22.03. 2017].

288 Letter no. MOC31600966804 of the Medical Department of the Ministry of Corrections of Georgia, dated 25 November 2016.

289 1 general practitioner serving no more than 500 remand/convicted persons.

290 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, 2015, para. 34, p. 39.

THE CASE OF G.CH.

According to G.Ch., on 2 July 2016, he was placed in a de-escalation room in penitentiary establishment no. 6. According to G.Ch., this was not the first occasion of him being placed in the de-escalation room.²⁹¹ The prisoner stated that for several days before being placed in the de-escalation room and during the stay in this room, he unsuccessfully requested for a doctor and a social worker. Three days after the return from the de-escalation room, G.Ch. became unwell and lost consciousness. The medical personnel administered emergency medical aid and the patient regained consciousness. G.Ch. told the medical personnel that he experienced shortness of breath and pains in the chest.

The representative of the Public Defender of Georgia examined the medical record of the patient and established that, on 8 August 2016, the convict was visited by the primary health-care unit's doctor and failed to give an accurate diagnosis. The doctor symptomatically administered Sol. Ketzi 1.0 ml, Sol. Drotaverini 2.0, scheduled an x-ray examination of the chest and a general blood test. On 9 August 2016, the patient received a surgeon's consultation; the patient again complained about shortness of breath and chest pain. The surgeon did not give a diagnosis, instead he recommended to the patient to consult a cardiologist and a general practitioner.

On 11 August 2016, in accordance with the planned procedure, the convict was brought to medical establishment no. 18 of the Penitentiary Department of the Ministry of Corrections to undergo white line hernia operation.²⁹² At the same establishment, the patient underwent pre-surgery examination which established the presence of left-side spontaneous pneumothorax²⁹³ J93.0 and bullous emphysema²⁹⁴ (both lungs) J43.9. Therefore, the patient did not undergo the planned white line hernia operation and was transferred promptly to the academician O.Ghudushauri National Medical Centre, where G.Ch. underwent the surgical procedure called left pleural effusion drainage. After the procedure, G.Ch. was placed in the general surgical unit and was discharged on 14 August 2016.

According to the medical form NIV-100 issued by the academician O.Ghudushauri National Medical Centre on 14 August 2016, the patient was recommended to abstain from

291 There is no sensor insulation in this room; sufficient natural or artificial ventilation is absent. The floor is made of concrete and covered with a thin layer of raw rubber. There is dampness in the room. The toilet area is not separated from the rest of the space and the sink is installed almost in the middle of the room. Besides, the room is equipped with video surveillance covering the sink and the adjacent area. The tap in the cell is out of order and water is constantly running. The convict was not provided with a mattress, a blanket, toilet paper, tooth paste and a toothbrush, soap or other staples.

292 Letter no. 81600753850 of the Medical Department of the Ministry of Corrections of Georgia, dated 5 September 2016.

293 Characterised by abnormal accumulation of air in the space between the lungs and the chest cavity that can result in the partial or complete collapse of a lung. The air re-entering the pleural cavity causes the formation of stretched (ventilated) pneumothorax, which causes the massive lung collapse and shifting the mediastinum and compromising hemodynamic stability. The signs and symptoms are the following: without the presence of underlying lung disease acute onset of chest pain and shortness of breath, cyanosis, tachycardia, possible decrease of arterial blood pressure, on percussion - **hyperresonant sounds, breathing sounds are weakened or absent** See at: http://www.medgeo.net/2009/07/12/spontaneous_pneumothorax/ [Last visited on 23.03.2017].

294 Bullous emphysema is a chronic obstructive pulmonary disease characterised by damaged alveoli that tend to form exceptionally large air spaces, especially within the uppermost portions of the lungs. See at: <https://www.medgeo.net/2009/06/22/emphysema/> [last visited on 23.03.2017].

physical work for a month and undergo x-ray examination after seven days. The x-ray examination conducted on 26 August 2016 revealed no pathologies in the pleural cavity. G.Ch. communicated the explanations given by the doctor at the public hospital, according to which a cyst ruptured the lung. The trauma caused the fluid to leak into the lung and it collapsed. According to the doctor, such a grievous trauma could be also caused by the placement in a de-escalation room. It should be noted that upon the return to the penitentiary establishment, G.Ch. again was placed in the de-escalation room.

The Office of the Public Defender of Georgia, on 2 November 2016, referred in writing to the Inspectorate General of the Ministry of Corrections of Georgia.

According to Letter no. MOC41600999557, dated 7 December 2016, the infrastructure of the de-escalation room of penitentiary establishment no. 6 has been examined. It is noteworthy that the response received from the Inspectorate General does not address those major problems and key breaches that have been identified in the case of G.Ch. and focuses on the problems related to the toilet of the de-escalation room.

Apart from the accessibility of medical personnel, the issue of the assisting personnel is also problematic. During the visit of the Special Preventive Group made to establishment no. 18,²⁹⁵ the patients in the long-term care unit complained about the performance of the paramedics employed by the establishment. According to the patients, the male paramedics are on duty only twice a week and in other days there are female paramedics on duty.²⁹⁶ According to the patients in the long-term care units, they prefer to be helped by the same sex paramedics in those procedures that involve stripping. Apart from this, female paramedics cannot help them to get up from the bed and sit down in a wheelchair. According to one of the prisoners, he has been unable to wash for two months. Another prisoner states that he has had to clean himself by wet towel for more than 2 years. He also claimed that he had to keep refusing therapeutic massage as he could not get on the massage table on his own.

According to the statistical data posted on the official website of the Ministry of Corrections of Georgia, in 2016, doctors provided consultation on 40,646 occasions. It should be positively mentioned that, compared to 2015, the number of consultations provided is higher.²⁹⁷ However, as the result of the inspection carried out in 2016 regarding the consultations given by doctors to prisoners, it was revealed that regularity and frequency of the visits of the doctors providing consultation was not adequate in a number of establishments. Besides, there are problems concerning specialised doctors' visits in the beginning of a year before the contracts between the Medical Department and the specialists are finalised.

Timely delivery of consultations remained a problem in 2016. In a number of cases, prisoners have to wait for months to get an appointment with a doctor. It should be noted that the appointments for consultations are only entered in the consultation logbooks and there is no such entry in the medical records of a patient. There is a problem re-

295 17-18 January 2017.

296 According to the Medical Department of the Ministry of Corrections of Georgia, there are 4 paramedics in establishment no. 18.

297 In 2015, doctors gave consultation on 37 445 occasions.

lated to communication among doctors in the penitentiary establishments with preliminary health-care units. In particular, whenever a prisoner registered with one preliminary health-care unit is transferred to another preliminary health-care unit, the information about the previous doctor, with whom the appointment was made, is not shared with another doctor. Therefore, prisoners do not receive consultation in a timely manner. It is important to register any information regarding an appointment for a consultation in the medical records of a prisoner.

The Public Defender recommended to the Ministry of Corrections to approve a standard special form which would register the name and the surname of a patient, the date when the need for medical consultation was established (and who established this need), the details of the specialist needed and the columns for the date and following recommendations. Furthermore, the Public Defender recommended to the Ministry of Corrections to ensure that the forms are comprehensively filled. It should be positively mentioned that, since August 2016, special journals were provided to the medical units of all penitentiary establishments with the sections for entering the information about prisoners' appointment for a consultation and the data about the consultations. It should be positively mentioned that these journals in several penitentiary establishments are filled correctly. However, in some of the penitentiary establishments the journals only refer to the dates of consultations. For instance, there are only entries on the dates of consultations in the journals of penitentiary establishments nos. 3 and 5.

The problem of receiving dental service remains problematic. The dental doctors working in penitentiary establishments do not have assistants. Besides, there are other problems in penitentiary establishments nos. 2 and 8. In particular, there is one dentist in establishment no. 2 providing dental services. Even in those cases, when prisoners have an acute toothache, they have to get in line and wait for a week or more. In penitentiary establishment no. 8, the officers on duty, without medical education or qualification, draft the appointment schedule for those patients wishing to see a doctor. The orthopaedic consultations are punctuated with certain delays. It should be noted that contracts are concluded several times a year with the clinic that manufactures prosthetics. The manufacturing of prosthetics is delayed until the contracts are finalised.

3.9.4.2. Medical Referrals

According to the information received from the Medical Department of the Ministry of Corrections of Georgia,²⁹⁸ the first link, which is in charge of the primary health-care, is at a penitentiary establishment. It determines on its own the need for specialised medical service for prisoners and requests referral of a patient by registering the request in a software; from the moment of the registration, the Medical Department processes the request, and when there is sufficient justification for the referral and the request is in compliance with national guidelines (if needs be, with international guidelines as well), the request is confirmed and assigned a registration number.

²⁹⁸ Letter no. MOC01700166123 of the Medical Department of the Ministry of Corrections of Georgia dated 6 March 2017.

From the moment of the registration, according to a numerical order, the registered request is agreed with a provider of medical service and referral is being made to that provider. If a referral is denied, the denial is registered in the system and the primary link of the health-care at the penitentiary establishment is notified about the reasons for the refusal. According to the information received from the Medical Department of the Ministry of Corrections of Georgia, in 2016, 4,605 requests were registered in the unified electronic database; after their considerations by the Medical Department, 600 requests were denied. Compared to 2015, the number of requests registered in the unified electronic database is almost halved and, accordingly, the number of denied requests is less.²⁹⁹

Only the patients within planned health-care are assigned a digital number and put on the wait list. Emergencies are not put on the wait list. The digital wait lists of the Eastern and Western Georgia are separate and managed independently. The referrals for inpatients and outpatients are separately managed as well.

According to the information received from the Medical Department of the Ministry of Corrections of Georgia, in 2016, 59 medical establishments of the public sector were contracted to provide medical services for prisoners. Besides, the tuberculosis treatment and rehabilitation centre (establishment no 19) and the medical establishment for remand and convicted persons (establishment no. 18) provided medical services for prisoners. The implementation of planned referrals is negatively affected by the incidents of self-harm, hunger strike and arbitrary discontinuation of treatment by prisoners, as well as capacity of public hospitals.

In 2016, in total, 5,861 referrals were made. It should be positively mentioned that compared to 2015, there is an increase in the number of referrals for planned outpatient medical treatment. In 2015, 3,804 patients were referred,³⁰⁰ and in 2016, 4,903 patients were referred.³⁰¹ However, there is a decrease in the number of referrals for planned inpatient medical treatment in 2016, compared to 2015. In 2015 1131 patients were referred for planned inpatient medical treatment,³⁰² and in 2016, 956 patients were referred.³⁰³ As regards emergency incidents, in 2016, 1,474 patients were referred for emergency inpatient/outpatient medical treatment. This indicator is 8% more than the similar indicator of 2015 (1349 incidents).

299 In 2015, 9,016 requests were registered in the unified electronic database; 589 requests were denied.

300 In 2015, within the planned outpatient medical treatment, 2,783 prisoners were transferred to the hospitals of the public sector and 1,021 prisoners were transferred to the medical establishment for remand and convicted persons (establishment no. 18).

301 In 2015, within the planned outpatient medical treatment, 3,034 prisoners were transferred to the hospitals of the public sector; 1,150 prisoners were transferred to the medical establishment for remand and convicted persons (establishment no.18); and 721 prisoners to the tuberculosis treatment and rehabilitation centre (establishment no 19).

302 In 2015, within the planned inpatient medical treatment, 733 prisoners were referred to the medical establishment for remand and convicted persons (establishment no.18); and 398 prisoners were referred to the hospitals of the public sector.

303 In 2016, within the planned inpatient medical treatment, 499 prisoners were referred to the medical establishment for remand and convicted persons (establishment no.18); 320 prisoners were referred to the hospitals of the public sector; and 137 prisoners were referred to the tuberculosis treatment and rehabilitation centre (establishment no 19).

The Medical Department of the Ministry of Corrections of Georgia determines the sequential order of the wait list according to the territorial principle, medical indications and inpatient/outpatient medical treatment.³⁰⁴ When assigning a number to a patient on the wait list, individual needs of a particular patient are not taken into account; the sequential order does not depend on clinical factors but instead on the factors such as the number patients on the wait list and the capacity of medical establishments. In the Parliamentary Report of 2015, the Public Defender recommended to the Ministry of Corrections of Georgia, for improving the medical referral system, to differentiate the digital wait list based on the acute and chronic nature of diseases, progress dynamics of diseases, the effect of these factors on the health condition of a patient and other factors. Unfortunately, the Ministry of Corrections failed to follow these recommendations made by the Public Defender of Georgia.

The Medical Department of the Ministry of Corrections processes the requests on first-come, first-served basis, taking into account the seriousness of the incident and the time needed for dealing with it in a qualified manner. Therefore, the Department does not take into account such cases where the health condition of a patient on the wait list is gradually deteriorating but not to such a degree as to qualify for emergency medical treatment. It should be also pointed out that some diseases progress rapidly and in life threatening situations, medical service could be delayed. It should be positively mentioned that, in 2015, the prompt-delayed medical intervention was added to the existing categories of medical interventions (planned and emergency medical treatments). However, it is not approved by the order of the Minister of Corrections of Georgia. It is imperative that the standard of urgent medical intervention is added to Order no. 31 of the Minister of Corrections of Georgia, dated 22 April 2015. Furthermore, Order no. 55 of the Minister of Corrections of Georgia, dated 10 April 2014, approving the Procedure for Transferring Remand/Convicted persons to the General Profile Hospitals, the Medical Establishment for Remand/Convicted Persons and the Tuberculosis Treatment and Rehabilitation Centre should be amended to the effect of adding a clause on urgent medical intervention.

Within the monitoring conducted by the Special Preventive Group in the penitentiary establishments of the Penitentiary Department, the Group inspected the timely administration of medical referrals. Since the second half of 2016, there have been no problems associated with the timely confirmation of registration by the Medical Department of referral requests. However, remand/convicted persons have alleged during their conversations with the Special Preventive Group members that the transfers for medical treatment are often delayed and the prisoners do not have any information when they are going to receive needed medical service. Furthermore, there are prisoners waiting for medical treatment since 2014 and 2015.

- Prisoner P.M. received the consultation of an otolaryngologist on 15 May 2015; it was established that the patient needed nasal bridge resection. The medical notes were written on 16 June 2015 and sent to the Medical Department for confirmation on 18 June 2015. The Medical Department confirmed the above-mentioned. On 7 March

³⁰⁴ The Procedure for Transferring Remand/Convicted persons to the General Profile Hospitals, the Medical Establishment for Remand/Convicted Persons and the Tuberculosis Treatment and Rehabilitation Centre approved by Order no. 55 of the Minister of Corrections of Georgia dated 10 April 2014, Article 1.5.

2016, the patient received an additional consultation from a cardiologist and was recommended for surgical treatment. It is noteworthy that by the time of the visit of the Special Preventive Group on 23 February 2017, the convict still had not undergone the above surgery.

- On 23 June 2015, prisoner D.T. received the consultation of a surgeon who diagnosed the prisoner with postoperative ventral hernia. The medical note was written by the doctor on the same day and sent to the Medical Department for confirmation on 24 July 2015. In its turn, the Medical Department confirmed the request on 26 October 2015. By the time of the visit of the Special Preventive Group on 23 February 2017, the convict still had not undergone the above surgery.
- On 3 September 2015, prisoner Z.P. received consultation with a surgeon who diagnosed him with chronic appendicitis. The medical note was written on 7 September 2015 and sent to the Medical Department for confirmation on 14 September 2016. In its turn, the Medical Department confirmed the request on 14 December 2015. By the time of the visit of the Special Preventive Group on 23 February 2017, the convict still had not undergone the above surgery.
- On 29 November 2015, prisoner G.B. received consultation with a surgeon who diagnosed him with right sided inguinal hernia. The medical note was written on 30 November 2015 and sent to the Medical Department for approval on 1 December 2015. The Medical Department, in its turn, approved the request on 14 December 2015. By the time of the visit of the Special Preventive Group on 26 January 2017, the convict still had not undergone the above surgery.
- On 18 December 2015, prisoner N.Ts. was recommended by a surgeon for umbilical hernia repair surgery. The doctor wrote the medical note and uploaded it in the system the same day. The Medical Department approved the request on 19 April 2016. However, by the time of the visit of the Special Preventive Group on 23 February 2017 the convict still had not undergone the above surgery.
- On 16 May 2015, prisoner M.S. received an angiologist's consultation and was recommended for duplex scan-phlebectomy. The doctor wrote the medical note on 18 May 2015 and uploaded it in the system on 19 May 2015. The Medical Department confirmed the incident on 17 December 2015. However, by the time of the visit of the Special Preventive Group on 26 January 2017, the convict still had not undergone the above surgery.

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Corrections of Georgia to ensure that the decisions about administration of referrals were only taken by the Head of the Medical Department of the Ministry of Corrections after consultation with the director of a respective penitentiary establishment concerning security issues related to the prisoner's transfer. The Public Defender recommended abolishment of the rule whereby the provision of medical service depends on the will of the director of a penitentiary establishment and the director of the Penitentiary Department. The Ministry of Corrections of Georgia unfortunately failed to fulfil the aforementioned recommendation.

In 2014 and 2015, the Public Defender of Georgia recommended to the Ministry of Corrections of Georgia to amend Order no. 55 of the Minister of Corrections of Georgia of 10 April 2014 to the effect of stipulating the out of turn transfer of the prisoner in need for additional examination in the short period (the next few days) or upon partial examination, while referred to a public sector medical establishment for outpatient medical treatment. The Ministry of Corrections of Georgia does not share this approach. According to the response of the Ministry, the prisoner referred to a public sector medical establishment for outpatient medical treatment and in need for additional examination in the short period (the next few days) or upon partial examination is transferred according to the patient's condition and in accordance with a doctor's recommendation. If needed, the prisoner is transferred out of turn/urgently.

Under Article 3.s¹) of the Law of Georgia on Health Care, emergency medical care implies medical care without which a patient's death, disability, or serious deterioration of health status is inevitable. Order no. 01-25/n of the Minister of Health of Georgia of 19 June 2013, on Determining the Classification of Medical Interventions and Minimum Requirements for the Primary Health Care Establishments comprises four kinds of interventions. They are as follows: emergency (critical) intervention is the intervention aimed at saving life, an organ or a limb through simultaneous reanimation and usually starts in several minutes after reaching the decision to intervene. Prompt-urgent intervention stands for intervention during the condition that started acutely and/or clinically deteriorated, posing a threat to life. This condition is related to the threat of losing life, an organ or a limb and intervention is directed at fixing a fracture, managing pain and other serious symptoms. Usually, the decision about intervention should be reached no later than 24 hours after the first phase of maintenance treatment is complete. Prompt-delayed intervention is an early intervention in the circumstances where a patient is in a stable condition, when there is no immediate threat is posed to life, an organ or a limb but still intervention should be planned within several (2-5) days. Planned intervention is planned at the convenience of a patient, a doctor and a medical establishment. It should be positively mentioned that the prompt-delayed medical intervention was added to the existing categories of medical interventions (planned and emergency medical treatments). However, there is no prompt-urgent intervention provided.

3.9.4.3. Equivalence and Quality of Medical Services

In the Parliamentary Report of 2015,³⁰⁵ the Public Defender of Georgia recommended to the Minister of Corrections of Georgia to take all necessary measures to enhance the mechanism of controlling the implementation of the public sector healthcare standards in the penitentiary health care system; to introduce the effective system of statistical data collection and analysis; to pay more attention to the results of the statistical data analysis when drafting the action plan of the penitentiary health care system; and to ensure effective management of the procurement procedure and analysis of cost efficiency.

³⁰⁵ For detailed information, see, the Parliamentary Report of 2015 by the Public Defender of Georgia, pp. 100-103.

The Public Defender commends the steps taken by the Ministry of Corrections towards the implementation of public sector health care standards in the penitentiary health care system. According to the response received from the Medical Department, the standard of medical services have been elaborated and approved by the Minister of Corrections. The practice of presenting monthly statistical data to the Disease Control National Centre, in accordance with the standard forms existing in the country, has been introduced. According to the correspondence received from the Medical Department, Order no. 8467 of the Minister of Corrections of Georgia, dated 30 December 2015 approved the regulations in the penitentiary system for managing and processing statistical data, terms of presenting it and the competent authorities in charge.

Despite the accomplished changes, problems related to the control of the adequate utilisation, disinfection and sterilisation of medical waste, equipment of research labs and manipulation rooms with adequate ventilation system and complete introduction of the categories of medical interventions existing in the public sector health care persist.

In 2015, the Public Defender recommended to the Minister of Corrections of Georgia and the Minister of Health, Labour and Social Affairs of Georgia to elaborate, through inter-agency cooperation, the plan for the complete integration of penitentiary health care with the national health care system. The Public Defender points out that the elaboration of the plan for the complete integration of penitentiary health care with national health care system implies the elaboration of activities and their timetable for the eventual transfer of the management of the penitentiary health-care to the Ministry of Health, Labour and Social Affairs of Georgia.

The Public Defender also observes that, in any event, considering the specific features of the penitentiary health care system, it is imperative to implement, within possible short terms, the major basic standards of the public health care sector to ensure gradually the equivalence of the penitentiary health care services with national health-care system.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure sufficient number of doctors and nurse in all penitentiary establishment for the provision of timely and adequate medical services;
- To ensure the visits by medical consultants to the penitentiary establishments are made frequently enough for the timely and adequate provision of medical services;
- To ensure that, when determining the sequence of a medical referral in the electronic database, the nature of a disease and dynamics of its progress are taken into account for the provision of timely and adequate medical services; to amend Order no. 55 of the Minister of Corrections of Georgia dated 10 April 2014 to this effect;

- To amend Order no. 55 of the Minister of Corrections of Georgia, dated 10 April 2014, to the effect of stipulating that the decisions about administration of referrals of prisoners to the medical establishments of public health care system and medical establishments of the penitentiary health care system are only taken by the Head of the Medical Department of the Ministry of Corrections after consultation with the director of a respective penitentiary establishment concerning security issues related to the prisoner's transfer. The Public Defender recommended the abolishment of the rule whereby the provision of medical service depends on the will of the director of a penitentiary establishment and the director of the Penitentiary Department;
- To amend Order no. 55 of the Minister of Corrections of Georgia, dated 10 April 2014, approving the Procedure for Transferring Remand/Convicted persons to the General Profile Hospitals, the Medical Establishment for Remand/Convicted Persons and the Tuberculosis Treatment and Rehabilitation Centre to the effect of stipulating the reasonable terms for the consideration by the Medical Department of a reasoned motion by a doctor for registering a patient in the unified electronic data basis in order to avert unjustifiable delays in providing medical services;
- To amend Order no. 55 of the Minister of Corrections of Georgia, dated 10 April 2014, approving the Procedure for Transferring Remand/Convicted persons to the General Profile Hospitals, the Medical Establishment for Remand/Convicted Persons and the Tuberculosis Treatment and Rehabilitation Centre to the effect of stipulating the out of turn transfer of the prisoner in need of additional examination in the short period (the next few days) or upon partial examination, while referred to a public sector medical establishment for outpatient medical treatment;
- To ensure the medical establishment for remand and convicted persons (establishment no. 18) has sufficient number of assisting personnel (paramedics) so that patients receive adequate care; and
- To take all measures to ensure the effective management of the procurement procedure and analysis of cost efficiency as well as evaluation of the quality of services provided within the penitentiary health care, based on pre-determined and valid indicators.

TO THE MINISTER OF CORRECTIONS OF GEORGIA AND THE MINISTER OF HEALTH, LABOUR AND SOCIAL AFFAIRS OF GEORGIA:

- To elaborate, through inter-agency cooperation, the plan for the complete integration of penitentiary health care with the national health care system.

3.9.4.4. Independence and Competence of a Doctor; Confidentiality and Informing a Prisoner

In accordance with Recommendation no. R(98)7 of the Committee of Ministers of the Council of Europe, doctors who work in prison should provide the individual inmate with the same standards of health-care that is delivered to patients in the outside community. The health needs of the inmate should always be the primary concern of the doctor. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health-care personnel should operate with complete independence within the bounds of their qualifications and competence.³⁰⁶ It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.³⁰⁷

The issues related to independence and qualifications of medical personnel remain problematic in 2016. For ensuring the independence of the medical personnel employed in the penitentiary health care system, it is necessary that the medical personnel should not be the subjects of the Ministry of Corrections of Georgia. Furthermore, even within the penitentiary health care system, it is important to make efforts towards enhancing the degree of professional independence and qualification. It is important to ensure continuous professional training of medical personnel and enhancement of various training modules and set up an effective mechanism for assessment and supervision of sustainability of training outcomes.

It is important to review the legal framework governing penitentiary health care for ensuring the rigorous observance of the principles of professional ethics to a maxim degree by the medical personnel of the penitentiary system. It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.³⁰⁸

In 2016, certain subordination of the medical personnel to the administration of a penitentiary establishment remains a problem as it violates the principle of confidentiality and obstructs the process of provision of medical services.

In terms of professional independence of medical personnel, it is particularly important to ensure in long term perspective, integration of the penitentiary health care with the public health care. As regards the short term perspective, it is imperative to ensure strict supervision over observance of the principles of professional ethics by the medical personnel and adequate response to breaches.

306 Council of Europe, Recommendation no. R (98) 71 of the Committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison, adopted by the Committee of Ministers on 8 April 1998 at the 627th meeting of the Ministers' Deputies in Strasbourg), paras. 19-20.

307 The United Nations Principles of Medical Ethics, 1982, principle 3, available only in English at: <http://www.un.org/documents/ga/res/37/a37r194.htm> [Last visited on 18.03.2015].

308 The United Nations Principles of Medical Ethics, 1982, principle 3, available only in English at: <http://www.un.org/documents/ga/res/37/a37r194.htm> [Last visited on 18.03.2015].

The practice existing in the detention and closed type prison facilities, whereby a prisoner has to address non-medical personnel for an appointment of consultation with doctor remains problematic; in most cases, a doctor examines a patient and provides consultation in a cell. This contradicts the principle of confidentiality as the complaints of the prisoner are thereby also communicated to other prisoners and non-medical personnel.³⁰⁹ Except for emergencies, a medical examination and consultation should be conducted separately in a doctor's office with due respect for confidentiality.³¹⁰ Furthermore, medical manipulations are not conducted in a confidential environment. For instance, according to the prisoners in penitentiary establishment no. 2, injections, taking blood for tests and other medical procedures are usually done in a guard's room on the residential floor, in the presence of the non-medical personnel on duty, which again violates the principle of confidentiality of medical services.

The principle of confidentiality is also violated by Article 24.2 of the Imprisonment Code,³¹¹ under which upon admission to a penitentiary institution, an remand/convicted person shall undergo a medical examination and the relevant report shall be prepared and kept in his/her personal file.

The maintenance of medical documentation in penitentiary establishments remains a problem. It should be mentioned that, in general, the unity of medical notes of prisoners is not observed and it creates the danger of losing the medical documents. In penitentiary establishment no. 3, in the medical note on convict G.G. son of Guram, born on 1985, there was a medical document that belonged to another person having the same name and surname – G.G. son of Ghvtiso, born on 1954. Furthermore, in a number of cases, there are no references in the recordings such as the name of the doctor who provided consultation to a prisoner, the date of giving the consultation or diagnosis.

According to Order no. 198/n of the Minister of Health, Labour and Social Affairs of Georgia, dated 5 July 2002, approving the Procedure of Storing Medical Records in Medical Establishments, all completed medical documentation should be stored in medical archive of the given medical establishment.

During the visit of the Division of Medical Regulation to penitentiary establishment no. 5³¹², the room arranged for medical archive was inspected and it has turned out that the major requirements for keeping archives are not observed, viz., temperature, humidity, and fire extinguishing devices.

The visit of the Division of Medical Regulation to penitentiary establishment no. 7³¹³ revealed that a medical archive room was not there. The piles of old, so-called archived documents are placed on two small open shelves in the medical unit. Besides the fact that the requirements for keeping archives are not observed in the room, the documentation is not archived according to the requisite form and not organised in an alphabetical order

309 Para. 51, Extracts from the general reports of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT/Inf (93)12).

310 *Ibid.*, para. 35.

311 *Ibid.*, paras. 50-51.

312 20 October 2016.

313 03.10.2016.

and by years. The documents are not placed in folders. Designated rooms for archives are not provided in penitentiary establishments nos. 11³¹⁴ and 12 either. In penitentiary establishment no. 11, medical documentation is kept in a drug store. The documents are placed on wooden shelves according to years and in an alphabetical order. They are placed in folders. In penitentiary establishment no. 12, according to the senior doctor, medical notes are kept in personal case-files of prisoners.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure contribution to the professional independence and qualification of medical personnel through continuous professional training and enhancement of various training modules and setting up an effective mechanism for assessment and supervision of sustainability of training outcomes;
- to ensure strict supervision by the Medical Department of the Ministry of Corrections of Georgia over observance of the principles of professional ethics by the medical personnel and adequate response to breaches;
- To ensure to a maximum degree confidentiality of doctor-inmate interaction without the presence of non-medical personnel by installing a call-button in closed type penitentiary establishments and introducing the obligation for medical personnel to inspect cells daily, etc.;
- To take all necessary measures to ensure that all medical examination and consultation is done confidentially in a doctor's room except for urgent and exceptional cases;
- To take all necessary measures to ensure the involvement of prisoners in medical services through informing them about the medical services to be rendered in the process of medical treatment; to ensure accessibility of the information related to prisoners health care, including preventive health care;
- To take all necessary measures to ensure that medical documentation is kept with due respect of confidentiality; and
- To ensure the amendment of Article 24.2 of the Imprisonment Code to the effect of deleting the provision, under which the report of medical examination of an remand/convicted person upon his/her admission to a penitentiary institution shall be kept in his/her personal (non-medical) file; to ensure submission of this draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia.

314 The inspection of the Medical Regulation Division of penitentiary establishment no. 11 was conducted on 08.11.2016.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To amend Article 24.2 of the Imprisonment Code to the effect of deleting the provision, under which the report of medical examination of a remand/convicted person upon his/her admission to a penitentiary institution shall be kept in his/her personal (non-medical) file. This report shall always be kept in a medical note of the prisoner.

3.9.5. MENTAL HEALTH AND SUBSTANCE ABUSE

Mental healthcare is one of the major challenges of the penitentiary healthcare. According to the information received from the Medical Department of the Ministry of Corrections of Georgia, the number of prisoners with mental health and behavioural disorders increased insignificantly compared to 2015. This indicator amounted to 1,031 by December 2015 and 1,079 by December 2016.

Getting an appointment with a psychiatrist remains a problem. In a number of cases, the medical personnel, despite prisoners' requests, do not give them appointments as they think the prisoners are pretending. Because of this, prisoners are frequently denied adequate psychiatric treatment.

Apart from the need to improve the accessibility of a psychiatrist, it is also imperative to deepen their cooperation with psychologists and social workers to improve the indicator of identification of the prisoners with mental health problems and give them timely and adequate psychiatric care. It is also important to ensure that patients with acute psychosis receive psychiatric treatment in psychiatric and not in penitentiary establishments.

According to the information received from the Ministry of Corrections, in 2016, psychiatrists gave 10,682 consultations.³¹⁵ By December 2016, there were 1154 prisoners with mental health problems (F00-F99) in penitentiary establishments. In 2016, involuntary inpatient psychiatric treatment was administered to 45 prisoners and 58 prisoners were placed for compulsory psychiatric treatment in a hospital.

The assessment of a prisoner's mental health condition should be given particular importance during the primary medical examination upon the admission of a prisoner to a penitentiary establishment. Besides, the prisoners inclined towards auto-aggression, suicide and substance abuse should be a special target group for mental health screening. At the same time, it is necessary to assess the mental health condition of those prisoners that systematically manifest antisocial behaviour and there is a suspicion that such behaviour could be caused by their mental health condition.

In the Parliamentary Report of 2015, the Public Defender of Georgia pointed out the importance of the creation of an effective mechanism for the identification of mental health problems to ensure that, instead of imposition of a disciplinary sanction for self-harm, violation of the regime and other disciplinary offences, timely and adequate treatment

³¹⁵ The data on establishment no. 18 is not taken into account.

was given to the prisoners with mental health problems. The Public Defender emphasised that the approach to the prisoners inclined to self-harm and other behavioural disorders had to be therapeutic and not punitive.

The prevalence of mental health problems among prisoners is mostly caused by the problems related to substance abuse and excessive use of psychoactive agents in the penitentiary system. In 2016, 351 prisoners were involved in methadone detox programme, and 315 in 2015.

In 2014 and 2015, the Public Defender recommended to the Minister of Corrections of Georgia to ensure the implementation of opioid dependence treatment through replacement maintenance therapy. However, this recommendation has not been fulfilled. According to the response received from the Ministry, opioid dependence treatment through replacement maintenance therapy is envisaged by the State Action Plane for 2016-2017, among others, for the penitentiary system as well. However, the correspondence of the Ministry of Corrections fails to show the process underway and the steps taken in this direction.

The Public Defender commends the introduction of the psychosocial rehabilitation programme Atlantis for the convicts in penitentiary establishments nos. 2 and 5. This is a therapeutic model for the convicts suffering from alcohol, narcotics and other psychoactive substance abuse. It is noteworthy that the infrastructure for the rehabilitation programme Atlantis is also provided in penitentiary establishment no. 6. However, the programme is not implemented in these establishments. The Public Defender observes that the psychosocial rehabilitation services tailored to the needs of prisoners suffering from mental health problems and substance abuse should be accessible in all penitentiary establishments.

In the process of mental health care, it is important to protect the interest of a person, respect for his/her dignity and provision of care in a maximum humane environment. The UN Human Rights Committee has stipulated in its General Comment³¹⁶ that the use of prolonged solitary confinement may amount to a breach the prohibition of torture, other cruel, inhuman or degrading treatment. UN Subcommittee on Prevention of Torture (SPT) pointed out that prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommends that the State Party should severely restrict the use of solitary confinement as punishment for persons deprived of their liberty. Solitary confinement should not be used in the case of minors or the mentally disabled.³¹⁷ According to the Istanbul statement of 2007 on the use and effects of solitary confinement,³¹⁸ the use of solitary confinement should be absolutely prohibited for mentally ill prisoners.

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the

316 CCPR, General Comment 20/44, April 3, 1992.

317 UN Subcommittee on Prevention of Torture (2010), report on the visit of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment to the republic of Paraguay (par 184).

318 International Psychological Trauma Symposium (2007), The Istanbul Statement on the use and effects of solitary confinement.

Minister of Corrections not to allow the placement of mentally ill prisoners in solitary confinement cells. Unfortunately, there were still incidents of placing mentally ill prisoners in solitary confinement in 2016.³¹⁹

The Special Preventive Group inspected the documentation in establishment no. 3 and found out that during the first months of 2016, out of 51 instances of placement in de-escalation rooms, in 22 cases, disciplinary measures were imposed on the prisoners during their stay in the de-escalation rooms or within the interval of one day.³²⁰ Out of 22 instances, in 11 cases, prisoners had various mental disorders; among them, in one case, the prisoner had persistent delusional disorder (F22) and organic personality disorder (F07.0); in two cases, sleep disorders not due to a substance or known physiological condition (F51); and in seven cases, disorders of personality and impulse control (F60.3). Accordingly, the prisoners' behaviour could have been caused by their mental health condition, which was later the basis for the disciplinary penalty imposed on them.

The above-mentioned 11 prisoners placed in the de-escalation room have not been visited by a psychiatrist during their stay in the room. They received psychiatric consultation in some cases before their placement in a de-escalation room or within a few days after removal from these rooms.

The environment and conditions in the de-escalation rooms are not safe³²¹ and do not minimise the risk of self-harm.³²² This is confirmed by the incidents of self-harm inflicted by the prisoners when they were placed in the de-escalation rooms.

It is imperative to take all necessary measures for avoiding the future placement of prisoners suffering from mental health problems in de-escalation rooms and their provision with timely and adequate psychiatric help. Besides, it is particularly important to develop psychosocial rehabilitation services.

3.9.6. DEATHS AND SUICIDES

In 2016, 17 prisoners died in the penitentiary establishments. Unfortunately, the number of deaths in the penitentiary system has increased.³²³ According to the Information received from the Medical Department of the Ministry of Corrections, the reasons for deaths were registered as follows: myocardial infarction, suicide, congestive heart failure, acute insufficient blood flow to the brain (brain ischemia), thromboembolism, oesophageal perforations due to foreign body, and septic shock. Similar to the previous years, the majority of prisoners died from congestive heart failure. It is imperative to pay attention to the screening and early diagnosis of cardiovascular and respiratory system in order to enable the provision of timely and adequate medical services in the future.

319 See in detail under the subchapter Regime, Disciplinary Responsibility and Incentives.

320 One day before placement into a de-escalation room and the next day after removal from the de-escalation room.

321 According to the information provided by the Ministry of Corrections, there is no cushioning material available in Georgia for lining the walls in de-escalation rooms

322 The floor and the walls in the de-escalation rooms are not cushioned.

323 In 2015, 12 prisoners died in the penitentiary system.

In 2016, the suicide prevention programme was introduced in all establishments of the Penitentiary Department. The statutory regulation of the suicide prevention programme³²⁴ is positively assessed. However, the number of suicides in penitentiary establishments has not changed compared to 2015.³²⁵ As regards suicide, this indicator is higher in 2016. In 2015, there were only 2 incidents of suicide and 5 in 2016. Moreover, out of these incidents, two prisoners had been involved in the suicide prevention programme.

A psychologist of a given establishment or its psychiatrist takes the decision about the provision of multidisciplinary assistance to an remand/convicted person and involvement in the suicide prevention programme. When taking the decision about the provision of multidisciplinary assistance to an remand/convicted person, the psychologist fills out the form in annex 4.³²⁶ After a prisoner is involved in the suicide prevention programme, in accordance with the pre-determined schedule, the members of a multidisciplinary group meet with him/her. According to the data of December 2016, 15 prisoners were involved in the suicide prevention programme.

The members of the Special Preventive Group inspected the documentation of the beneficiaries of the suicide prevention programme. The study of the recording reveals that the multidisciplinary group works with prisoners in terms of emotional venting, change of values and the mechanisms of coping with stress, which on its own is positive. However, it was established during the study of the documentation that in a number of cases, the prisoners involved in the programme have problems in terms of maintaining contacts with family and friends; they do not have adequate number of contacts with their family members or have strained contacts with them. This significantly affects their psychological and emotional condition. For instance, the Special Preventive Group inspected the documentation of one convict involved in the suicide prevention programme. It was clear from the documentation that the convict was particularly anxious about the lack of contact with the family. According to the multi-assessment report, under the head of placement and supervision of the prisoner it is mentioned that the prisoner should be placed in a company of supporting cellmates to feel comfortable. However, it is not clear from the documents what steps were made by the social services towards ensuring that the prisoner had an additional short or long visit or could make a phone call. It should also be mentioned that the objective of the suicide prevention programme would not be accomplished only by supporting conversations. It is therefore important to assess the effectiveness of the work done within the suicide prevention programme to identify shortcomings and make necessary changes for eradicating these problems.

The death of convict N.B. is noteworthy in this context. The convict allegedly committed suicide on 15 August 2016. The Office of the Public Defender of Georgia studied this case. The examination of the case of convict N.B. revealed that N.B. did not receive adequate medical service in establishment no. 17; the medical note was not processed properly. The risks for suicide, mental and narcotic status was not fully assessed; the patient was

324 Approved by Order no. 13 of the Minister of Corrections of Georgia dated 11 February 2016.

325 142 attempts in 2015; 141 attempts in 2016.

326 Suicide Prevention Programme approved by Order no. 13 of the Minister of Corrections of Georgia dated 11 February 2016, Article 10.

given psychotropic drugs without need and only based on the prisoner's request; and he was involved only in a short term replacement therapy course, but unsuccessfully.

On 19 September 2016, the Public Defender of Georgia sent proposal no. 15-11/11031 to the Office of the Chief Prosecutor of Georgia concerning the death of convict N.B. The circumstances revealed, based on the study of medical and other documentation kept in penitentiary establishment no. 17, that the personnel of the establishment possibly committed the act under Article 342 of the Criminal Code of Georgia – official negligence. According to response no. 13/65056 received from the Chief Prosecutor's Office on 11 October 2016, the Investigative Department of the Ministry of Corrections of Georgia started investigation on criminal case no. 073150816002 under Article 115 of the Criminal Code of Georgia, on the incident of driving convict N.B. to suicide. According to the correspondence from the Chief Prosecutor's Office, the circumstances of the incident were investigated comprehensively and upon the establishment of the requisite legal ground, the investigation would be continued under Article 342¹ of the Criminal Code as the subjects of this provision were, according to the notice given to this Article, the personnel of the Medical Department of the Ministry of Corrections of Georgia. These persons were deemed to have the same status as the personnel of the special penitentiary service of the administrative personnel of the establishment of deprivation of liberty. Therefore, their failure to perform their function duly in accordance with the regulations of their office falls within the competence of the Investigative Department of the Ministry of Corrections of Georgia.³²⁷

It is noteworthy that there are specific circumstances in the above cases that could be indicating alleged official negligence on the part of the medical personnel of penitentiary establishments. Accordingly, the investigation conducted by the Investigative Department of the Ministry of Corrections does not discharge the obligation of ensuring independent, impartial and effective investigation since the Investigative Department is not an institutionally independent investigative authority in this case.

The Public Defender observes that in all cases of the death of a patient, involving a possible suicide and specific circumstances indicating commission of a crime by a staff member or medical personnel of the establishment, the investigation should be conducted by the Office of the Chief Prosecutor of Georgia.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure screening of prisoners' health condition and to ensure that the prisoners having mental health problems are provided with timely and adequate psychiatric assistance;

327 Order no. 34 of the Minister of Justice of Georgia dated 7 July 2013 on Determining Investigative and Territorial Jurisdiction in Criminal Cases, Article 8.

- To ensure that the patients suffering from acute psychosis are treated in a psychiatric establishment and that outpatient services are implemented;
- To take all necessary measure to ensure that the prisoners suffering from mental health problems are not placed in a solitary confinement cell;
- To ensure implementation of opioid dependence treatment through replacement maintenance therapy;
- To ensure that assessment of the effectiveness of the work done within the suicide prevention programme to identify shortcomings and make necessary changes for the eradication of these problems; and
- To ensure the creation of psycho-social rehabilitation services tailored to the needs of the prisoners suffering from mental health problems and substance abuse.

PROPOSAL TO THE CHIEF PROSECUTOR OF GEORGIA:

- To ensure independent and impartial investigation of all incidents of suicide.

3.9.7. MANAGING AND PREVENTING HIGHLY DANGEROUS CONTAGIOUS DISEASES

According to the data received from the Ministry of Corrections of Georgia, in 2016, tuberculosis screening tests were performed 57,658 times (in 2015, 58,208 times). The tests revealed 45 new and 45 repeated cases of tuberculosis.

By December 2016, 41 prisoners (in 2015, 38 prisoners) were infected with multi-drug-resistant tuberculosis. 9 incidents of discontinued treatment have been revealed (in 2015, 16 incidents). In the same year, 8 patients resumed discontinued treatment. The fact that, in 2015, 156 patients were referred to a public sector clinic for examination/treatment of related diseases is positively assessed. There are no significant changes in this regard, compared to 2015.³²⁸

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections of Georgia to eradicate problems related to activities aimed at controlling infections and treatment of related diseases in establishment no. 19. According to the response received from the Ministry of Corrections, since 2016, the National Centre for Tuberculosis and Lung Diseases has continuously supplied establishment no. 19 with respirators (for everyone) and sterile gloves (only for the personnel in direct contact with the patients involved in the course of treatment with new medications). Disposable masks and gloves are provided by the Ministry.

In 2015, the Public Defender recommended to the Minister of Corrections to ensure that all prisoners suffering from tuberculosis were transferred to the tuberculosis treatment

³²⁸ This number amounted to 152.

and rehabilitation centre. It should be positively mentioned that, in December 2016, 57 prisoners out of the 65 prisoners in penitentiary establishments and involved in tuberculosis treatment course were placed in the tuberculosis treatment and rehabilitation centre (establishment no. 19); other prisoners were placed in various establishments due to the security considerations. According to the information submitted by the Medical Department of the Ministry of Corrections, there are adequate conditions for anti-tuberculosis treatment in these establishments and remand/convicted persons suffering from tuberculosis are treated in accordance with the state programme guidelines under the supervision of the health-care professionals of the relevant specialisation. The Public Defender regretfully observes that his recommendation has not been fully accomplished.

According to the information received from the Ministry of Corrections of Georgia, in 2016, 6,618 prisoners underwent hepatitis B and C testing (in 2015, this number amounted to 5,500). It should be positively mentioned that the hepatitis screening indicator has been increased and more prisoners are involved in the hepatitis C treatment course. In 2015, only 308 convicts received the treatment and in the course of 2016, 970 prisoners were treated for hepatitis C.

In the Parliamentary Report of 2015, the Public Defender of Georgia recommended to the Minister of Health, Labour and Social Affairs of Georgia to make antiviral treatment available for remand persons for corresponding medical indications. The Public Defender recommended to the Minister of Corrections of Georgia to ensure treatment with sofosbuvir for foreign nationals and stateless persons, placed in penitentiary establishments, having corresponding medical needs. It should be positively mentioned that presently the beneficiaries of the programme are remand and convicted persons placed in penitentiary establishments regardless of whether they have a document certifying Georgian citizenship.³²⁹

In 2016, there was an increase in the number of prisoners screened for HIV/AIDS. In 2016, 7,809 prisoners underwent screening for HIV/AIDS. In 2015, 5,500 prisoners underwent screening for HIV/AIDS. As regards the prisoners involved in antiviral treatment for HIV/AIDS, by December 2016, 68 patients were involved in the programme. 15 prisoners rejoined the same year.

The penitentiary system still faces challenges in terms of full observance of statutory requirements for infection control, such as cold chain, and disinfection and sterilisation of medical instruments, objects and materials designated for multiple uses.

The Medical Regulation Division, during its visit to penitentiary establishment no. 5³³⁰, inspected the central sterilisation room which has been recently arranged and refurbished. The surgical and manipulation instruments as well as dental instruments are sterilised in the central sterilisation room. There is a designated staff-member in charge of disinfection and sterilisation. However, at this stage, the process of disinfection and sterilisation in the dentist's room is punctuated with shortcomings that need to be addressed to ensure that the procedures are in full compliance with the prerequisite standards. Personnel with

329 Resolution no. 169 of the Government of Georgia dated 20 April 2015 on Approving State Programme on Hepatitis C Management.

330 20 October 2016.

special training in infections control are not there; there are no paper towels for drying hands in the room where procedures are done; there is no requisite space arranged for preliminary sterilisation of instruments; this space, should be equipped with a sluice sink, a table, shelves, etc. At this stage, the instruments are not categorised into critical, semi-critical and non-critical tools. There is packaging equipment in the sterilisation room.

It was revealed during the visit³³¹ of the Medical Regulation Division to penitentiary establishment no. 7 that there is no separate sterilisation room in establishment no. 12 either. Sterilisation is done in the so-called dry-air steriliser in the dentist's room. At this stage, the process of disinfection and sterilisation in the dentist's room is punctuated with shortcomings that need to be addressed to ensure that the procedures are in full compliance with the prerequisite standards. Designated personnel with special training in infections control are not there in the penitentiary establishment. At this stage, the dental equipment is being sterilised right in the dentist's room in the so-called dry-air steriliser; there are no paper towels for drying hands in the room where procedures are done. There is no requisite space arranged for preliminary sterilisation of instruments; this space should be equipped with a sluice sink, a table, shelves etc.; the instruments are not categorised into critical, semi-critical and non-critical tools; no so-called packaging is done before sterilisation; there are no instructions on the preparation and use of disinfectants posted in the procedures room. According to the dentist, there are no so-called sterilisation indicators; therefore, the sterilisation cycles are not verified by periodic use of indicators. Despite the fact that there is a recently purchased autoclave in the storage room of the establishment, due to the lack of space it is not used.

There is no central sterilisation room in penitentiary establishment no. 11.³³² The sterilisation of instruments is done by a dentist. There are no designated personnel with special training in infections control in the penitentiary establishment. There are no paper towels for drying hands in the room where procedures are done. There is no requisite space arranged for preliminary sterilisation of instruments; this space, should be equipped with a sluice sink, a table, shelves etc. There is no sink to wash hands in the room where procedures are done; there are no instructions on the preparation and use of disinfectants placed in the procedures room; the tool packaging equipment is brought into the dentist's room but it is not used due to the lack of space. The walls are not wet cleaned.

There is no separate sterilisation room in establishment no. 12 either. Sterilisation is done in the so-called dry-air steriliser in the dentist's room. The dentist has undergone continuous medical training programme – control of infections related to dental services. There are also shortcomings in the disinfection and sterilisation procedures conducted in the dentist's room in penitentiary establishment no. 15.³³³ It is imperative to ensure that there are sterilisation rooms arranged in accordance with the requisite standards in each penitentiary establishment.

331 03.10.2016.

332 The inspection of penitentiary establishment no. 11 was carried out by the Medical Regulation Division on 8 November 2016.

333 The inspection of penitentiary establishment no. 15 was carried out by the Medical Regulation Division on 28 July and 9 August 2016.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure that all prisoners suffering from tuberculosis are placed in the tuberculosis treatment and rehabilitation centre for adequate treatment of tuberculosis incidents;
- To ensure the full observance of infection control standards in each penitentiary establishment; and
- To ensure the accessibility of information related to preventive health care for prisoners.

3.9.8. FOOD AND DRINKING WATER

Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality, well prepared and served³³⁴. The food norms in penitentiary establishments are determined by the joint order of the Minister of Corrections of Georgia and the Minister of Health, Labour and Social Affairs of Georgia.³³⁵ The same order has approved the special (dietary) nutritional needs of prisoners.

The Special Preventive Group, during the monitoring visits, inspected the best before dates for food products in the penitentiary establishments' dining hall; breaches have not been identified. However the majority of the prisoners placed in penitentiary establishments expressed their indignation concerning the quantity, quality and taste of the food given to them.

The National Food Agency conducts food /animal food safety, veterinary and phytosanitary control. State control is carried out through the following mechanisms: inspection, monitoring, supervision, document check and taking samples.³³⁶

Regarding inspecting the dining halls of penitentiary establishments, the Public Defender of Georgia sent letters nos. 03-1/4437 and 03-3/10205 to the National Food Agency. According to correspondence no. 09/363 received from LEPL National Food Agency on 10 June 2016, an inspection was carried out in penitentiary establishment no. 6 on 17 February 2016. However, the inspection results are not known. According to correspondence no. 09/7238, received from the National Food Agency on 23 September 2016, penitentiary establishment no. 9 was inspected on 13 September 2016. No violations have been identified.

The National Food Agency needs permission of the Ministry of Corrections for visiting penitentiary establishments. Therefore, visits to penitentiary establishments are made

334 The Nelson Mandela Rules Rule 22.1; the European Prison Rules, Rule 22.1-22.6.

335 Approved by Order no. 88-no. 01-34/n of 13 August 2015.

336 Order no. 2-3 of the Minister of Agriculture of Georgia of 14 January 2011 approving the Statute of LEPL National Food Agency.

based on the prior notification of the Ministry. Therefore, there is a high probability that on inspection days the dining hall personnel prepare better quality food than before and after inspections. Such probability questions the credibility of the findings of the National Food Agency. The Public Defender of Georgia commends the practice of the National Food Agency for inspecting dining halls of penitentiary establishments. However, the Public Defender wishes to emphasise that any inspection should be carried out unexpectedly, without any prior notification and inspections results should be made accessible for any interested party.

Prisoners shall, subject to the requirements of hygiene, good order and security, be entitled to purchase or otherwise obtain goods, including food and drink for their personal use at prices that are not abnormally higher than those in free society.³³⁷ There is a shop in each penitentiary establishment where prisoners may buy additional food products and primary hygiene products. According to prisoners, they do not have the list of the products (with prices) available in shops. They also complain about the lack of products and high prices. The Special Preventive Group examined this issue and found out that the shops of penitentiary establishments do not have the list of products they could provide to prisoners. The Group also compared the prices of the products in the shops of penitentiary establishments with the prices in the shops outside establishments and this comparison showed that the prices in the shops of penitentiary establishments are higher by 10-20%. The dire economic situation of the prisoners in penitentiary establishments should also be taken into consideration.

Under the Imprisonment Code, with the permission of the Director of the Department, a remand/convicted person may receive additional food products and articles of prime necessity in the form of a parcel.³³⁸ In accordance with the statutes of penitentiary establishments, prisoners can receive all kinds of fruit, except for berries, grapes, melon and watermelon, not more than 5 kg in total in parcels,. It should also be pointed out that prisoners receive mostly apples, bananas and pears in parcels. Considering the fact that fruit is only given in the form of compote in the menu of prison establishments, receiving the maximum of 5 kg fruit in a parcel is insufficient. This is particularly problematic for those prisoners whose families do not live in the nearby or who cannot afford to send fruit frequently.

Under the European Prison Rules, clean drinking water shall be available to prisoners at all times.³³⁹ The problem of uninterrupted water supply is still not solved in penitentiary establishment no. 3, where prisoners get water according to schedule. It is imperative that all penitentiary establishments take measures for ensuring uninterrupted supply of drinking water. Penitentiary establishment no. 17 has 24-hour supply of drinking water and has a 60-ton reservoir too. In case of water cuts, water is supplied from an auxiliary tank according to schedule. However, the prisoners in this establishment claim that drinking water has a specific taste from time to time. According to the administration of the establishment, water is supplied by LTD Rustavi Water and its quality is not inspected at the spot. It is imperative to ensure that the quality of the drinking water supplied to penitentiary establishments is regularly controlled. The Public Defender observes that the

337 The European Prison Rules, Rule 31.5.

338 Article 23.6.

339 Rule 22.5.

National Food Agency, in parallel to the dining halls of penitentiary establishments, should also inspect the quality of drinking water.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure amendment of the statutes of penitentiary establishments to the effect of increasing the total amount of fruit;
- To take all necessary measures for ensuring adequate provision of shops in penitentiary establishments; also to ensure that the products available in the shops are reasonably priced;
- To take all necessary measures to ensure that the list of the products (and the prices) available in the shops of penitentiary establishments are accessible to prisoners;
- To take all necessary measures to solve the problem of water supply in penitentiary establishment no. 3; and
- To ensure that permission to entry is issued for the National Food Agency for a reasonable period (e.g., for six months) so that the representatives of the agency could conduct inspections in penitentiary establishments unexpectedly without prior notification.

TO THE HEAD OF THE NATIONAL FOOD AGENCY:

- To ensure that regular visits are made to penitentiary establishments without prior notifications and dining halls and drinking water are inspected and inspections results are made accessible for any interested party.

3.10. SPECIAL CATEGORIES

3.10.1. JUVENILE PRISONERS

An remand minor who has been detained as a pre-trial restriction shall be placed in the juvenile section of a detention facility, and a convicted minor who has been sentenced to imprisonment shall be placed in a juvenile rehabilitation facility. Services in detention and prison facilities where remand or convicted minors are placed shall meet the requirements for the health care of minors and respect the dignity of minors.³⁴⁰ According to the commentary to the Beijing Rules, if a juvenile must be institutionalised, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements

³⁴⁰ Juvenile Justice Code, Article 79.1.

for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to 'open' over 'closed' institutions.³⁴¹

A convict who has not attained the age of 18 at the moment of admission to a penitentiary establishment shall be placed in rehabilitation establishment no. 11 for juveniles.³⁴² Juvenile remand/convicted prisoners are also placed in penitentiary establishments nos. 2 and 8.

Despite the fact that juvenile prisoners are placed in an isolated residential building at penitentiary establishments nos. 2 and 8, they still can interact with adult prisoners, for instance, when an remand or convicted juvenile is brought to meet with a lawyer or a legal representative. Besides, the adult convicts who are enrolled in economic services take food to each cell, despite the fact that they perform this function under the supervision of a staff member.

An remand or convicted minor may be temporarily transferred to a different facility based on an order of the director of the Penitentiary Department and only if this is necessary for his/her security or the security of other minors.³⁴³ In 2016, in total, 9 convicts were removed from establishment no. 11. Out of this number, 6 convicts were removed when they attained the age of 18. 3 convicts were transferred from establishment no. 11 to establishments nos. 2 and 8 due to the security reasons. It is noteworthy that none of the convicts that were transferred to another establishment on the account of becoming of age had completed 12 years of education.

At the same time, in accordance with Article 90.3 of the Juvenile Justice Code,³⁴⁴ with the view of completing the studies, five convicts who attained the age of 18, applied to the administration with the request to be allowed to stay in the rehabilitation establishment and all of them were granted.

Regarding the legitimacy of the practice of transferring juveniles from establishment no. 11 to establishments nos. 8 and 2, the Public Defender recommended to the Minister of Corrections of Georgia on 13 April 2016.³⁴⁵ In his recommendation, the Public Defender emphasised that juvenile convicts should serve in a rehabilitation establishment and they should not be transferred to a closed-type prison facility for indefinite term and without reasoning. This significantly compromises rehabilitation and runs counter to the best interest of juvenile convicts. The Public Defender called upon the Minister of Corrections to ensure that each juvenile serves the sentence in a rehabilitation establishment no. 11

341 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985, Rule 19, see at: <http://www.un.org/documents/ga/res/40/a40r033.htm> [Last visited on 15.03.2017].

342 Imprisonment Code, Article 68.1.

343 Juvenile Justice Code, Article 89.

344 To re-socialise a convicted minor, or to provide general education and vocational training, a convicted person who has attained the age of 18 may, upon his/her personal application, be kept to serve his/her sentence in the same facility where he/she was serving the sentence before reaching the age of majority. The decision on this matter shall be made by the director of the Penitentiary Department based on the petition of the director of the facility.

345 Recommendation of the Public Defender of Georgia to the Minister of Corrections of Georgia, 13.04.2016, no. 10/3382.

with due respect to their rights and best interests. The Public Defender also pointed out that juveniles should be transferred to other establishments on the account of security reasons only as a measure of last resort, after alternative and more lenient statutory measures have been exhausted; such transfers should be adequately reasoned as a temporary measure.

In response to the above recommendation, the Public Defender of Georgia was informed that the removal and transfer of certain convicts to another establishment was caused by altercations that had taken place among juveniles and it was due to the extreme necessity as a more lenient punishment would not be effective.³⁴⁶

In the rehabilitation process of juvenile convicts, the particular importance should be attached to their involvement in rehabilitation and educational activities. The learning process in establishments nos. 2 and 8 only ensures the continuance of education; rehabilitation activities are not as diverse as in establishment no. 11.

It should be positively assessed that, in 2016, no disciplinary sanctions were imposed on juvenile convicts. As regards incentives, 24 convicts were officially commended for good behaviour and involvement in rehabilitation activities. This is a positive practice and it is important to be continued and enhanced in the future.

The Public Defender welcomes the adoption of the Joint Order of the Minister of Justice of Georgia, the Minister of Internal Affairs of Georgia and the Minister of Corrections of Georgia, which determined the Methodology, Procedure and Standard for Preparing an Individual Assessment Report.³⁴⁷ Under the said order, the maximum term for accomplishment of individual sentence planning is 12 months. In order to ensure its effective accomplishment, once in three months, the plan is revised; after six months, an interim report about progress/regress is drafted; the final report is written after a year; one month before the completion of the plan, its outcomes are assessed, revised and/or replaced by a new individual plan.³⁴⁸

The study of the documentation of juvenile convicts revealed that assessment and individual sentence planning works for each beneficiary. However, plans are of general nature and particular activities are not specified. For instance, there are frequent entries such as 'meeting with a psychologist' or 'meeting with a social worker'. However, there is no purpose, or topic, etc., specified. Therefore, it is impossible to see the full picture and the work identified by specialists.

The Public Defender emphasises the importance of the individual sentence planning for juveniles and observes that following the plan and its possible modification should be a constant process that would be tailored to the needs of a particular juvenile convict.

346 Letter no. MOC91600339130 of the Ministry of Corrections of Georgia, dated 25.04.2016.

347 Joint Order no. 132N95N23 of the Minister of Justice of Georgia, the Minister of Internal Affairs of Georgia and the Minister of Corrections of Georgia, dated 15 March 2016 approving the Methodology, Procedure and Standard for Preparing an Individual Assessment Report.

348 *Ibid.*, Annex 3, Articles 6, 8.

In accordance with the recommendation of the Committee of Ministers of the Council of Europe,³⁴⁹ an individual plan shall be drawn up listing those plans in which the juvenile shall participate. The objective of this plan shall be to enable juveniles from the outset of their detention to make the best use of their time and develop skills and competences that enable them to reintegrate into society. It is noteworthy that, in the reporting period, the majority of prisoners participated in numerous programmes. In the course of the entire year, establishment no. 11 offered convicted persons various psychosocial programmes, cultural and sporting activities.³⁵⁰

The Public Defender commends the adoption of a joint order of the Minister of Education and Science of Georgia and the Minister of Corrections of Georgia, which approved the Regulations for Receiving Complete General Education by Remand and Convicted Juveniles and Educational Process in Penitentiary Establishments of the Ministry of Corrections of Georgia. The order regulates in detail the procedure for receiving general education by juvenile prisoners.³⁵¹

There is a school functioning in establishment no. 11, which is linked with one of the public schools in Tbilisi. The sub-program of minors' general education is provided at the school. This enables minors to complete the programme as an external student and move to another step, as well as to receive a certificate after the completion of certification exams.

Unlike establishment no. 11, the educational programme in establishments nos. 8 and 2 is not linked to any of the public schools. Therefore, a document certifying the obtaining of general education is not issued. The above special educational programme aims at ensuring continuous education until the juveniles' stay in the establishment as remand. Therefore, prisoners do not show keen interest towards the learning process and often skip lessons.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty emphasises the importance of the contact of juveniles with the outside world: 'Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society.'³⁵² In rehabilitation establishment no. 11 for juveniles, the convicts have statutory rights to short, long and video visits and telephone calls.

349 Council of Europe, Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers' Deputies, Articles 79.1, 79.2; see in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [Last visited on 15.03.2017].

350 See in details about the rehabilitation activities carried out in establishment no. 11 in subchapter *Daily Schedule and Rehabilitation Activities*.

351 Order no. 110/n/N124 of the Minister of Education and Science of Georgia and the Minister of Corrections of Georgia, dated 1 September 2016, approving the Regulations for Receiving Complete General Education by Remand and Convicted Juveniles and Educational Process in Penitentiary Establishments of the Ministry of Corrections of Georgia.

352 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990, Article 59.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To take appropriate measures to ensure that all juvenile prisoners are placed in the rehabilitation establishment for juveniles;
- To take all necessary measures to ensure that a juveniles is transferred to another establishment if it is necessary due to security reasons and after alternative measures have proved ineffective; such transfers should be adequately reasoned as a temporary measure; and
- To take all measures to ensure that remand and convicted juveniles placed in establishments nos. 2 and 8 have the same opportunities for receiving education as the juveniles placed in establishment no. 11.

3.10.2. PROTECTION OF THE RIGHTS OF WOMEN PRISONERS IN PENITENTIARY ESTABLISHMENTS

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) invite Member States to take into consideration the specific needs and realities of women as prisoners when developing relevant legislation, procedures, policies and action plans.

Women prisoners, apart from establishment no. 5 are also placed in establishment no. 2. In 2016, in semi-open and closed-type special penitentiary establishment no. 5 for women,³⁵³ the average number of women prisoners amounted to 266.³⁵⁴ In the course of 2016, there were 55 remand and 46 convicted women³⁵⁵ in closed-type penitentiary establishment no. 2.

The Special Preventive Group found out during the monitoring that similar facilities and services tailored to the women's needs, available in establishment no. 5, are absent. Penitentiary no. 2 does not accommodate the specific needs of women prisoners and does not provide the same conditions as in establishment no. 5. Despite the recommendations made by the Public Defender in the 2015 post-visit report³⁵⁶, the involvement of women prisoners in rehabilitation activities remains problematic to date. Furthermore, the recommendation of the Public Defender on creating requisite conditions in penitentiary

353 Order no. 116 of the Minister of Corrections of Georgia on approving the Statute of penitentiary establishment no. 5 of the Ministry of Corrections of Georgia (hereinafter the statute of penitentiary establishment no. 5).

354 Minister of Corrections of Georgia, 2016 Report on Statistics of the Ministry of Corrections of Georgia (hereinafter, the Ministry's report), available at: <http://www.moc.gov.ge/ka/saqarthvelos-sasjelaghsrulebi-sa-da-probaciis-saministros-sistemis-statistikis-2016-tslis-angarishi> [Last visited on 10.02.2017].

355 Letter no. MOC 117 00037938 of the director of penitentiary establishment no. 2, dated 17 January 2017 (registered under no. 03-3/200 in the Office of the Public Defender of Georgia) (hereinafter letter of penitentiary establishment no. 2).

356 Report of the Public Defender of Georgia on the visit to penitentiary establishment no. 2 (1-2 July 2015), available at: <http://www.ombudsman.ge/uploads/other/3/3294.pdf> [Last visited on 19.02.2017] (hereinafter 2015 post-visit report on establishment no. 2).

establishment no. 2 for sports activities as well as organising regular and diverse sports activities also remains unfulfilled to date.³⁵⁷

Despite the recommendation made by the Public Defender in the Parliamentary Report of 2015, the situation regarding women's reproductive health care is still problematic in penitentiary establishment no. 2. There is no gynaecologist in the establishment and prisoners have to wait for a long time for a gynaecologist's visit. Similar to 2015,³⁵⁸ the provision of women with sanitary pads remained problematic in the reporting period.

In 2016, within the National Preventive Mechanism, the Special Preventive Group together with the Department of Gender Equality of the Office of the Public Defender of Georgia carried out monitoring at penitentiary establishment no. 5. The visit was aimed at inspecting the fulfilment of the recommendations made in 2015, identification of the needs of women prisoners and making recommendations based on the needs assessment. To this end, the monitoring group relied on the domestic legislation and the standards established by the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

The Public Defender of Georgia welcomes the steps made towards the fulfilment of the recommendations made in 2015. The Public Defender positively assesses the improvement of the transportation of women prisoners through the renewal of the auto park of the division of external protection and convoy of the Penitentiary Department.

Furthermore, the Public Defender commends the repair works done in penitentiary establishment no. 5 in 2016. Two special cells were arranged in the prison facility and two cells for the persons with disabilities; the examination/search room for remand and convicted persons was repaired; maintenance works were done in several wards, rooms and offices of the medical unit, including the offices of the personnel; and the repair works done in the shower room and hanging a curtain on the shower cubicle for privacy reasons are also positively assessed.

The Public Defender positively assesses the activities aimed at re-socialisation and public reintegration that have been carried out in penitentiary establishment no. 5. In this regard, the training sessions on preparation for release, coping with family related difficulties, and developing cognitive and social skills should be mentioned. The conduction of sporting and cultural activities, vocational, trade and educational training sessions are positively assessed.

It should be positively assessed that, in 2016, the number of imposition of disciplinary sanctions is almost halved. Furthermore, the fact that, in 2016,³⁵⁹ compared to the previous year,³⁶⁰ the number of giving incentives for participating in rehabilitation activities

357 Letter of penitentiary establishment no. 2.

358 Report of the Public Defender of Georgia on the visit to special penitentiary establishment no. 5 for women (19-20 February 2015), available at: <http://www.ombudsman.ge/uploads/other/3/3285.pdf> [Last visited on 19.02.2017] (hereinafter 2015 post-visit report on establishment no. 5).

359 Letter no. MOC 317 00036373 of the director of penitentiary establishment no. 5, dated 16 January 2017, (registered under no. 03-3/193 in the Office of the Public Defender of Georgia) (hereinafter letter of penitentiary establishment no. 5).

360 In 2015, 26 convicts were given incentives to participate in rehabilitation activities.

has increased is also welcomed. According to the data of 2016, short visits have not been restricted.

Despite the positive developments, there are problems that considerably affect the situation of women prisoners.

Despite the fact that the majority of the women prisoners are not high risk prisoners, the security measure such as full body search is used routinely, without any justification and individual risk assessment.

According to the information submitted by the director of penitentiary establishment no. 5, full body (cavity) search/examination was used towards 1574 prisoners upon admission to the establishment and upon leaving the establishment, 1469 prisoners were subjected to full body (cavity) search. The full body search includes strip search and cavity search conducted by a health-care professional.³⁶¹

According to the letter received from the director of penitentiary establishment no. 5, in 2016, during the full body (cavity) search/examination of remand and convicted persons, no illegal objects were found within the body.³⁶² The fact that in the course of the entire year no illegal objects were found during the full body (cavity) search of the remand and convicted persons shows that there is no need for excessive security measures in the establishment.

During conversations with the Special Preventive Group members, the majority of prisoners stated that on each occasion of entering the establishment, they were offered to either undergo full strip search or, as an alternative, an internal, gynaecological search. According to the prisoners, in such cases, they are compelled to opt for strip search. According to the information given by the women prisoners, strip search in practice means taking clothes off from all parts of the body at the same time. Furthermore, they are forced to do squats when naked, including during menstrual periods. Some of the prisoners also stated that together with strip search they had to undergo additional scans.

Apart from the fact that there is no justification based on individual circumstances when subjecting a woman prisoner to full body search, the method of conducting these searches is problematic as well. During a full body search, the request to take off clothes from all parts of the body simultaneously is in violation of international standards.³⁶³ Furthermore, request to 'do squats' has no legal basis, and therefore such requests are illegal.

According to the women prisoners, instruments used for their medical examination are not sterilised. The cover of the gynaecology chair is not for single use; doctors are not provided with disposable gloves either.

361 Order no. 116 of the Minister of Corrections of Georgia on approving the statute of penitentiary establishment no. 5 of the Ministry of Corrections of Georgia, Article 22.4, and Article 22.9.

362 Letter of penitentiary establishment no. 5.

363 Council of Europe, Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014, published on 31 March 2015, para. 85, available at: [http://hudoc.cpt.coe.int/eng#{"fulltext":\["squat"\],"CPTSectionID":\["p-cze-20140401-en-30"\]}](http://hudoc.cpt.coe.int/eng#{) [Last visited on 10.02.2017].

Prisoners complained to the members of the Special Preventive Group that minors visiting the establishment are strip-searched. According to one of the prisoners, the children visiting her in the establishment were made to remove their underwear and do squats, which offended the children a great deal. It should be stressed that requiring children to strip search violated international standards.³⁶⁴

Under the Bangkok Rules, effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff that have been properly trained in appropriate searching methods and in accordance with established procedures. Alternative screening methods such as scans shall be developed to replace strip searches and invasive body searches to avoid the harmful psychological and possible physical impact of invasive body searches.³⁶⁵

In the Parliamentary Report of 2015, the Public defender of Georgia recommended to the Minister of Corrections to replace aggressive (invasive) body searches with alternative methods such as scans. The Public Defender commends the steps made towards the fulfilment of this recommendation. The installation of the scanner in the establishment is positively assessed. However, as it turned out during the monitoring, the scanner as an alternative method of body search is not always used. It should be stressed that the use of a scanner as an alternative method does not imply its use along with the full body search, but as an alternative to the full body search (strip search and gynaecological search) and other additional search methods should not be used after scans.

As regards the infrastructure of the penitentiary establishment, adequate artificial ventilation in the residential cells is absent. The sanitation and hygiene conditions of the cells in the prison facility are unsatisfactory and the cells need repairs. There is no hot water running in the cells, prisoners have to hand wash their clothes right under the tap, in cold water. For personal hygiene, they heat water by a water boiler. According to the prisoners in the prison facility, their time in shower is limited (as the prisoners allege they are only given 15-20 minutes). The prisoners complain about the quality of the drinking water.

The walking yards in the prison facility are visually not different from cells. There is no space for the prisoners in the prison facility for physical activities and exercise.

The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.³⁶⁶

364 Under the Nelson Mandela Rules, body cavity searches should be minimised with respect to visitors and should not be applied to children.

365 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 19, 20.

366 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 4.

Under the Bangkok Rules, prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organisations, shall design and implement comprehensive pre-release and post-release reintegration programmes which take into account the gender-specific needs of women.³⁶⁷

During the monitoring visits made by the Special Preventive Group, the prisoners living in building A told the group members that they were not treated in the same way as the prisoners accommodated in buildings B and C. The residents of building A faced problems in terms of regular access to a computer, gym, and a salon unlike those accommodated in buildings B and C. It is noteworthy that the same problem was communicated to the Special Preventive Group during its visit to the penitentiary establishment in 2015 (19-20 February). Therefore, the respective recommendation has not been fulfilled to date.

The Public Defender of Georgia observed in his recommendation given in 2015 that the process of successful re-socialisation requires a complex approach, which implies the elaboration of a well thought plan comprising both the activities of a general nature and individual approach. According to this plan, the main aspects of re-socialisation cannot be determined based on the crime committed, imposed sentence, the personality of an offender and his/her psychological state of mind and behaviour.

The Public Defender welcomes the steps made towards the introduction of individual sentence planning for women prisoners. However, plans are of general nature and particular activities are not specified that should be accomplished in the process of women convicts.

The individual plans do not give the full picture about prisoners' needs and the work planned or accomplished as the result of identification of problems by specialists. Therefore, the position of the Public Defender remains the same regarding the elaboration of a well-thought action plan and individual approaches during selection of programmes for re-socialisation purposes.

It should be emphasised that an important component of rehabilitation is psychological support to prisoners. Under the Bangkok rules, particular efforts shall be made to provide appropriate services to women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.³⁶⁸ It should be mentioned that the penitentiary establishment does not employ a clinical psychologist; psycho diagnostic researches are either absent or any other individual and group psycho-therapeutic activities are not conducted.

The Nelson Mandel Rules consider employment as one of the means of prisoners' re-socialisation. Sentenced prisoners shall have the opportunity to work and/or participate actively in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals. The organisation and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons to prepare prisoners for the conditions of normal occupational life. Within the limits compatible with proper vocational selection and with the requirements of institutional

367 The Bangkok Rules, Rule 46.

368 The Bangkok Rules, Rule 42.4.

administration and discipline, prisoners shall be able to choose the type of work they wish to perform.³⁶⁹

Under the Nelson Mandela Rules, so far as possible the work provided shall be such that it will maintain or increase the prisoners' ability to earn an honest living after release. The Public Defender of Georgia positively assesses the fact that penitentiary establishment no. 5 is the front-runner in terms of offering targeted and diverse rehabilitation programmes to prisoner. In this regard, the practice of offering vocational and trade courses is to be mentioned.

The Public Defender positively assesses the increase in the number of prisoners employed in economic services in penitentiary establishment no. 5 in 2016,³⁷⁰ compared to 2015.³⁷¹ The Public Defender, however, observes that the establishment should introduce the practice of offering prisoners work that will help them enhance their qualification and use the obtained experience after release.

In their conversations with the members of the Special Preventive Group, several prisoners placed in penitentiary establishment no. 5 mentioned the indifferent and nonchalant attitude of the medical personnel. According to some prisoners, doctors do not explain to them and do not give any information about the progress of their diseases and related risk factors. Some of the prisoners complained about the accessibility of medicines.

The Public Defender of Georgia commends the provision of the requisite infrastructure for long visits in penitentiary establishment no. 5. It should be pointed out that 58 long visits were made to penitentiary establishment no. 5 in 2016.

The Public Defender negatively assesses the draft amendment proposed by the Ministry of Corrections of Georgia concerning the use of a family visit by a woman prisoner based only on the submission of the director of a penitentiary establishment and the consent of the Director of the Penitentiary Department.

3.10.3. THE SITUATION OF MOTHERS AND CHILDREN

In accordance with the Bangkok Rules, 'decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.'³⁷² After the visit to establishment no. 5 in 2015, in his post-visit report, the Public Defender of Georgia recommended to ensure that separation of a child from its mother was not based only on formal rules and that

369 The Nelson Mandela Rules, Rules 96-99.

370 In 2016, there were 36 convicts employed in the economic services of the penitentiary establishment, see, letter of penitentiary establishment no. 5.

371 In 2015, there were 17 convicts employed in the economic services of the penitentiary establishment, see, the Report of the National Preventive Mechanism on its visit to special penitentiary establishment no. 5 for women (19-20 February 2015), p. 12, available at: <http://www.ombudsman.ge/uploads/other/3/3285.pdf> [Last visited on 10.02.2017].

372 United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), Rule 52.

psychological state of a child and the stage of its development should also be taken into account.³⁷³

The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

Taking into consideration the best interests of a child, women prisoners should be allowed to find a custodian for their children. In such cases, the Bangkok rules even allows release for a reasonable period – ‘prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children’. The best interests of the child should be taken into consideration during taking any decision and it should be counterbalanced with the public interests related to the penitentiary system.³⁷⁴

In his post-visit report, the Public Defender of Georgia requested the revision of the procedures for the removal of children from the establishment and their improvement with due account to the best interests of a child. The purpose of the recommendation was to ensure the adaptation of a child with the outside world and minimise the trauma related to separation from its mother.³⁷⁵

The Public Defender commends the draft amendments to the Imprisonment Code and related legislative acts aimed at laying down the regulations governing mothers leaving the penitentiary establishment.

Under the draft amendment, upon attaining the age of three, a child will leave the establishment of deprivation of liberty so that the child could adapt to the outside world and minimise the child’s trauma due to separation from mother. These changes will be made to Article 72 of the Imprisonment Code, namely a women convict that has a child up to three years of age in the establishment and due to attaining the age of three, the child was removed from the establishment, the mother will be allowed, based on the decision of the Director of the penitentiary establishment, to leave the establishment on weekends in the course of one year. When making the decision, the following factors will be taken into consideration: the threat to the public posed by the convict, her personal attributes, criminal record, the nature of the crime, its motive, objective and the outcome, the behaviour in the process of serving the sentence and other circumstances that will be taken into account by the establishment’s director.

373 Report by the Public Defender of Georgia on the Visit to Special Establishment no. 5 for Women (19-20 February 2015) available at: <http://www.ombudsman.ge/uploads/other/3/3285.pdf> [Last visited on 19.02.2017].

374 United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), Rule 52.2.3.

375 Post Visit Report by the Public Defender of Georgia.

The Public Defender positively assesses the determination of the draft law of the obligation to start work for the elaboration of the procedure and conditions in the transitory provisions whereby a child will leave the establishment of deprivation of liberty upon attaining the age of 3. The Public Defender will observe the elaboration of the above procedure and its implementation.

Under the Bangkok Rules³⁷⁶ and the Nelson Mandela Rules,³⁷⁷ children in prison with their mothers shall never be treated as prisoners. In 2016, 32 children were placed in the unit for mothers and children at establishment no. 5.

The environment provided for such children's upbringing shall be as close as possible to that of a child living outside the prison.³⁷⁸ The living conditions and hygiene situation of the residential building for mothers and children are satisfactory. The Public Defender positively assesses the accomplishment of the recommendation made in 2015. The Public Defender commends the refurbishing and accomplishment of repair works in the residential building for mothers and children.

The Public Defender of Georgia positively assesses the fact that children are provided with planned medical treatment, with adequate food and means of hygiene. A paediatrician pays planned visits once a week, but it is also possible to call in a doctor; the paediatrician orders food for children according to their needs. The provision of mothers and children with food and hygiene items is positively assessed.

The Public Defender of Georgia negatively assesses the fact that a psychologist cannot work with mothers in the establishment. There are no specific psychological educational sessions on developing child upbringing and care skills. Due to the absence of the trained staff, psycho diagnostic researches are not conducted.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To take all necessary measures to ensure that women prisoners in establishment no. 2 are provided regular consultations on reproductive health care with a gynaecologist;
- To take all measures to ensure that women prisoners in penitentiary establishment no. 2 are provided with sanitary pads;
- To take all measures to ensure that rehabilitation activities tailored to the needs of women prisoners are offered to them in penitentiary establishment no. 2;
- To take all necessary measures to ensure that upon admission to a penitentiary establishment the search of women prisoners are conducted in the manner not degrading to their dignity;

376 The Bangkok Rules, Rule 49.

377 The Nelson Mandela Rules, Rule 29.2.

378 *Ibid.*, Rule 51.

- To take all measures to ensure that hot water is provided to women in cells for hygiene procedures;
- To take all measures that individual sentence planning for women prisoners contain specific activities which should be implemented in the rehabilitation process of convicted women;
- To ensure introduction of the practice of offering prisoners work that will help them enhance their qualification and use the obtained experience after release;
- To take all measure to ensure that in the process of separation of the mother and the child, psychological state of a child and the stage of its development is taken into account to a maximum degree and decisions are made based on the best interests of the child;
- To take all measures to ensure that psycho-diagnostic researches are conducted in the establishment and psychologists counsel mothers with a up to three-old child;
- To take all measures to ensure that women prisoners with a up to three-old child can benefit from special psychological educational sessions on developing child upbringing and care skills; and
- To take all measures to ensure that the prisoners living in building A, similar to the prisoners accommodated in buildings B and C have access to a computer, gym, and a salon.

3.10.4. THE PERSONS SENTENCED TO LIFE IMPRISONMENT

The persons sentenced to life imprisonment are placed in establishments nos. 6, 7 and 8 of the Penitentiary Department. These persons fall under the category of particularly vulnerable group. Accordingly, the treatment shall be such that will encourage their self-respect and develop their sense of responsibility.³⁷⁹

In accordance with the Recommendation of the Committee of Ministers of the Council of Europe, to prevent and counteract the damaging effects on life caused by long-term sentences, prison administrations should seek, inter alia, to offer adequate material conditions and opportunities for physical, intellectual and emotional stimulation and allow contacts with the outside world to the maximum degree.³⁸⁰

379 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rules 65 and 66.

380 Council of Europe, Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, Adopted by the Committee of Ministers on 9 October 2003, paras 21-25, available at: [https://www.coe.int/t/dghl/standard-setting/cdpc/\(Rec%20_2003_%2023%20E%20Manag%20PRISON%20ADM%20Life%20Sent%20Pris%20%20REPORT%2015_205\).pdf](https://www.coe.int/t/dghl/standard-setting/cdpc/(Rec%20_2003_%2023%20E%20Manag%20PRISON%20ADM%20Life%20Sent%20Pris%20%20REPORT%2015_205).pdf) [Last visited on 02.03.2017].

It should be noted that despite the recommendation made by the Public Defender in the Parliamentary Report of 2015 to the penitentiary establishments, accommodating the persons sentenced to life imprisonment, they did not carry out diverse and systematic rehabilitation activities in 2016. In particular, in the course of the reporting period, rehabilitation activities were not at all carried out in penitentiary establishments nos. 6 and 7. According to the letter of the director of penitentiary establishment no. 6, as the establishment under his charge is a high risk prison facility, no rehabilitation activities aimed at receiving professional education, or learning a trade, etc., have been carried out for the prisoners placed at the establishment due to security reasons.³⁸¹

As regards establishment no. 8, several persons sentenced to life imprisonment took part in educational and professional programmes (English language courses, driving courses, and Georgian language course) which is commendable. However, it is hard to consider the above-mentioned programmes to be regular, purposeful, and diverse activities that are tailored to individual needs. Therefore, the recommendation of the Public Defender of Georgia remains the same, namely, the persons sentenced to life imprisonment should be given an opportunity to participate in purposeful and diverse activities aimed at rehabilitation as well employment opportunities.

Under the recommendation of the Committee of Ministers of the Council of Europe, particular importance should be paid to ensuring that prisoners sentenced for life and other long-term sentences are given incentives to participate in drawing up their individual sentence plans.³⁸²

In 2015, the Public Defender of Georgia, recommended to the Minister of Corrections of Georgia to ensure the introduction of individual sentence planning for the persons sentenced to life imprisonment. The Public Defender commends the introduction of pilot programme of individual sentence planning for the persons sentenced to life imprisonment in establishment no. 8. However, the conversations held by the Special Preventive Group members with convicts revealed that the majority of them did not know anything about this programme.

The Special Preventive Group examined individual sentence planning for several persons sentenced to life imprisonment. The plans give general information about a convict's criminal record, dependence on alcohol and drugs, life style, values and interests. However, the plans are of general nature and do not contain specific actions that have to be carried out in the rehabilitation process of the persons sentenced to life imprisonment. The individual plans do not give a full picture about the needs of a convict or the activities that have already been implemented by a specialist after the identification of the challenges, or the activities that are planned to be carried out in the future.

It is imperative that persons sentenced to life imprisonment are given an opportunity, under requisite supervision, to communicate with their family members and friends, both through correspondence and visits within regular intervals.

381 Letter no. MOC7 17 00040633 of the head of penitentiary establishment no. 6, dated 17 January 2017 (registered under no. 03-3/205 in the Office of the Public Defender of Georgia).

382 Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies).

The European Committee for the Prevention of Torture emphasises in its report that the number of visits should not depend on the type of an establishment and the crime committed by a convict. It is imperative that life-sentenced prisoners are given more short and long visits that would facilitate maintaining strong ties with their family and contribute to their rehabilitation.³⁸³

Life-sentenced prisoners may enjoy 1 short visit a month and 1 additional short visit as an incentive.³⁸⁴ Furthermore, life-sentenced prisoners may enjoy 2 long visits a year and 1 additional long visit as an incentive.³⁸⁵

The Public Defender observes that the number of visits should not depend on the type of an establishment and the crime committed by a convict. It should be taken into account that maintaining strong family ties is particularly important for life-sentenced persons and it can have a positive impact on the process of rehabilitation as well. Therefore, the Public Defender of Georgia observes that it is imperative to increase the number of short and long visits for the persons sentenced with life imprisonment.

The Public Defender commends the provision of the persons sentenced to life imprisonment with infrastructure designed for long visits in establishment no. 6. The practice of transferring life-sentenced persons from penitentiary establishment no. 8 to establishment no. 6 for long visits is also positively mentioned. However, the Public Defender emphasises that it is necessary to provide appropriate infrastructure for long visits in establishment no. 8 as well. Unfortunately, life-sentenced prisoners in establishment no. 7 could not use long visits in the course of the reporting year.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To take all necessary measures to ensure that the persons sentenced to life imprisonment are provided with diverse and systematic rehabilitation activities;
- To take all necessary measures to ensure the introduction of individual sentence planning tailored to the needs of the persons sentenced to life imprisonment;
- To take all necessary measures to ensure that that the persons sentenced to life imprisonment are given an opportunity to be employed if they wish so;
- To take all necessary measures to ensure that the persons sentenced to life imprisonment have maximum support in maintaining family ties; and

383 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2015, available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last visited on 14.03.2017].

384 Imprisonment Code of Georgia, Article 65.1.b).

385 *Ibid.*, Article 65.1.d).

- To ensure drafting an amendment to the Imprisonment Code to the effect of increasing the number of short and long visits for the persons sentenced to life imprisonment; to submit the draft law to the Government of Georgia for its initiation before the Parliament of Georgia.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To amend the Imprisonment Code to the effect of increasing the number of short and long visits for the persons sentenced to life imprisonment.

3.10.5. REMAND PRISONERS

In the reporting period, remand prisoners were placed in penitentiary establishments nos. 2, 3, 5, 6, 7, 8 and 9. In December 2016, there were 1,104 remand prisoners; among them were 42 women and 3 minors.

The Imprisonment Code stipulates the obligation of a designated person, immediately upon the admission of an remand person to a facility, to allow him/her to read written information about his/her rights and obligations, including the procedure for filing complaints and appeals provided by law.³⁸⁶ However, monitoring conducted by the Special Preventive Group revealed that remand persons do not have adequate information about their own rights.

Under the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), untried prisoners shall be kept separate from convicted prisoners.³⁸⁷ However, despite this requirement, during the monitoring visits conducted by the Special Preventive Group, remand and convicted persons were placed together in establishments nos. 2 and 8.

Under the Imprisonment Code,³⁸⁸ living space standard per an remand person in a detention facility shall not be less than 3 m². Under the recommendation of the European Committee for the Prevention of Torture, living space standard per each prisoner shall not be less than 4 m².³⁸⁹ Therefore, the Public Defender of Georgia observes that the penitentiary establishments should afford the living space of minimum 4m² per each prisoner.

Despite numerous recommendations made by the Public Defender of Georgia, the remand prisoners placed in penitentiary establishments are not provided with the living space of minimum 4m².

There are no rehabilitation programmes for remand prisoners in penitentiary establishments. The only activity that remand prisoners can benefit from is one-hour walk in the

³⁸⁶ Imprisonment Code, Article 97.1.

³⁸⁷ Rule 112.

³⁸⁸ Imprisonment Code, Article 15.3.

³⁸⁹ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2015, available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last visited on 22.02.2017].

daytime.³⁹⁰ As the monitoring conducted by the Special Preventive Group showed, remand persons, while spending all the time in a cell, do not have any opportunity to be engaged in activities interesting to them. The Public Defender of Georgia observed in the Parliamentary Report of 2015 that involvement of remand prisoners in rehabilitation programmes would have a positive effect on their health and well-being. The Public Defender recommended to the Minister of Corrections concerning these issues. However, this recommendation has not been fulfilled to date.

Under Rule 99 of the European Prison Rules, unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners, like other convicted prisoners, shall avail visits and shall be allowed to communicate with family and other persons. The United Nations Special Rapporteur on torture in the report on his mission to Georgia in 2015 pointed out the presumption of innocence of remand prisoners and stressed the importance of maintaining their family ties.³⁹¹

Under the Imprisonment Code of Georgia, a remand person has the right to a short visit, correspondence and telephone calls.³⁹² Before 1 January 2016, remand persons needed the permission of an investigator, a prosecutor or a court for short visits, correspondence and telephone calls. Since 1 January 2016, these limitations have been lifted. However, in exceptional cases, a remand person may be restricted in his/her right to use short visit based on a reasoned resolution of an investigator or a prosecutor.³⁹³ A remand person may be restricted in his/her right to correspondence and phone calls based on a reasoned decision of an investigator or a prosecutor.³⁹⁴

In 2016, remand persons were restricted in their rights to short visits, correspondence and telephone calls on 336 occasions.

The Public Defender stresses that it is imperative to restrict the contacts with the outside world only in exceptional cases. It should be used for the legitimate interests of investigation and under no circumstances should it amount to an additional punishment. Therefore, in order to avert any abuse of power on the part of an investigator/a prosecutor, every such restriction should seek legitimate interests of investigation and should be expressly reasoned.

The Imprisonment Code in force does not provide for the right of remand prisoners to long visits. In the opinion of the Public Defender of Georgia, this restriction is unjustified and in breach of the well-established case-law of the European Court of Human Rights.³⁹⁵

390 Imprisonment Code, Article 14.1.g).

391 Report of the Special Rapporteur of the United Nations, 6 November, 2015.

392 Imprisonment Code, Articles 77 and 79.

393 Imprisonment Code, Article 79.

394 Imprisonment Code, Article 79.

395 *Varnas v. Lithuania*, application no. 42615/06, judgment of the European Court of Human Rights of 9 July 2013. As to the reasonableness of the justification of difference in treatment between remand detainees and convicted prisoners, the Court acknowledges that the applicant in the present case had been charged with belonging to a criminal association and to an organised group involved in multiple car thefts. However, it also finds that the security considerations relating to any criminal family links were absent in the present case. The Court observed that the applicant's wife was neither a witness nor a co-remand in the criminal cases against her husband, which removed the risk of collusion or other forms of obstructing the process of collecting evidence. The Court eventually found that there had been a violation of Article 14 (prohibition of

Therefore, the Public Defender observes that the Imprisonment Code should be amended to the effect of determining the right of remand prisoners to long visits with due account to the interests of investigation.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To increase the time remand prisoners can spend daily in the open air;
- To take all necessary measures to insure the involvement of remand prisoners in rehabilitation activities;
- to ensure drafting of an amendment to the Imprisonment Code to the effect of determining a minimum living space of 4 m² for remand prisoners; to submit the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia; and
- to ensure drafting of an amendment to the Imprisonment Code to the effect of determining the right of remand prisoners to long visits; to submit the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To amend the Imprisonment Code to the effect of determining minimum living space of 4 m² for remand prisoners; and
- To amend the Imprisonment Code to the effect of determining the right of remand prisoners to long visits with due account to the interests of investigation.

3.10.6. PARTICULARLY VULNERABLE PERSONS³⁹⁶

LGBTI persons fall under the category of particularly vulnerable. Therefore, in those penitentiary establishments where persons deprived of their liberty are under full control of the state, the risks for discriminatory treatment, violence and stigmatisation are even higher.

In accordance with the recommendation of the Committee of Ministers of the Council of Europe, the Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian,

discrimination) in conjunction with Article 8 (the right to respect for private and family rights) of the Convention.

396 See this issue in detail in the Parliamentary Report by the Public Defender of Georgia of 2015, especially vulnerable groups, p. 134, available at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf>.

gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.³⁹⁷

According to the outcomes of the monitoring conducted by the Special Preventive Group of the Public Defender of Georgia, the prisoners enrolled in maintenance services, in charge of cleaning services, usually are not self-identified LGBTI persons. However, they are associated with LGBTI persons by other prisoners and this causes the difference in treatment. The prisoners in charge of cleaning services are referred to with offensive language by other prisoners and sometimes even the administrative personnel. This, in the opinion of the members of the Special Preventive Group, is caused by the influence of the criminal subculture existing in penitentiary establishments.

The prohibition of discrimination takes on particular importance when an inmate is subjected to difference in treatment. Under the well-established case-law of the European Court of Human Rights, where the distinction in question operates in this intimate and vulnerable sphere of an individual's private life, particularly weighty reasons have to be advanced before the Court to justify the measure complained about.³⁹⁸ Furthermore, an inmate should be separated from other prisoners, he or she should be placed in a location that meets his/her medical needs and well-being.³⁹⁹ The authorities have an obligation, which was incumbent on them under Article 14 of the Convention taken in conjunction with Article 3, to take all possible measures to determine whether a discriminatory attitude had played a role in adopting the measure totally excluding the applicant from prison life.⁴⁰⁰

Unfortunately, under the existing circumstances in penitentiary establishments, the prisoners employed in maintenance services, prisoners in charge of cleaning services, are stigmatised, isolated from the everyday life of the rest of the establishment and are marginalised. At the same time, there is a high risk of subjecting them to violence. There is an impression that the personnel of an establishment follow the informal rule of prison and turn a blind eye to the existing situation.

In the Parliamentary Report of 2015, the Public Defender of Georgia made numerous recommendations to the Minister of Corrections of Georgia concerning the measures that would contribute to the eradication of these problems. However, none of these recommendations has been fulfilled. With regard to the 6th⁴⁰¹ recommendation made by the

397 Council of Europe, Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, March 31, 2010, § 4;

398 *X v. Turkey*, application no. 24626/09, judgment of the European Court of Human Rights of 9 October 2012, para. 50; *Alekseyev v. Russia*, applications nos. 4916/07, 25924/08 and 14599/09, judgment of the European Court of Human Rights of 21 October 2010, para. 108; *Kozak v. Poland*, application no. 13102/02, judgment of the European Court of Human Rights of 2 March 2010, para. 83.

399 *Martzaklis and others v. Greece*, application no. 20378/13, judgment of the European Court of 9 July 2015, para. 71.

400 *X v. Turkey*, application no. 24626/09, judgment of the European Court of Human Rights of 9 October 2012, para. 55.

401 To take all necessary measures to enhance the support of psychologists and social workers with the prisoners employed in the economic service towards their acceptance among prisoners and for the prevention of

Public Defender, according to the response received from the Ministry of Corrections,⁴⁰² enhancement of social work is one of the priorities of the Ministry, since this work makes one of the most significant contributions to the process of a convicted person's rehabilitation and re-socialisation, which later decreases the incidents of recidivism. In 2016, as the result of the efforts of social workers and psychologists of the penitentiary establishments, it was possible to involve the convicted persons enrolled in maintenance services in the same rehabilitation activities that are offered to other convicted persons. According to the communication from the Ministry, presently some of the penitentiary establishments can already offer all convicted persons the same space for similar activities. In all penitentiary establishments, depending on the existing infrastructure, there is a place where remand/convicted persons can have confidential meetings with a psychologist. In 2016, psychologists and social workers of penitentiary establishments managed to involve 30 representatives of the particularly vulnerable group of prisoners enrolled in maintenance services in various psychological and rehabilitation programmes.

The Public Defender commends the steps made by the Ministry of Corrections towards involving the convicts falling under of particularly vulnerable categories in rehabilitation programmes. However, it should be pointed out that the situation in the penitentiary establishments in this regard has not changed compared to the previous year. As the Public Defender observed in the Parliamentary Report of 2015, stemming from the unwritten (informal) rules of the prison, the prisoners in charge of cleaning services and accommodated separately (barred out) are not allowed to have any physical contact or verbal communication with other convicts. According to the established rules, it is prohibited to speak with them, take an object handed by them, shake hands with them or acknowledge them in any way, use the items used by them and, in general, be in the same area with them. Accordingly, these prisoners are less involved in the existing rehabilitation or other activities implemented in penitentiary establishments. The administration explains such classification in terms of security reasons. It is considered that this is the only way to protect prisoners' interests and the regime of the penitentiary establishment.

Redeeming this situation necessitates considerable efforts from the Ministry of Corrections of Georgia. In the first place, it is necessary to acknowledge the problem in a timely fashion and start searching for the means for its solution. It is imperative to make coherent and decisive steps towards the eradication of the informal rule of the prison and establishment of the human rights based approach of the prison management.

Since none of the recommendations given last year have been fulfilled, for the protection of the rights of LGBTI persons, considering their special importance, the Public Defender of Georgia once again calls upon the Minister of Corrections of Georgia to tackle in full seriousness the accomplishment of the said recommendations.

self-isolation and self-harm. It is important to address specifically during the conversations with prisoners the notorious influence of the informal rule of the prison that contributes to violence among prisoners, as well as insults, stigmatisation and marginalisation.

402 The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure the elaboration of a strategy and guidance principles aimed at preventing discriminatory treatment of LGBTI prisoners on the account of sexual orientation and gender identity and eradicating discriminatory segregation;
- To ensure there are specific activities aimed at raising awareness among the personnel of penitentiary establishments about the rights of LGBTI persons, international standards and possible risks associated with the placement in closed institutions;
- To take all necessary measures, with regard to personnel, such as through enhanced control over the exercise of their rights and fulfilment of their duties in good faith, as well as through the use of disciplinary sanctions to prevent discriminatory and degrading treatment and treatment leading to stigmatisation of vulnerable persons in penitentiary establishments;
- To take all necessary measures to ensure that LGBTI prisoners, prisoners enrolled in maintenance service and in charge of cleaning services, are involved, in safe circumstances, in various rehabilitation, educational, sporting, cultural and other activities planned by penitentiary establishments;
- To ensure the involvement of the representative groups of the NGOs and other CSOs working on the rights of LGBTI persons in the process of elaboration and implementation of special programmes;
- To take all necessary measures to enhance the support of psychologists and social workers with the prisoners employed in the maintenance service towards their acceptance among prisoners and for the prevention of self-isolation and self-harm. It is important to specifically address during the conversations with prisoners the notorious influence of the informal rule of the prison that contributes to violence among prisoners, as well as insults, stigmatisation and marginalisation;
- To take all necessary measures to ensure that all convicts equally use the yard of a penitentiary establishment; and
- To take all necessary measures to ensure the involvement of the prisoners enrolled in maintenance service and LGBTI prisoners in rehabilitation programmes.

3.10.7. REPRESENTATIVES OF ETHNIC AND RELIGIOUS MINORITIES, FOREIGN CITIZENS AND STATELESS PERSONS

Foreign citizens and representatives of ethnic or religious minorities placed in penitentiary establishments fall under the category of particularly vulnerable prisoners. The par-

ticular problem is linguistic barrier because of which majority of prisoners do not know anything about their statutory entitlements. Under the European Prison Rules, linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison.⁴⁰³

Under the Nelson Mandela Rules, the information shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided.⁴⁰⁴ This implies provision of information about prison law and applicable prison regulations; his or her rights and obligations, and all other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.⁴⁰⁵

As of December 2016, there were foreign nationals from 35 countries and stateless persons in the penitentiary system of Georgia. By the end of December 2016, their number amounted to 338 (3.6% of the total number of remand and convicted persons).⁴⁰⁶

It should be pointed out that in penitentiary establishment no. 8, where in the course of 2016, 153 foreign prisoners/stateless prisoners were held annually on average, the services of an interpreter were used only 8 times in a year.⁴⁰⁷ Whereas in establishment no. 2, where the average annual number of foreign prisoners/stateless prisoners amounts to 50, the services of an interpreter were used 129 times a year.⁴⁰⁸ Furthermore, in establishment no. 5, where the average annual number of foreign prisoners/stateless prisoners amounts to 36, the services of an interpreter were used 112 times a year.⁴⁰⁹

However, in penitentiary establishment no. 9, where the average annual number of foreign prisoners/stateless prisoners amounts to 24, the services of an interpreter were not used at all during the year.⁴¹⁰

It can be concluded based on the presented data that there is no uniform practice of using the services of an interpreter in penitentiary establishments. In some of the penitentiary establishments, despite having a large number of foreign prisoners/stateless prisoners, the insignificant number of occasions where the services of interpreters were afforded shows that interpretation services are not adequately provided in these establishments.

The foreign prisoners, due to their language barriers, face problems in communication with prison personnel. It is especially problematic to maintain communication with the

403 European Prison Rules, Rule 38.3.

404 The Nelson Mandela Rules, Rule 55.

405 *Ibid.*, Rule 54.

406 The Ministry of Corrections of Georgia, the Unified Report on Penal Statistics, December 2016, available at: <http://www.moc.gov.ge/images/temp/2017/02/08/93746902cb8a5fb18b5c2f521e458623.pdf> [Last visited on 18.02.2017].

407 Letter no. MOC 617 00046221 of the director of penitentiary establishment no. 8, dated 20 January 2017 (registered under no. 03-3/273 at the Office of the Public Defender of Georgia).

408 Letter no. MOC 117 00037938 of the director of penitentiary establishment no. 2, dated 17 January 2017 (registered under no03-3/200 at the Office of the Public Defender of Georgia).

409 Letter no. MOC 317 00036373 of the director of penitentiary establishment no. 5, dated 16 January 2017 (registered under no. 03-3/193 at the Office of the Public Defender of Georgia).

410 Letter no. MOC 917 00044181 of the director of penitentiary establishment no. 9, dated 18 January 2017 (registered under no. 03-3/193 at the Office of the Public Defender of Georgia).

medical staff. Despite the fact that on some occasions an interpreter is called in, usually foreign prisoners face problems in communication with the personnel of their penitentiary establishment.

The Public Defender welcomes printing a brochure on the rights of foreign prisoners in various languages. However, due to the limited number of publications, sufficient copies are unavailable for all foreign prisoners. The Special Preventive Group members found out in their conversations with foreign prisoners that the convicts were not adequately informed about their rights in the language they would understand. The majority of them were not given the information translated in the language they would understand about their rights.⁴¹¹ Informing foreign prisoners about their rights is similarly problematic in penitentiary establishments. The Public Defender stresses that imparting this information to prisoners is important for ensuring prisoners follow the regime existing in the given penitentiary establishment and observe discipline.

Under the European Prison Rules, prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.⁴¹² It should be noted that despite the recommendations made by the Public Defender of Georgia in the Parliamentary Report of 2015, the dietary needs of various religions are not taken into consideration when preparing food in penitentiary establishments. Therefore, they frequently refuse to eat the food offered to them. It is, therefore, imperative to take into account the religious factor when preparing the menu.

Foreigners can experience particular isolation in prison as they may not speak the language or receive many visits from family and friends. Access to the outside world therefore takes on a heightened importance for them; for instance, maintain contacts with relatives, friends, representatives of consular services, various civil societies and volunteers. Telephone calls for detained prisoners in some cases are the only means to maintain ties with relatives. Under the recommendation of the Committee of Ministers of the Council of Europe, indigent foreign prisoners shall be assisted with the costs of communicating with the outside world.⁴¹³

Detaining authorities should seek alternate ways to ensure that foreign nationals are still able to maintain contact with their community; for example, providing additional or accumulated time to use the telephone, enabling them to call at hours that take into account the time differences, and where resources allow, financial assistance to cover the cost of international phone calls. Detainees should be charged the cheapest possible call rates for international calls.⁴¹⁴

411 The visits made by the Special Preventive Group in 2016.

412 European Prison Rules, Rule 22.1.

413 Council of Europe, Recommendation CM/Rec(2012)12 of the Committee of Ministers to Member States concerning foreign prisoners, adopted by the Committee of Ministers on 10 October 2012 at the 1152nd meeting of the Ministers' Deputies, para. 22.4, available in English at: [http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+\(2012\)+12+concerning+foreign+prisoners.pdf/a13a6dc6-facd-4aaa-9cc6-3bf875ac8b0f](http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2012)+12+concerning+foreign+prisoners.pdf/a13a6dc6-facd-4aaa-9cc6-3bf875ac8b0f) [Last visited on 13.02.2017];

414 Association for the Prevention of Torture (APT), Detention Focus; telephone contact with the outside world, available at: http://www.apr.ch/detention-focus/en/detention_issues/6/ [Last visited on 10.02.2017].

The members of the Special Preventive Group found out from the conversations with foreign prisoners that foreign prisoners face challenges in terms of communicating with their family members. According to the foreign prisoners, they cannot afford to talk frequently with their family members due to the cost of phone calls abroad. Besides, sending letters and receiving parcels appear to be costly for the foreign prisoners. It should be noted that due to geographical distance, foreign prisoners are practically deprived of the possibility to enjoy long and short visits with their relatives. The similar problems are faced by those citizens of Georgia whose family members reside outside the country.

The Public Defender observes that the Ministry of Corrections of Georgia should ensure that foreign prisoners, as well as those citizens of Georgia whose family members leave outside the country, should be able to make international calls and send correspondence at reasonable and accessible prices. The costs of the indigent prisoners for maintaining contacts with the outside world should be subsidised by the state.

Under the Imprisonment Code, if an remand/convicted person does not have his/her personal clothes, the administration shall provide him/her with special uniforms that are not degrading to human dignity, according to the season.⁴¹⁵ The monitoring conducted by the members of the Special Preventive group revealed that the provision of some of the foreign prisoners with clothing according to the season remains problematic.

During the monitoring visits, the Special Preventive Group found out that foreign prisoners, unlike other prisoners, could not participate in the activities available in their establishments. The foreign prisoners interviewed by the Special Preventive Group members claimed that there are no rehabilitation programmes run by penitentiary establishments for them stating language barriers as the main reason for that.

While there are the Georgian language courses offered by penitentiary establishments for foreign prisoners on some occasions, however, it should be noted that it is impossible to learn language within three-month and six-month courses; moreover, these courses are not systematic. According to some of the foreign prisoners, despite their wish, they were not given an opportunity to participate in the Georgian language courses.

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To take all necessary measures to ensure that foreign prisoners are adequately informed in the language understandable to them;
- To take all necessary measures to ensure that prisoners placed in all penitentiary establishments are handed a brochure about their rights and duties;
- To take all necessary measures to ensure that prisoners, if needs be, are provided by interpretation services;

⁴¹⁵ Imprisonment Code, Article 22.1.

- To take all necessary measures to ensure that foreign prisoners, as well those citizens of Georgia, whose family members live outside the country, are able to make international telephone calls and send correspondence at reasonable and accessible prices;
- To take all necessary measures to ensure that the costs of the indigent prisoners for maintaining the contacts with the outside world are subsidised by the state;
- To take all necessary measures to ensure that foreign prisoners are provided with the clothes according to season; and
- To take all necessary measures to ensure that foreign prisoners can participate in rehabilitation programmes.

4. THE SITUATION IN AGENCIES UNDER THE MINISTRY OF INTERNAL AFFAIRS

4.1. INTRODUCTION

The present chapter deals with the findings of the monitoring conducted by the National Preventive Mechanism in police divisions and temporary detention isolators within the Ministry of Internal Affairs of Georgia.

In 2016, monitoring was carried out in 58 police divisions and 27 temporary detention isolators. Apart from the monitoring visits, the members of the Special Preventive Group had meetings in regions with local lawyers and NGO representatives. The Special Preventive Group obtained information regarding protection of the rights of arrested persons and the situation in the regions. In total, six such meetings were held in 2016.

The members of the Special Preventive Group studied the arrestees log books in police divisions and registration journals of detained persons maintained in temporary detention isolators; visually examined the administrative buildings of police divisions; and interviewed division personnel.

The monitoring group members inspected isolators' infrastructure and interviewed personnel, detained persons, studied case-files in temporary detention isolators. For obtaining systematised information from case-files, the monitoring group used a specifically designed questionnaire.

In 2016, similar to 2015, the group members examined the case-files of all arrestees placed in isolators from 1 January 2016 until the day of the visit. The questionnaire was filled only in those cases where a particular case-file raised suspicions about the circumstances of an arrest, localisation, number and nature⁴¹⁶ of injuries. In total, 950 such case-

⁴¹⁶ The questionnaire would not be filled in if an arrestee only had scar marks, scabs or minor scratches.

files were studied. The qualitative analysis of the data obtained through the pre-designed questionnaire was performed using the Statistical Program (SPSS). For interviewing police officers, the Special Preventive Group used a pre-designed questionnaire. Furthermore, the Group requested additional information about involvement of lawyers and contacting families in particular cases. The monitoring group examined 439 case-files through the random sampling method.

In the course of preparing the report, six proposals sent by the Public Defender of Georgia to the Chief Prosecutor of Georgia in 2016 have also been applied. These proposals relate to the incidents of alleged violence by police officers against arrestees. In the process of the drafting the report, the data obtained from the Ministry of Internal Affairs have also been analysed; desk research of Georgian legislation and international standards was also performed.

4.2. GENERAL OVERVIEW

In 2016, the number of detained persons in temporary detention isolators is less in comparison to 2015. However, there is an increase in the number of placement of arrestees with injuries as well as the complaints lodged by them against the police. For the past four years, the average number of placement of arrestees with injuries as well as the complaints lodged by them against the police is the highest in 2016. Furthermore, in 2016, the number of incidents of injuries inflicted during arrests or thereafter has also increased, in comparison to 2015.

The monitoring revealed a trend of not registering injuries in arrest reports but described in external examination report; or external examination reports describe more bodily injuries than arrest reports. While this could be caused by shortcomings in examination and documentation of bodily injuries during arrest, there are serious misgivings that injuries might have been inflicted under police control.

During the study, those cases where analysed considering the arrest circumstances, it can be assumed with high probability that police would resort to force. However, it is clear that police officers are reluctant to indicate the use of force in arrest reports, which increases suspicions that they could have used excessive force and ill-treatment.

The Public Defender regretfully observes that there were incidents revealed in 2016 where persons were held in police custody when the measure was unlikely to be necessary. This is an extremely alarming practice as this is the situation where there is a high risk of physical violence and psychological pressure being exerted by the police. Accordingly, the Public Defender observes that it is necessary to transfer arrestees to temporary detention isolators as soon as possible as these are relatively secure places.

The Public Defender observes with regret that the Chief Prosecutor's Office maintained the previous practice of instituting criminal proceedings. Instead of instituting criminal proceedings regarding incidents of alleged torture and inhuman or degrading treatment; investigations are launched under Article 333 (abuse of official power) of the Criminal Code.

One of the problems that still persisted in the reporting period was the notorious practice of ‘conversations’ conducted in police vehicles or police stations without the consent of the persons concerned, which was dealt with in the 2015 Parliamentary Report of the Public Defender. As the members of the Special Preventive Group became aware, those persons who recently left a penitentiary establishment or those who are perceived as a risk group by police due to their criminal past or other reasons are the main target of this practice. The Public Defender observes that public order and security should not be maintained through unreasonable restriction of fundamental human rights.

As the result of the inspections carried out by the Special Preventive Group, it was revealed in a number of cases that the time of admission of persons to police station precedes the time of their formal arrest. In such cases, usually, a person is summoned as a witness, certain investigative actions are conducted with his/her participation and after the lapse of certain time, the person is formally arrested. However, the person is not read his/her rights (among them, right to a legal counsel) when he is brought as a witness to a police station; his/her personal items, including a mobile phone are taken away. This way, these persons are deliberately limited in their rights to contact their family and call a lawyer.

It is an alarming trend that out of the studied case-files almost in half of the cases arrestees had no lawyer at all. Besides, in those cases, where an arrestee did have a lawyer, the latter was involved in the proceedings after the lapse of certain time from the arrest (in one or two days).

In terms of accessibility to legal consultation, it is important to increase the number of legal aid lawyers employed in the bureaus of the Legal Aid Service. Requisite finances should be allocated to this end so that those persons who cannot afford to hire a legal counsel are promptly provided with effective legal services.

The Public Defender of Georgia positively assesses the approval of the Instructions on Medical Assistance of the Inmates of Temporary Detention Isolators. The Instructions are in compliance with the CPT standards and reflect the Public Defender’s recommendations made in the past years concerning timely and adequate medical services, medical ethics and documenting injuries, which is a step forward. At the same time, the Public Defender emphasises the importance of the accurate and comprehensive implementation of the Instructions. The Public Defender also calls upon the Ministry of Internal Affairs to consider creating additional safeguards for isolators’ medical personnel by transferring the system to the Ministry of Health-Care.

In the opinion of the Public Defender, the confidentiality of the initial medical examination of persons placed in isolators remains a challenge. Usually, there is a notice in external examination reports and examination is conducted by a doctor, which means that a health-care professional and the isolator’s staff member jointly carried out screening and medical examination of a person placed in a temporary detention isolator.

The fact that the minimum term of storage was defined in the reporting period is assessed positively. During video surveillance, information is recorded automatically. The recorded

material is stored in a central control room for no less than 24 hours. When the memory of the recording device is full, fresh information is recorded on the same device after erasing the existing information. However, the Public Defender believes that the storage of recordings for 24 hours does not ensure attaining the objective sought and, accordingly, all measures should be taken so that the recordings are stored for a reasonable time.

It is still a problem in 2016 to have external and internal premises of police divisions covered adequately by video cameras. Video cameras are not installed either on external or internal premises of some regional police divisions. In a great majority of those divisions, where internal premises are covered by video surveillance, the cameras are mostly installed at the entrance, in front of the place allocated for an on-duty operative. This does not ensure complete surveillance of the internal premises of the administrative buildings.

The Public Defender welcomes the introduction of a five-day term for the consideration of complaints lodged from temporary detention isolators, as well as the statutory regulation of the provision of inmates with envelopes for confidential complaints.

The Public Defender considers it most important to regulate the police work schedule not only in terms of protection of police officers' labour rights, but also in the respect that it has significant effect on adequate treatment of arrestees by police. The police officers working long hours without adequate break are likely to get exhausted and be under stress. This, in turn, would adversely affect their psycho-emotional condition and, hence, behaviour.

The Public Defender welcomes the fact that there is a mandatory special education programme for the youths recruited by law-enforcement bodies, junior lieutenants, district inspectors, detective-investigators and patrol-inspectors.

It can be concluded as the result of examination of the syllabuses of the study programmes that the major human rights topics are included. The Public Defender, however, considers that a single training on important human rights issues and the duration allocated for human rights topics in the curriculum cannot ensure theoretical and practical comprehension of key human rights problems within special educational programme of law enforcement officers. The Public Defender considers it important that the methodology of each study programme and training session included examination and assessment of participants through observation of their involvement in various practical simulated situations and role-plays. Furthermore, in the opinion of the Public Defender, close attention should be paid to teaching police officers on use of force so that they could correctly assess particular situations and use adequate methods of the use of force that have been pre determined.

The Public Defender welcomes the renovation of the infrastructure and living conditions at the temporary detention isolators of the Ministry of Internal Affairs in 2016. However, the existing conditions in temporary detention isolators still need considerable improvement and bringing closer to international standards.

The Public Defender observes that, along with the positive changes, the negative trends identified in 2015 still unfortunately persist in 2016. The data processed by the Special

Preventive Group show that the use of excessive force, physical and psychological violence exerted after arrest, failure to provide arrestees with adequate safeguards and shortcomings in documenting bodily injuries remain a challenge for the police system. Therefore, the Public Defender observes that it is particularly important to introduce strict control on policing and increase their accountability. It is necessary that police officers receive a clear message from their superiors that violation of human rights will not go unpunished.

4.3. SITUATION IN TERMS OF PREVENTION OF TORTURE AND OTHER ILL-TREATMENT

No one shall be subjected to torture⁴¹⁷ or inhuman or degrading treatment or punishment.⁴¹⁸ Under Article 10 of the International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person. The United Nations Human Rights Committee 'believes that here the Covenant expresses a norm of general international law not subject to derogation.'⁴¹⁹

According to the well-established case-law of the European Court of Human rights, with respect to a person deprived of liberty, recourse to physical force which has not been made strictly necessary by his/her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3.⁴²⁰ Furthermore, in the opinion of the European Court, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.⁴²¹

In those situations where injuries have been inflicted during arrest, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive.⁴²² Furthermore, police officers should use minimum force during arrests so that physical injuries are not inflicted on an arrestee. Under the domestic law, to perform

417 Under Article 1 of the UN Convention against Torture, for the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

418 The Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3.

419 General Comment no. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31. August 2001, para. 13(a), accessible in the UN official languages at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en> [last visited on 24.03.2017].

420 *Labita v. Italy*, application no. 26772/95, judgment of the Grand Chamber of the European Court of Human Rights of 6 April 2000, para. 120.

421 *Salman v. Turkey*, application no. 21986/93, judgment of the Grand Chamber of the European Court of Human Rights of 27 June 2000, para. 100.

422 *Rehbock v. Slovenia*, application no. 29462/95, judgment of the European Court of Human Rights of 28 November 2000, para. 72.

police functions, a police officer may use suitable and proportionate coercive measures only in the case of necessity and to the extent that shall ensure achievement of legitimate objectives.⁴²³ The form and extent of a coercive measure shall be defined based on a given situation, the nature of an offence and individual peculiarities of the offender. In addition, a police officer must try to cause minimal damage while carrying out a coercive measure.⁴²⁴

It is important to bear in mind the landmark case against Georgia, where the European Court found the violation of Article 3 in its substantive limb on the account of ill-treatment of the applicant by Tskaltubo police officers of the Ministry of Internal affairs and in procedural limb on the account of the failure of the prosecutor's office to conduct effective investigation.⁴²⁵

The Office of the Public Defender of Georgia requested statistics from the Ministry of Internal Affairs of Georgia. The number of persons placed in temporary detention isolators, the statistics of bodily injuries found on the detained persons of temporary detention isolators and the number of complaints filed against police according to years are shown in the below tables.⁴²⁶

no.	Data According to Years	2013	2014	2015	2016
1	Number of persons placed in TDIs	16553	17087	16416	13081
2	Persons with injuries	7095(42.9 %)	6908(40.4 %)	5992(36.5 %)	6417 (49 %)
3	Complaints filed against police	111 (0.8 %)	198 (1.1 %)	168 (1 %)	193 (1.5 %)

According to the data in the above tables, in 2016, compared to 2015, the number of persons placed in temporary detention isolators decreased by 20.3 %. At the same time, in 2016, compared to 2015, the number of cases, where persons were placed with injuries increased by 12.5 %. There is an increase by 25 (12.9 %) in the number of complaints lodged against police. Besides, the average number of complaints against police *vis-a-vis* the number of persons placed in temporary detention isolators is 1.5% in 2016. The similar indicator in 2015 was 1%.

It is particularly alarming that, in 2016, the average number (juxtaposed to the total number) of persons placed in isolators that have bodily injuries and who filed complaints against police is the highest within the past four years.

423 The Law of Georgia on Police, Article 31.1.

424 *Ibid.*, Article 31.4.

425 *Dvalishvili v. Georgia*, application no. 19634/07, judgment of the European Court of Human Rights of 18 December 2012.

426 Letter no. MIA 1 17 00306720 from the Ministry of Internal Affairs of Georgia of 7 February 2017 (registered in the Office of the Public Defender on 9 February 2017 under no. 1935/17).

Number of Incidents of Inflicting Bodily Injuries in 2015 and 2016	2015	2016
Before arrest	5635	6009
During arrest	243	254
After arrest	52	53
Before arrest - during arrest	47	76
Before arrest - after arrest	10	20
During arrest - after arrest	4	2
Before arrest - during arrest - after arrest	1	3
	Total: 5992	Total: 6417

The analysis of the official statistics received from the Ministry of Internal Affairs of Georgia given in the above tables shows that, in 2015, the total number of incidents involving inflicting injuries either during or after arrests amounts to 357. This is 5.9 % of the total number of the incidents. The similar indicator is 408 in 2016 and accordingly amounts to 6.3% of the total number of incidents. The number of incidents involving inflicting injuries either during or after arrests increased by 51 (12.5%) in 2016, compared to 2015.

Within the monitoring, information was requested from the Ministry of Corrections of Georgia regarding the statistics of persons admitted to penitentiary establishments with bodily injuries. The statistics are given in the below tables:⁴²⁷

Year	Placed in Total	Injury Before Arrest	Injury During Arrest	Injury After Arrest	Not Registered	Incidents in Total
2015	6294	818 (86 %)	88 (9.2 %)	37 (3.9 %)	8 (0.8 %)	951 (100 %)
2016	5287	764 (79.3 %)	91 (9.5 %)	103 (10.7 %)	5 (0.5 %)	963 (100 %)

The analysis of the data received from the Ministry of Corrections shows that, in 2015, 15.1% of the remand persons admitted to penitentiary establishments had bodily injuries and 18.2% in 2016. In 2016, compared to 2015, the average number of those incidents where arrestees stated that bodily injuries were sustained before arrest, decreased by 6.7% juxtaposed to the total number of admissions with bodily injuries.

The percentage proportions of injuries inflicted during arrest remain practically the same. Particularly noteworthy is that the average number of injuries inflicted after arrest increased by 6.8%. In 2015, injuries after arrest were reported by 37 persons placed in penitentiary establishments, and in 2016 such injuries were reported by 103 remand persons. It stems from the aforementioned that number of such incidents increased by 64.1% in 2016, which is alarming.

According to the analysis of the data submitted by the Ministry of Internal Affairs of Georgia regarding admission of persons with bodily injuries to temporary detention isolators, the total number of incidents where bodily injuries were inflicted after arrest amounts

⁴²⁷ Letter no. MOC 3 17 00074038 of the Ministry of Corrections of 30 January 2017.

to 67 in 2015; 78 in 2106. This means the numbers have increased by 14.1%, in 2016. As regards the average number of such incidents juxtaposed to the total number of the admissions of arrestees with bodily injuries to isolators, it amounted to 1.1% in 2015 and 1.2% in 2016. It is obvious that these numbers are significantly less than the similar data on remand persons with bodily injuries placed in penitentiary establishments. It is evident that according to the data of the Ministry of Internal Affairs of Georgia, in 2016, 78 arrestees (both in criminal and administrative proceedings) in total reported injuries after arrest, whereas 103 remand admitted into penitentiary establishments reported bodily injuries sustained after arrest.

The analysis of the case-files studied during the monitoring conducted in the reporting period showed numerous significant trends. The incidents of injuries studied during the monitoring are given in the below tables:

no.	Isolator	Arrestees at the Time of Monitoring	Number of Questionnaires ⁴²⁸	Time of Conducting Monitoring
1.	Kakheti Regional TDI (Telavi)	224	47 (21 %)	07.2016
2.	Sagarejo TDI	92	30 (32.6 %)	07.2016
3.	Sighnaghi TDI	96	13 (13.5 %)	07.2016
4.	Kvareli TDI	194	53 (27.3 %)	07.2016
5.	Imereti, Ratcha-Lechkhumi, and Kvemo Svaneti Regional TDI (Kutaisi)	92	36 (39.1 %)	06.2016
6.	Zestaponi TDI	124	16 (12.9 %)	09.2016
7.	Baghdati TDI	141	22 (15.6 %)	09.2016
8.	Tchiatura TDI	71	13 (18.3 %)	09.2016
9.	Samtredia TDI	169	34 (20.1 %)	09.2016
10.	Ambrolauri TDI	31	4 (12.9 %)	09.2016
11.	Samegrelo and Zemo Svaneti regional TDI (Zugdidi)	183	15 (8.2 %)	08.2016
12.	Zugdidi TDI	125	7 (5.6 %)	08.2016
13.	Senaki TDI	187	12 (6.4 %)	08.2016
14.	Poti TDI	161	17 (10.5 %)	08.2016
15.	Khobi TDI	126	14 (11.1 %)	08.2016
16.	Chkhorotsku TDI	126	7 (5.5 %)	08.2016
17.	Mestia TDI	13	2 (15.4 %)	08.2016
18.	Ajara and Guria Regional TDI (Batumi)	1381	162 (11.7 %)	12.2016

⁴²⁸ With the view of obtaining systematised information from case-files, the monitoring group used a specifically designed questionnaire.

19.	Kobuleti TDI	284	22 (7.7 %)	11.2016
20.	Ozurgeti TDI	110	22 (20 %)	11.2016
21.	Lanchkhuti TDI	28	2 (7.1 %)	11.2016
22.	Borjomi TDI	49	13 (28.3 %)	10.2016
23.	Akhaltsikhe TDI	155	14 (9 %)	10.2016
24.	Tbilisi no. 1 TDI	279	23 (8.2 %)	05.2016
25.	Tbilisi no. 2 TDI	2774	349 (12.6 %)	07.2016

According to the analysis of the above table, out of those isolators where the average number of the noteworthy incidents identified by the Special Preventive Group and documented with the questionnaires is not less than 20% in terms of the total number of detained persons placed in temporary detention isolators at the time of the monitoring visits, the most noteworthy incidents were revealed in Imereti, Ratcha-Lechkhumi and Kvemo Svaneti regional TDI in Kutaisi (39.1 %), Sagarejo TDI (32.6 %), Borjomi TDI (28.3 %), Kvareli TDI (27.3 %), Kakheti Regional TDI in Telavi (21 %), Samtredia TDI (20.1 %) and Ozurgeti TDI (20 %).

Within the study, the dynamics have been studied, compared to 2015. See in the below tables, the comparison of the percentage, proportions according to TDIs, between the noteworthy incidents revealed in the regions during monitoring conducted in 2015 and 2016.

no.	Isolator	2015	2016
1.	Kakheti Regional TDI (Telavi)	14.7 %	21 %
2.	Sagarejo TDI	15.8 %	32,6 %
3.	Sighnaghi TDI	4.8 %	13.5 %
4.	Kvareli TDI	9.7 %	27.3 %
5.	Imereti, Ratcha-Lechkhumi, and Kvemo Svaneti Regional TDI (Kutaisi)	15 %	39.1 %
6.	Zestaponi TDI	10 %	12.9 %
7.	Baghdati TDI	11.3 %	15.6 %
8.	Tchiatura TDI	22.8 %	18.3 %
9.	Samtredia TDI	12.6 %	20.1 %
10.	Samegrelo and Zemo Svaneti regional TDI (Zugdidi)	11 %	8.2 %
11.	Zugdidi TDI	8.6 %	5.6 %
12.	Senaki TDI	6.7 %	6.4 %
13.	Poti TDI	9.9 %	10.5 %
14.	Khobi TDI	10.8 %	11.1 %

15.	Chkhorotsku TDI	9 %	5.5 %
16.	Ajara and Guria regional TDI (Batumi)	10.4 %	117 %
17.	Kobuleti TDI	16.9 %	7.7 %
18.	Ozurgeti TDI	16.9 %	20 %
19.	Lanchkhuti TDI	0	7.1 %
20.	Borjomi TDI	39.7 %	28.3 %
21.	Akhaltzikhe TDI	23.9 %	9 %
22.	Akhalkalaki TDI	5.3 %	0

Based on the analysis of the above tables, the following should be assessed positively: the percentage proportions of the noteworthy incidents decreased in 2016, compared to 2015 in the temporary detention isolators of Akhaltsikhe (by 14.9 %); Borjomi⁴²⁹ (by 11.4%); Kobuleti (by 9.2%); Tchiatura (by 4.5%); Chkhorotsku (3.5%); Zugdidi (by 3 %); and Samegrelo and Zemo Svaneti Regional TDI in Zugdidi (by 2.8%). The Special Preventive Group has not revealed noteworthy incidents in Akhalkalaki temporary detention isolator.

In 2016, the percentage proportions increased by more than 5% in Imereti; Ratcha-Lechkhumi and Kvemo Svaneti Regional TDI in Kutaisi (by 24.1%); Kvareli TDI (by 17.6%); Sagarejo (16.8%); Signaghi (by 8.7%); Samtredia (by 7.5%); Lanchkhuti (by 7.1%); and Kakheti Regional TDI in Telavi (by 6.3%).

Within the study, the situations existing in 2015 and 2016, in five regions, were compared to each other. See the data in the below tables:

Region	2015	2016
Samegrelo and Zemo Svaneti	9.1 %	8 %
Imereti, Ratcha-Lechkhumi and Kvemo Svaneti	14.2 %	19.9 %
Kakheti	11.9 %	23.6 %
Guria	15.4 %	17.4
Ajara ⁴³⁰	11.2 %	11 %
	Total: 11.7 %	Total: 13.9 %

The analysis of the data above shows that the situation is practically the same in 2015 and 2016 in Ajara and Samegrelo-Zemo Svaneti, whereas the trend in the increasing number of noteworthy incidents is evident in Kakheti (by 11.7 %); Imereti, Ratcha-Lechkhumi and

429 In 2016, persons arrested by Borjomi police were placed in Khashuri TDI too. In September 2016, Borjomi TDI was closed. The Special Preventive Group did not visit Khashuri TDI in 2016. The incidents identified only in Borjomi TDI do not give full picture as to how many incidents were noteworthy out of the total number of the arrests made by Borjomi police.

430 In 2016, persons arrested by Borjomi police were placed in Khashuri TDI too. In September 2016, Borjomi TDI was closed. The Special Preventive Group did not visit Khashuri TDI in 2016. The incidents identified only in Borjomi TDI do not give the full picture as to how many incidents were noteworthy out of the total number of the arrests made by Borjomi police. Therefore, the data on the Samtskhe-Javakheti Region are missing from the tables.

Kvemo Svaneti (by 5.7%); and Guria (by 2%) regions. In total, there is an increase in these five regions by 2.2%.

It should be pointed out that, in 2016, the number of noteworthy incidents in Kakheti, Imereti, Ratcha-Lechkhumi and Kvemo Svaneti region is considerably higher. Besides, according to the analysis of the documented incidents in two temporary detention isolators in Tbilisi, 8.9% of the case files examined in 2016 were considered as noteworthy by the Special Preventive Group. This indicator practically equals the number of noteworthy incidents of Samegrelo-Zemo Svaneti but at the same time lower in comparison to other regions.

As the result of processing the information collected in the regions of Georgia, it was found out that, there is a reference to a bodily injury in the arrest reports of 391 cases (68.7 %); in 2015, it stands at 419 cases (58.5 %). The same, i.e., bodily injury, is mentioned in external examination reports in 569 cases; in 2015, 716 cases. Accordingly, there is no reference in arrest reports of 178 cases (31.3%) to the bodily injuries that are documented in external examination reports; in 2015, 297 cases (41.5 %). Similarly, in temporary detention isolators in Tbilisi, bodily injuries are registered in external examination reports in 367 cases. In 233 cases (63.5 %), bodily injuries are registered in arrest reports; and in 134 cases (36.5 %), no bodily injuries are documented in arrest reports. While this could be caused by shortcomings in examination and documentation of bodily injuries during arrest, there are serious misgivings that injuries might have been inflicted under police control. Similarly, the study shows that in 232 cases (40.8 %) that have been examined in the regions of Georgia, the external examination reports document more bodily injuries than arrest reports; in 2015, 418 cases (58.4 %). As regards Tbilisi, this indicator stands at 145 (39.5 %).

According to the explanations given by police officers, the full documentation of bodily injuries in arrest reports is negatively affected by the existing procedure of body examination and lack of requisite light. Therefore, within the study the Special Preventive Group analysed, there is a possible effect of sufficient light or its absence on documenting bodily injuries in arrest reports. It was found out that in approximately 1/4 of the cases (in 2015, in 1/3 of the cases) arrests were made during daytime. It was also found out that of the fraction of 1/3 of arrests where bodily injuries are only documented in external examination reports, arrests were also made during daytime. It should be pointed out that the study showed 33 incidents in the regions (50 incidents in 2015) and 20 incidents in Tbilisi, when a person was arrested in the daytime and injuries in the head, face and eye-socket areas are only documented in the reports of external examination drafted by the personnel of a temporary detention isolator. In 53 cases mentioned above, if a person had an injury during arrest, this injury should have necessarily been noticed by a police officer making the arrest.

The Special Preventive Group studied the location of injuries. The data⁴³¹ compiled based on the external examination reports drafted in temporary detention isolators in Tbilisi and the regions are given in the below table:

431 For the purposes of the study, the location of injuries was generalised and grouped. As the injuries in the head, face and eye-socket areas were the main focus of the study, these parts were mentioned separately.

Location	Regions 2015	Regions 2016	Tbilisi 2016
Head area	14 (1.9 %)	4 (0.7 %)	2 (0.5 %)
Face area	82 (11.4 %)	48 (8.4 %)	26 (7 %)
Eye-socket area	39 (5.4 %)	37 (6.5 %)	21 (5.6 %)
Various body parts (apart from head, face and eye-socket areas)	263 (36.7 %)	117 (20.6 %)	67 (18 %)
Head and face areas	7 (1 %)	5 (0.9 %)	4 (1.1 %)
Head and eye-socket areas	4 (0.5 %)	3 (0.5 %)	0
Head area and various body parts (apart from face and eye-socket area)	20 (2.8 %)	24 (4.2 %)	14 (3.8 %)
Head, face and eye-socket area	2 (0.3 %)	8 (1.4 %)	3 (0.8 %)
Head and face areas and various parts of the body	12 (1.7 %)	18 (3.2 %)	13 (3.5 %)
Head and eye-socket areas, also various body parts	1 (0.1 %)	8 (1.4 %)	6 (1.6 %)
Face and eye-socket areas, also various body parts	51 (7.1%)	55 (9.7 %)	37 (9.9 %)
Face and eye-socket areas	31 (4.3 %)	35 (6.1 %)	19 (5.1 %)
Face area and various body parts (apart from head and eye-socket areas)	136 (19 %)	136 (23.9 %)	112 (30.1 %)
eye-socket area and various body parts (apart from head and face)	41 (5.7 %)	63 (11.1 %)	40 (10.8 %)
Head, face and eye-socket area also various body parts	13 (1.8 %)	8 (1.4 %)	3 (0.8 %)
	Total: 716	Total: 569	Total: 367

The analysis of the data given in the above table shows that, in 2016, in 81.7 % of the total cases studied in Tbilisi, and in 79.4 % of the total cases studied in the regions, injuries are localised separately and with other injuries in the head, face and eye-socket areas.⁴³² This indicator is higher by 16.1 % than the indicators of 2015 (in 2015, it was 63.3%), which is noteworthy.

The Special Preventive Group studied whether the external examination reports registered the time of inflicting bodily injuries. See the below table:

432 The findings of the study showed that out of 950 incidents studied in 2016, an arrestee was taken to a hospital in 31 cases due to injuries sustained before admission into a temporary detention isolator. In ten cases, arrestees explained that they sustained injuries during arrest; in four cases – after arrest. In three out of the said incidents, the arrestees who alleged injuries during arrest have complaints against police; in three cases, arrestees alleged injuries after arrest and have complaints against police; in one case, an arrestee made a complaint but time frame of the injury was not indicated in the external examination form; also in one case, recording in an external examination form, either about time frame of sustaining injury or complaints, is absent.

Time of Sustaining Injury	Regions	Tbilisi
Before arrest	427 (73.9 %)	314 (84.4 %)
During arrest	121 (20.9 %)	46 (12.4 %)
After arrest	22 (3.8 %)	9 (2.4 %)
N/A	8 (1.4 %)	3 (0.8 %)
	Total: 578	Total: 372

As the analysis of the table shows, according to the records of the external examination reports, the average number of indicating bodily injuries inflicted during arrests are 8.5% higher than the similar numbers in Tbilisi. Besides, there are a higher percentage of those cases in the regions, compared to Tbilisi, where an arrestee claimed that a bodily injury was inflicted after arrest.

Time of Sustaining Injury	2015	2016
Before arrest	581 (78.5 %)	427 (73.4 %)
During arrest	116 (15.7 %)	121(20.8 %)
After arrest	11 (1.5 %)	22 (3.8 %)
N/A	32 (4.3 %)	8 (2.1 %)
	Total: 740	Total: 578

The analysis of the data in the above table shows that in 2016, compared to 2015, there is an increased percentage of inflicting injuries during and after arrests. Moreover, there is a slight decrease in the number of cases where the time of inflicting injuries is not documented in external examination reports.

The Special Preventive Group studied how many persons had complaints against police by the time of their admission to a temporary detention isolator and in how many cases an entry concerning a complaint/or its absence was missing from the external examination reports.

Complaints against Police	Region 2015	Region 2016	Tbilisi 2016
Complaints	69 (9.3 %)	87 (15 %)	24 (6.4 %)
No complaints	626 (84.6 %)	482 (83.4 %)	345 (92.8 %)
N/A	45 (6.1 %)	9 (1.6 %)	3 (0.8 %)
	Total: 740	Total: 578	Total: 372

The analysis of the above table shows that compared to 2015, the percentage of arrestees expressing complaints against police increased by 5.7%, which is noteworthy. It is also evident that, compared to the previous year, the number of cases, where there was no entry about complaints against police in external examination forms, decreased by 4.5% in 2016. As regards Tbilisi, the percentage of complaining against police is less by 8.6 % compared to the similar indicator in the regions.

Within the framework of the monitoring, the Special Preventive Group, based on the information submitted by the Ministry of Internal Affairs of Georgia, analysed the time of inflicting bodily injuries in those cases where an arrestee had complaints against police. The data is given in the below table:

Complaints against Police in 2015 and 2016	2015	2016
Before arrest	8	2
During arrest	90	96
After arrest	34	37
Before arrest – during arrest	23	42
Before arrest – after arrest	8	12
During arrest – after arrest	4	2
Before arrest – during arrest – after arrest	1	1
	Total: 168	Total: 193

It should be pointed out that according to the data submitted by the Ministry of Internal Affairs of Georgia, the number of cases, where an arrestee had complaints against police and it is documented in the external examination report, increased by 25 (by 12.9%) in 2016, compared to the previous year.⁴³³ The noteworthy trend in considerable increase in the number of incidents, where arrestees complained against police, was revealed as the result of the analysis of the cases studied by the Special Preventive Group in the regions. In particular, compared to the previous year, the number of cases where arrestees complained against police officers increased by 18 (by 20.7%) in 2016.

The Special Preventive Group studied the number of complaints arrestees had against police officers and how many out of the complainants had bodily injuries before arrest, during and after arrest. See the table below:

Time of Sustaining Injury	Complaints against Police (Regions)						Total	
	Complaints		No Complaints		No Entry			
	2016	2015	2016	2015	2016	2015	2016	2015
Before arrest	10	9	414	543	3	29	427	581
During arrest	59	50	60	57	2	9	121	116
After arrest	16	8	6	3	0	0	22	11
N/A	2	2	2	23	4	7	8	32
Total	87	69	482	626	9	45	578	740
%	15 %	9.3 %	83.4 %	84.6 %	1.6 %	6.1 %	100 %	100 %

⁴³³ The average number of complaints against police juxtaposed to the total number of persons admitted to temporary detention isolators with injuries was 2.8% in 2015 and 3% in 2016.

According to the data given in the table and its analysis, 16 arrested persons in 2016 (in 2015 – 8 persons) that had claims against police, according to their own explanations, received bodily injuries after arrest; 59 (in 2015 – 50 persons) received injuries during arrest. It is noteworthy that 66 arrested persons (in 2015 – 60 persons) received injuries either during or after arrest but they did not press charges against the police. In 44 cases out of 66 cases (66.7%), arrested persons had injuries, separately and with other traumas, in the head, face and eye-socket areas.⁴³⁴ Accordingly, the fact that these arrestees have no complaints against police is less convincing. In these cases, it is supposed that the arrestees do not have complaints due to self-censoring caused by fear, stress and ambiguity as the risks of intimidation, pressure, insult and other ill-treatment are the highest at the initial stage of deprivation of liberty. Individuals are most vulnerable at this stage. For instance, B.Ts. who was arrested on 16 August 2016 under Article 19-177 of the Criminal Code had injuries in the area of both eyes and bruise near the right eyebrow, lacerations on forehead, nose, ear, left eyebrow, and left thumb; scratches on the right shoulder and left wrist; redness on the nose and left shoulder; and swelling on the lower lip. The arrestee explained that he received the said injuries during arrest, however did not lodge a complaint against police officers.

Code	No Complaints		No Complaints	
	Region	Tbilisi	Region	Tbilisi
CAO ³³⁵	62 (71.3 %)	8 (33.3 %)	333 (69.1 %)	133 (38.5 %)
CC ³³⁶	25 (28.7 %)	16 (66.7 %)	149 (30.9 %)	212 (61.4 %)
	Total: 87	Total: 24	Total: 482	Total: 345

The above table shows that 14% of the persons arrested in criminal proceedings (in Tbilisi – 5.7%) have complaints against police and 15.5% (in Tbilisi - 7%) of those arrested in administrative proceedings have complaints against police. The cross tabulation also shows that out of 400 cases of administrative arrests, 77 (19.2%) allege sustaining injuries during and after arrest. 56 (31.5%) out of 178 criminal arrests allege sustaining injuries during and after arrest. This latter indicator is higher by 12.3%. The combined information obtained from various sources during the monitoring shows the tendency that some of the persons arrested in administrative proceedings are reluctant to state, during filling out the external examination report in a temporary detention isolator, that they sustained a bodily injury during or after arrest. They are afraid that unless they act like this they will be ‘making police an enemy’ and will be facing problems afterwards. It is also noteworthy that those persons arrested in administrative proceedings that claim sustaining injuries from police either during or after arrest usually are not shy to complain against police (66.2 % of cases), unlike those arrested in criminal proceedings (42.8 % of cases). Stemming from the above-mentioned, and additionally considering the fact that in the cases

434 In 2016, 33 persons were arrested in Tbilisi. According to their own explanations, they sustained injuries either during arrest or after, but they do not have claims against police. In 13 incidents, out of the 33 incidents, the injuries were located in the areas of head, face and eye-sockets, separately and along with other traumas.

435 The Criminal Code.

436 The Code of Administrative Offences.

of administrative arrests studied by the Special Preventive Group, the participation of a lawyer is a rare exception; the risk of ill-treatment against those arrested in administrative proceedings is high. Therefore, it is imperative to enhance work towards prevention of ill-treatment during administrative arrests.

The circumstances of arrests were also studied. The aim of this study was to establish whether arrests were preceded in examined incidents by insulting citizens and physical altercations, disobedience to legal requests by police and resisting police, if there were incidents of verbal abuse and whether police used force. Below are only given those noteworthy tendencies with respective data that has been identified in 2016, compared to 2015.⁴³⁷

Based on the arrest reports, the study showed that in the great majority of cases incidents of altercation with other citizens or an arrested person insulting other citizens were never registered. At the same time, it is noteworthy that the study showed that police officers indicated verbal abuse from arrested persons in 258 cases (44.3%); in 2015- 171 cases (23.1%). Accordingly, the average number of such incidents of the total number of cases that have been studied almost doubled in 2016. The similar indicator in Tbilisi⁴³⁸ is less by 12.9% compared to the regions.

In the regions, there have been 384 cases (66.4%) of disobedience to legal requests by police and resisting police; (in 2015- 227 cases (30.7%). According to arrest reports, arrested persons verbally abused police officers in 241 cases (in 2015- in 74 cases). As regards Tbilisi, in 2016, there were 225 cases (60.5%) of disobedience to legal requests by police and resisting police. In 110 cases, according to arrest reports, arrested persons verbally abused police officers making arrest.⁴³⁹ In such cases, the likelihood of the use of force by police and accordingly the risk of the use of disproportionate force is high. It is noteworthy that the police officers interviewed during monitoring felt very emotional that offenders verbally abused them. According to them, it is very difficult for a Georgian man to bear with swearing and they have to tolerate all this abuse.

The Special Preventive Group examined within the study conducted what bodily injuries were identified on arrestees in those cases where police officers were assaulted. In Tbilisi, in 81.7 % of the studied cases in 2016, arrestees have injuries separately and together with other traumas in the head, face and eye-socket areas; in the regions the number stands at 79.4% of the studied cases. This indicator exceeds the numbers registered in 2015 (63.3 %) by 16.1% which is noteworthy.

The analysis of the 578 cases studied in the regions shows that out of 384 cases, where arrest reports indicated disobedience/resistance, in 6 cases, there is a full description of the act of disobedience/resistance (in 2015 - 3 cases [1.3 %]); in 199 cases (51.8 %), reports partially describe the circumstances (in 2015 - 4 cases [1,8 %]); in 46.9 % cases, police

437 See additional information in the Parliamentary Report by the Public Defender of 2015, pp. 181-238, available in Georgian at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf> [Last visited on 23.03.2017].

438 In Tbilisi - 117 incidents (31.4 %).

439 The percentage correlation of the incidents of resisting police in Tbilisi and in the regions is almost zero; as regards the average number of the incidents of verbal abuse out of the total number of disobedience/resistance, the average number in regions (62.8%) exceeds the similar indicator in Tbilisi (48.9) by 13.9%.

officers do not elaborate on the circumstances of disobedience/resistance (in 2015 - [96.9 %]); as regards Tbilisi, only in one case (0.4%) there is a full description of the circumstances; in 126 (56%) cases, the circumstances are partially described; and in 98 (43.6%) cases, there is no description in arrest reports altogether.

In 578 cases studied in the regions, there is a reference to use of force only in 33 (5.7 %) cases, (in 2015 - 46 cases [6.2 %]); in Tbilisi, out of 372 cases, there is such a reference in 16 cases. Out of the 33 cases of reference to the use of force, the method of the use of force is fully described in arrest reports only in 2 (6.1 %) cases (in 2015 - 4.3 %); in 10 (30.3 %) cases, there is a partial description (in 2015 – 6.5. % cases); in 21 cases (63.6 %) cases, there is no reference to the method of the use of force (in 2015 - 89.2 % cases). As regards Tbilisi, only in one case there is a partial description of the method of the use of force.

It is noteworthy that during the study, there were cases analysed where, considering the circumstances of arrest, it can be supposed with a high probability that police would have to resort to force. Out of 384 cases of disobedience/resistance, the study showed such 344 (89.6 %) cases. However, police officers indicated the use of force only in 33 cases. Similarly, in Tbilisi, considering the circumstances of arrest studied based on the case-files, it can be supposed with a high probability that police would have to resort to force in 203 (90.6 %) cases out of the total number of 224 cases of disobedience/resistance. However, the use of force is registered only in 16 cases. It is obvious that police officers are reluctant to register the use of force in arrest reports, which strengthens the misgivings that they could have used excessive force and subject arrestees to ill-treatment.

Within the study, the Special Preventive Group analysed the cases in gender prism. Out of the 372 cases documented in Tbilisi, injuries were found on 10 arrested women. Out of these cases, 2 women claimed that injuries were inflicted during arrest. In one of these cases, the woman arrested under Articles 166 and 173 of the Code of Administrative Offences of Georgia complained about the police actions. The arrestee had injuries in the face area and on different parts of the body.⁴⁴⁰ According to the arrest report, she disobeyed legitimate requests of the police and resisted them. Despite the fact that the arrest report says nothing about the use of force during the arrest, the circumstances of the case indicate the high probability that police would have to resort to force. The arrestee additionally alleged during filling out the external examination report upon admission to a temporary detention isolator that two police officers had insulted her verbally and physically, that they were hitting her with hands on the body. In the second case of sustaining an injury, the woman arrested under Articles 166 and 173 of the Code of Administrative Offences of Georgia did not complain against police.

Out of the 578 cases studied in the regions, in 7 cases, arrested women had bodily injuries. Out of these cases, 2 arrestees had complaints against police officers. In one case, the woman arrested under Articles 166 and 173 of the Code of Administrative Offences of Georgia claimed that during the arrest police officers had insulted her verbally and phys-

⁴⁴⁰ According to the external examination report filled out on 20 April 2016 in Tbilisi temporary detention isolator no. 2, the following injuries were documented on the arrestee: excoriations, scratches, bruises, and hyperaemic areas on the face and on the entire body, as well as small size hematomas.

ically.⁴⁴¹ In another case, the woman arrested under Article 173 of the Code of Administrative Offences of Georgia explained that she sustained bodily injuries before arrest. She, however, complained that police officers had verbally assaulted her.⁴⁴² In one of the cases, the woman arrested under Article 173 of the Code of Administrative Offences of Georgia alleged that she had sustained bodily injuries both before and after arrest. She, however, did not complain against police and additionally explained that the injury on her wrist had been caused because of the handcuffs.⁴⁴³

The Public Defender of Georgia observes that police officers have to be particularly cautious when it comes to the use of force against women. Furthermore, it is imperative to follow rigorously professional ethics in verbal communication with arrested women and not to address them in a language perceived as degrading by the arrestees.

During the monitoring conducted in 2016, the Special Preventive Group paid particular attention to the study of application of Articles 353⁴⁴⁴ and 353¹ of the Criminal Code of Georgia,⁴⁴⁵ and Article 173⁴⁴⁶ of the Code of Administrative Offences of Georgia.

According to the official information received,⁴⁴⁷ in 2015, investigation was started under Article 353 in 162 cases; 161 cases were examined in a court; 9 persons were acquitted; and 244 persons were found guilty. Out of this, in 113 cases plea bargain agreement was concluded with 187 persons. Investigation under Article 353¹ was started in 24 cases; 25 cases were examined in a court; 2 persons were acquitted; 41 persons were found guilty; out of this, in 17 cases, plea bargain agreement was concluded with 34 persons in 17 cases.

Similarly, in 2016, investigation under Article 353 was started in 100 cases; criminal prosecution was started against 172 persons and discontinued with regard to 6 persons; 113 cases were examined in a court; 10 persons were acquitted; 151 persons were found guilty; out of this, plea bargain agreement was concluded in 73 cases with 114 persons. Investigation under Article 353¹ was started in 15 cases; criminal prosecution was started against 22 persons and discontinued with regard to 1 person; 21 cases were examined in a court; 7 persons were acquitted; 19 persons were found guilty; out of this, plea bargain agreement was concluded in 14 cases with 14 persons.

The analysis of the above data shows that, compared with 2015, the cases instituted under Article 353 were less by 62 and cases instituted based on 353¹ were less by 9 in 2016.

441 According to the external examination report filled out on 1 May 2016 in Ozurgeti temporary detention isolator, a small size hyperaemic area was documented on the arrestee's forehead.

442 The external examination report was filled out on 5 March 2016 in Telavi temporary detention isolator.

443 The external examination report was filled out on 16 July 2016 in Baghdati temporary detention isolator.

444 Resistance, threat or violence against the official securing public order or other representative of the authorities.

445 Attack on a police officer, or other representative of the authorities and/or public agency.

446 Disobedience to the legitimate order or request by a law enforcement office, military officer, officer of the Special Service of the State Protection or enforcement police officer, or commission of an illegal act against any of these officials.

447 From the Ministry of Internal Affairs of Georgia: the data of 2015 - Letter no. 293573 of 6 February 2017; the data of 2016 - Letter no. 293333 of 6 February 2017; from the prosecutor's office: the data of 2015 - Letter no. 13/9693 of 11 February 2017; the data of 2016 - Letter no. 13/3327 of 17 January 2017; from the Supreme Court of Georgia: the data of 2015 and 2016 - Letter no. p-27-17, p-28-17 of 3 February 2017.

Despite the downward tendency, it is noteworthy that, in 2015, 96.4 % were found guilty out of those charged with Article 353; and in 2016, 93.8 % were found guilty. Out of this, in 2015, plea bargain agreement was concluded with 76.6 % of the remand persons; and in 2016, with 75.5% of the total number of the remand persons charged under Article 353. The extremely low number of acquittals and the high number of concluding plea bargain agreements shows the high risk of abusing Articles 353 and 353¹ of the Criminal Code of Georgia. This is confirmed by lawyers and NGO representatives interviewed within the focus groups all over Georgia.

One of the incidents revealed by the Special Preventive Group during the monitoring conducted in 2016 is noteworthy as an example. On 8 April 2016, at 19:55, in the administrative building of Adigheni district division, police officers arrested L.D. under Article 353^{1.1} of the Criminal Code of Georgia.⁴⁴⁸ According to the arrest report, L.D. ‘was physically resisting police officers, swearing and cursing in bad language’. According to the arrest report, L.D. was searched from 20:00 to 20:15, with L.D. again resisting physically the police officers. Despite the scarce references in the arrest report, the members of the Special Preventive Group revealed from conversations with police officers and lawyers of focus groups that before being arrested in criminal proceedings, L.D. was brought for a drug test, and the test result was negative. It was not established that L.D. had been using drugs. According to police officers, L.D. was outraged for being subjected to drug test and therefore rushed into the yard of the Adigheni District Division, swearing and requesting to meet with the Head of the Division. Having crossed the yard, L.D. came up to the on duty guard and physically assaulted him. In the opinion of the Special Preventive Group, this version of the events is less convincing. As it was revealed during the discussions with lawyers and NGOs in Akhaltsikhe, they knew about this incident and opined that most probably L.D. was incited by police and the incident could be related to L.D.’s business.

In the opinion of the Special Preventive Group, individuals are even more vulnerable when being arrested under Article 173 of the Code of Administrative Offences of Georgia.⁴⁴⁹ In accordance with the practice, well established over years, judges, rely on the explanations of police officers in a vast majority of the cases. Furthermore, those arrested in administrative proceedings usually have no lawyer and in such cases, they avoid ‘making enemies’ out of police.⁴⁵⁰ In such cases, the risk of arbitrariness on the part of police is high. During the monitoring, the Special Preventive Group revealed one incident that is a clear example of police arbitrariness.

In the course of the monitoring, during the discussions held with lawyers and non-governmental organisations’ representatives, one incident was identified as the abuse of Article

448 Attack on a police officer or other representative of authorities, and/or their official or residential buildings, or transport means, and/or their family member in relation to the official capacity of the police officer or other representative of authorities.

449 In 55.7% of the cases studied by the Special Preventive Group in Tbilisi and regions, a person was arrested under Article 173 of the Code of Administrative Offences of Georgia, separately and jointly under other Articles of the Code.

450 For instance, according to the external examination report, on 17 August 2016, Z.K. arrested under Article 173 of the Code of Administrative Offences of Georgia was registered to have the following injuries: an open wound in the area of the left eye-socket, bruise and swelling, redness on the nose, excoriations to the left of the forehead and on the right of the back of the head. The arrested person alleged that the injuries were sustained during arrest; he however did not lodge any complaint against police.

166 and 173 of the Code of Administrative Offences of Georgia on part of police officers. According to the received information, police officers claimed during court hearings that the arrested person, who had been prosecuted in administrative proceedings, was cursing and swearing in Zugdidi. That person tried to flee having noticed police. According to police officers, they approached the person to clear up the situation, introduced themselves and requested an ID. The citizen responded with abusive words and did not obey the legitimate request to stop cursing and swearing. According to the police officer, who drafted the report, he suspected whether the citizen concerned was under the influence of drugs and brought that person to a criminal forensic agency. The drug test was negative and it was not established that the person concerned was under the influence; however, that person was arrested in administrative proceedings on the account of another administrative offence.

The statements given by police officers at the court hearing and the circumstances indicated were not established. The arrested person adduced video recording before the court and the recording clearly proved that there were no such circumstances as alleged by police officers. It is noteworthy that the person was arrested initially under Article 173 of the Code of Administrative Offences of Georgia and only subsequently Article 166 was added to the administrative offence report. In the opinion of the Special Preventive Group, this incident expressly shows the arbitrariness of police officers and purposeful and illegal prosecution of a citizen.

In the opinion of the Special Preventive Group, the cases, where police resorts to the means of coercion, gives rise to misgivings about the use of disproportionate force and ill-treatment, the failure to describe the method of the use of force in the arrest reports and to establish a clear link between the method of the use of force and the injuries found on the bodies of arrested persons. Besides, in a number of cases, the nature of a bodily injury and its location further increases suspicions about ill-treatment. For instance,⁴⁵¹ according to the arrest report of 24 January 2016, K.Dz.⁴⁵² under Article 173 of the Code of Administrative Offences of Georgia, resisted police when they used handcuffs. The police used a special technique of restraint which caused K.Dz. to fall down and injure his lip and face. It should be pointed out in this case that the police failed to indicate how the resistance put up by K.Dz. was manifested and which technique did they use that caused K.Dz. to take a fall. It cannot be established based on the entries of the arrest report whether it was possible to use handcuffs without inflicting bodily harm.

During the conversations held with police officers within the monitoring, the Special Preventive Group members paid particular attention to the use of proportionate force during

451 According to an arrest report, on 3 May 2016, during arrest made under Article 353 of the Criminal Code of Georgia, force was used against V.J. for the resisting police. According to the same report, the following injuries were documented on the body of the arrestee: excoriations on the area of the right wrist, and bruises on the left arm and wrist. According to the external examination report (drafted in Kakheti regional temporary detention isolator), the following injuries were identified on the body of the arrestee: excoriation on the right elbow, a scratch on the left shin, redness on the nose and both ears, bruises on the upper muscle of both arms, scratches and redness on wrists, bruise on the upper part of the back and a scratch. According to the arrested person, these injuries were inflicted during the arrest.

452 The external examination report is drafted on 24 January 2016 upon admission to Zestaponi temporary detention isolator.

arrest. During the interviews, police officers tried to demonstrate the methods of the use of force (special technique) in standard situations.⁴⁵³ The Special Preventive Group, however, was left with the impression that the methods described by those police officers were their improvisation rather than the methods taken from uniform special training programme designed for police forces on the use of force. The Public Defender, while taking into consideration the extremely complex, stressful and dangerous nature of policing, stresses that sporadic training in the methods of the use of force does not ensure development of the adequate skills of police officers. Therefore, the Public Defender observes that training on the methods of the use of force should be of regular nature so that eventually police officers could adequately assess particular situations, the use of the adequate methods they previously trained on and arrest a person without harming his/her physical health or where it is absolutely necessary only inflicting minimum injuries.

Within the study, the Special Preventive Group examined how much time was spent by police to bring arrestees to police stations and the duration of overall periods spent under police control. See the data in the below table:

Duration of the Period under Police Control	Region	Tbilisi
1-3 hours	337 (59.8 %)	183 (50 %)
4-6 hours	139 (24.6 %)	121 (33.1 %)
7-9 hours	53 (9.4 %)	41 (11.2 %)
10-12 hours	21 (3.7 %)	17 (4.6 %)
13-15 hours	9 (1.6 %)	3 (0.8 %)
16-18 hours	4 (0.7 %)	0
19 hours	1 (0.2 %)	0
20 hours	0	1 (0.3 %)
Total:	564	366

The duration of the periods under police control in the regions and Tbilisi are not essentially different. In the regions, in 31% of the cases given in the table, individuals were arrested in criminal proceedings (out of this 44 % in the daytime and 63.6 % at night); in 69 % of the cases given in the table, individuals were arrested in administrative proceedings (out of this 18.5 % in the daytime and 81.5% at night). In Tbilisi, the average number of individuals arrested in criminal proceedings amounts to 38.8 % (out of this 48.6 % in the daytime and 51.4 % at night) and 62.2 % have been arrested in administrative proceedings (out of this 18.4 % in the daytime and 81.6 % at night).

453 One of such standard situations is placing a person in a police car. This, according to the explanation of police officers, is problematic in most cases. In the opinion of the Special Preventive Group, there is a high risk for use of force by police in such cases. For instance, according to an arrest report, on 21 June 2016, R.S. was swearing in a street and was breaching order. R.S. did not obey police request, became aggressive and abused police officers verbally. R.S. resisted police during arrest and therefore police forced the citizen into a car. According to the arrest report, there were the following injuries documented on the body of the arrestee: swelling, which according to the arrestee was caused by dislocation when walking. There was a scratch that was caused during shaving. According to the external examination report (drafted in Chkhorot-sku temporary detention isolator), there was excoriation on the cheek and eye-socket area; there were a hematoma and hyperaemia in the eye-socket area. The arrestee complained of pain in the ankle area.

Within the study, the Special Preventive Group also examined the time of bringing individuals to the nearest police stations. In the regions, in the majority of cases (55.8 %), an arrestee was brought to the nearest police station within half an hour from the moment of arrest; in approximately 1/5 of the cases (26.2 %) within an hour; in 7.3 % of the cases – within two hours; and in isolated cases, particularly in 8 cases, the time of bringing individuals to police stations is from 3 to 5 hours. As regards Tbilisi, here too, in the majority of the cases (52.6 %), individuals are brought to police stations within half an hour and in 1/3 of the cases – within an hour; in 5.2 % of the cases – within 2 hours; and in 7 cases within 3-5 hours.

The Special Preventive Group also examined, within the study, in how many cases arrested persons spent a night⁴⁵⁴ under police control.⁴⁵⁵ It has turned out that in 39 cases out of the total number of cases studied in the regions, and in 18 cases out of the total number of the cases studied in Tbilisi, arrested persons were under control of police at night. Out of these 57 cases, persons were arrested in administrative proceedings in 16 cases, and in 41 cases in criminal proceedings. The Special Preventive Group is not aware of the reasons that warranted spending a night under police control in the above cases when it was possible to place these persons in temporary detention isolators. The Public Defender observes that keeping arrested persons under police control for a long time (especially at night) is an extremely risky practice as the risk of exerting physical violence and psychological pressure by police on arrested persons is high under such circumstances. Therefore, the Public Defender stresses that it is imperative to place an arrested person in a temporary detention isolator as the latter is a relatively safer place.⁴⁵⁶

During the monitoring, the Special Preventive Group examined the conditions under which arrested persons are held in police stations. Police officers stated in interviews that arrested persons were kept under constant supervision. Against these claims, on 11 August 2016, the members of the Special Preventive Group, who were inspecting the administrative building of Chkhorotsku District Division of the Ministry of Internal Affairs of Georgia, found two arrested persons left on their own without any supervision. One person was in a staff room and another in a room for district inspectors. As the examination of the relevant documents and conversations with police officers revealed, these individuals were arrested in criminal proceedings at 05:49 and brought to the police station at 07:55. By approximately 14:00, the planned investigative actions were complete and the arrestees were supposed to be admitted to a temporary detention isolator. However, they were placed in a temporary detention isolator at approximately 17:00.

In the opinion of the Special Preventive Group, it is also problematic that whenever there is a complaint registered by an arrested person, it is impossible to examine the reason-

454 Under Article 17.3 of the Criminal Procedure Code of Georgia, the night is the time from 22:00 to 6:00. For the purposes of the study conducted by the Special Preventive Group, the cases where individuals spent a night under police control were those cases where an arrested person was under police control from 22:00 to 6:00, for no less than six hours.

455 In the night hours (from 22:00 to 6:00) the time spent under police control for less than 6 hours: for 5 hours - 65 cases; for 4 hours - 91 cases; for 3 hours - 143 cases; 2 hours - 219 cases; and 1 hour - 152 cases.

456 These issues are discussed by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in his report on the mission to Georgia in 2015. The report is available in the official languages of the United Nations at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3 [Last visited on 22.03.2017].

ableness of the claims through video surveillance system. Surveillance cameras were not installed on those premises of police administrative buildings where arrestees are held.⁴⁵⁷ The Special Preventive Group is devoid of any possibility to⁴⁵⁸ inspect proactively and verify through video surveillance system the conditions under which arrested persons, witnesses and persons without any procedural status are held in police stations.

The incident that took place in Akhaltsikhe shows the particular vulnerability of citizens when they are under police control. In particular, on 24 October 2016, the members of the Special Preventive Group of the Public Defender of Georgia, during a visit to Akhalkalaki District Police of Samtskhe-Javakheti Police Department of the Ministry of Internal Affairs of Georgia, revealed that there were citizens in the administrative building of police with whom their relatives could not get in touch (in total eight persons). Furthermore, the members of the Special Preventive Group saw how police officers took several individuals from the police building and took them somewhere by a car.

In order to clear up the situation, the member of the Special Preventive Group inspected the logbooks of arrested persons maintained in the guard's room of the police station. As it has turned out the arrests of the above citizens were not indicated in the logbook at all. Subsequently, the members of the Special Preventive Group inspected the building of the police station and found in various rooms another two persons, one of whom was a minor.

The members of the Special Preventive Group requested the head of the division to explain the status of the above persons as well as the legal ground for holding them in the police station. However, the head of the division did not impart any information to the group members and advised them to contact the public relations officer of the Ministry of Internal Affairs.

Later the members of the Special Preventive Group found out that there was another person in the police building. It has turned out that apart from the three persons mentioned above, there were another 5 persons in police custody that had been taken away by police officers for conducting various investigative actions before the Special Preventive Group entered the police building.

The members of the Special Preventive Group found out that the above-mentioned 8 persons were not officially arrested and they were brought as witnesses in the police station. However, these persons were actually restricted in their movements and the police officers did not allow them to leave the police building. Furthermore, the police took away their mobile phones and restricted their contact with family members and relatives. It is

457 See for additional information subchapter *Audio and Video Recordings*.

458 During monitoring, the Special Preventive Group often comes across suspicious and noteworthy incidents, where despite the fact that an arrested person does not register his/her complaint against police in external examination reports, there still is a high probability of physical violence taking place after arrest. For instance, on 8 July 2016, according to an arrest report, certain G.Ch. who acted aggressively, swearing at police officers at the administrative building of Gurjaani District Division, resisted legitimate requests of police and inflicted self-harm by hitting with a metal pole from the left side on the first floor of the building. The external examination report registered the following injuries on the arrestee's body: bruises and redness in the areas of the left eye-socket, left cheek and the nose; redness in the area of the left ear; old scar wounds on the forearm; and old scar wounds and redness in the area of the right clavicle. The arrestee did not register any complaints against police officers.

noteworthy that 5 individuals out of the 8 were residents of Akhalkalaki that were picked up in the night hours on 22 October, and 3 individuals, among them, one minor, lived in Rustavi. As it has turned out, Rustavi police officers first brought the minor to police station no. 1 of Rustavi police in the morning hours; on 22 October and in the night hours transferred that person to Akhalkalaki District Division. This incident expressly shows the vulnerability of a citizen when in police custody and the manner in which witnesses are arrested and subjected to self-incrimination without the safeguards of due process. The self-incriminatory statements later become the legal grounds for formal arrests and deprivation of liberty.

When assessing the situation in terms of prevention of torture, inhuman or degrading treatment in the system of the Ministry of Internal Affairs of Georgia, it is important to analyse the incidents studied by the Public Defender of Georgia. In 2016, the Public Defender referred the proposals to the Chief Prosecutor of Georgia to start investigation with regard to six incidents of alleged torture, inhuman or degrading treatment of arrested persons by police (in 2015, 11 proposals were referred). There were multiple bodily injuries documented on arrestees.⁴⁵⁹ It is noteworthy that in two cases, minors were assaulted verbally and physically; the threat of sexual violence was also used. In another two incidents, the threats of sexual violence were used against I.J. and G.A. In both the incidents of possible violence against minors⁴⁶⁰, the objective of the violence was getting a confession.

In the Parliamentary Report of 2015, the Public Defender of Georgia, for eradicating the above problems and identified negative trends, recommended to the Minister of Internal Affairs of Georgia to take all necessary measures to ensure prevention of torture, inhuman or degrading treatment and violations of human rights by police. Some of the suggested measures were adequate training, enhanced accountability and strict supervision. Unfortunately, the negative trends in terms of human rights protection are maintained in the Ministry of Internal Affairs of Georgia in 2016 as well. Therefore, the Public Defender stresses that in the short-term perspective, it is particularly imperative to introduce strict control over policing and enhance the accountability of police officers. It is imperative that police officers receive a clear message from their superiors that violation of human rights will not go unpunished.

The Public Defender observes with regret that the Chief Prosecutor's Office maintained the previous practice of instituting criminal proceedings, according to which instead of instituting criminal proceedings regarding incidents of alleged torture and inhuman or degrading treatment, investigation is launched under Article 333 (abuse of official power) of the Criminal Code. The Public Defender of Georgia reiterates its position and calls upon the prosecutor's office of Georgia to start investigation in such circumstances under Articles 144¹ and 144³ of the Criminal Code of Georgia.

⁴⁵⁹ Two arrestees were diagnosed with concussion.

⁴⁶⁰ According to the official letter received from Terjola District Division of the Ministry of Internal Affairs of Georgia, in one of the cases, 3 minors were brought to Terjola District Division of the Ministry of Internal Affairs of Georgia for identification in accordance with Article 18.b) of the Law of Georgia on Police. The Members of the Special Preventive Groups of the Public Defender of Georgia studied the case-file and revealed that the minor was in police custody for approximately 8 hours (from 22:00 to 6:00). During this period, the minors were not given any possibility to contact their family members.

RECOMMENDATIONS

TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA:

- To take all measures to ensure prevention of torture, inhuman or degrading treatment and violations of human rights by police, among them, through adequate training, enhance accountability and strict supervision; and
- To ensure regular training of police officers in the methods of the use of force (the use of special techniques).

TO THE CHIEF PROSECUTOR OF GEORGIA:

- To ensure the effective (implying comprehensive and full) investigation of the incidents of alleged torture, inhuman or degrading treatment of arrested persons by police; and
- To ensure that upon identification of the elements of alleged torture, inhuman or degrading treatment of arrested persons by police investigation is started under Articles 144¹ and 144³ of the Criminal Code of Georgia.

4.4. THE KEY SAFEGUARDS AGAINST ILL-TREATMENT

4.4.1. INFORMING ARRESTED PERSONS ABOUT THEIR RIGHTS

Under Article 5.2 of the European Convention on Human Rights, everyone who is arrested shall be informed promptly in a language which he/she understands, of the reasons for his/her arrest and of any charge against him/her. Any person arrested must be told in simple, non-technical language that he/she can understand the essential legal and factual grounds for his/her arrest to be able, if he/she sees fit to apply to a court to challenge its lawfulness.

According to the position of the European Committee for the Prevention of Torture, it is imperative that persons taken into police custody are expressly informed of their rights immediately in a language they understand. In order to ensure that this is accomplished, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Furthermore, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.⁴⁶¹

The legislation of Georgia guarantees an arrestee with the right to be informed of his/her rights.⁴⁶² However, one of the problems that still persisted in the reporting period was the notorious practice of ‘conversations’ conducted in police vehicles or police stations

461 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 12, para. 44.

462 Criminal Procedure Code of Georgia, Article 38.1-2; the Code of Administrative Offences of Georgia, Article 245.1.

without the consent of the persons concerned, which was dealt with in the 2015 Parliamentary Report of the Public Defender.⁴⁶³

Furthermore, the Public Defender recommended to the Minister of Internal Affairs of Georgia to ensure the discontinuation of this practice where an individual is actually deprived of his/her liberty.⁴⁶⁴ However, as the Special Preventive Group learned from various sources, among them, from police officers, that the ‘conversations’ are still practiced. In particular, a person is called in police without giving him/her any procedural status, delayed for certain period (several hours), and asked various questions. No information is given about the rights in these cases; there are no documents drafted concerning entering and leaving police division or station that would certify the status and purpose of this person’s stay with the police. The Criminal Procedure Code is familiar with the institute of enquiry, however, in such cases, information is given voluntarily and a person is explained about his/her rights before the procedure.⁴⁶⁵

The United Nations Working Group on Arbitrary Detention emphasises that any confinement or retention of an individual accompanied by restriction on his or her freedom movement, even if of relatively short duration, may amount to de facto deprivation of liberty.⁴⁶⁶ Therefore, if a person is under control of law-enforcement officers, this is already to be considered as deprivation of liberty and it is imperative that the person arrested is given information from the very outset about his/her procedural rights. Conversely, the persons summoned for the ‘conversation’ are not given any information as to the procedure at stake, their status and purpose of bringing them in police. They are not given any explanation about the rights they can exercise in this situation.

The Public Defender observes that the risky practice of the so-called ‘interviews’ does not ensure citizens’ safety during their interaction with police. The case of D.S., who committed suicide, could serve as one of the examples. In the letter supposedly written by him, found after his death, D.S. wrote about psychological pressure exerted on him by police in order to close a drug case. The case of D.S. should be investigated thoroughly and effectively in order to establish the truth in this matter. It is at the same time imperative that the state should pay special attention even to isolated cases like this and prevent police officers from using such methods and exerting psychological pressure on citizens.

As the members of the Special Preventive Group became aware, those persons who recently left a penitentiary establishment, or those who are perceived as risk group by police due to their criminal past or other reasons, are the main target of this practice. Some of the police officers explains this practice by the considerations of securing public order and safety and argues that the interviews with these persons are conducted within the

463 The Parliamentary Report by the Public Defender of Georgia of 2015, p. 204, available at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf> [Last visited on 10.03.2017].

464 *Ibid.*, p. 214.

465 The Criminal Procedure Code, Article 113.1-2.

466 The United Nations, Human Rights Council, Report of the Working Group on Arbitrary Detention (24 December 2012), para. 55, available in English at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf [Last visited on 10.03.2017].

operative and investigative actions and the obtained information is given to the Ministry of Internal Affairs through classified channels. The said information is classified and Special Preventive Group members do not have access to it. Therefore, the Special Preventive Group was devoid of any chance to consider if these persons had been summoned to police legally and in what circumstances information had been obtained from them.

The Public Defender observes that public order and security should never be maintained at the expense of unreasonable restriction of fundamental human rights. Bringing an individual without any legal grounds and procedural safeguards for 'conversation' amounts to this very interference and is impermissible.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in his report on the mission to Georgia in 2015, stressed that taking a person for 'conversation' without explicit and freely given consent not only restricts that person's right to liberty and security but also heightens the risk of torture and ill-treatment.⁴⁶⁷

The Public Defender considers that the practice of getting persons in police stations or into cars for 'conversation' gives rise to the high risk of illegal arrests and ill-treatment. Persons taken into police custody should be expressly informed immediately of all their rights.⁴⁶⁸

As the result of the inspections carried out by the Special Preventive Group, it was revealed that in a number of cases the time of admission of persons to police station precedes the time of their formal arrest. In such cases, usually, a person is summoned as a witness, certain investigative actions are conducted with his/her participation and, after the lapse of certain time, the person is formally arrested. However, the person is not read his/her rights (among them, right to a legal counsel) when he/she is brought as a witness to a police station, his/her personal items, including mobile phone, are taken away. This way, these persons are purposefully limited in their rights to contact their family and call a lawyer. This gives rise to a suspicion that these persons have been illegally deprived of their liberty since they were not officially arrested at the moment they were brought in by the police, they have not read their rights and at the same time they were not free to leave the police station, or police division. The Public Defender observes regretfully that before the full enforcement of the new procedure of witness interrogation, the possibility given to the police to question a person as a witness allows them to have unlimited opportunity to investigate to obtain desirable statements from the persons who are actually deprived of their liberty and do not have minimum procedural safeguards. This may be followed by the formal arrest of the person within hours. Therefore, within this period, when the risk of self-incrimination is high, it is of principal importance that police expressly explains the status, the list of rights and duties, among them, the right to call a lawyer. The Public Defender wishes to stress that whenever bringing a person to police administrative buildings under any status, the person should be explained the rights clearly in the language he/she understands, as well as the purpose of bringing him/her to police. It is

467 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, A/HRC/31/57/Add.3, 2015, para. 43, available in the official languages of the UN at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3 [last visited on 10.03.2017].

468 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 6, para. 37.

at the same time imperative that whenever the status is changed (e.g., when a person is brought in police as a witness and is eventually charged), the person should be read his/her respective rights again and given the possibility to exercise these rights.

Besides, during meetings with the Special Preventive Group, lawyers practising in the regions stated that investigators actively use district inspectors for obtaining information on particular cases. District inspectors enjoy the trust of the locals and they manage collecting information at places of residence, in private circumstances and later bring these persons as witnesses to police divisions. It should also be mentioned that in such cases, citizens are not informed of the circumstances that could follow from giving information to the district inspectors as they deem that this was one of their routine visits.

Furthermore, the lawyers discuss problems regarding drug testing. In those cases where a person refuses to undergo a drug test, he/she is usually arrested in administrative proceedings in accordance with the procedure provided for by the Code of Administrative Offences of Georgia.⁴⁶⁹ Later, this person is brought for a drug test that delays the release up to 12 hours. In such a case, the person is particularly vulnerable and the risk of ill-treatment is especially high. Besides, arrested persons are not read their rights, including their right not to submit biological material for testing. The submitted information is of general nature and related to the category and type of the testing. Therefore, the arrested persons, as the result of pressure and intimidation, sign the document as if they are submitting that material willingly. Besides, the procedure of taking biological sample is conducted in a degrading environment.⁴⁷⁰

Under the legislation of Georgia, when admitting a person to a temporary detention isolator, the head of shift at the isolator or another authorised official notifies the person in writing about his/her rights and duties, the procedure for lodging a complaint, the requirements stipulated by the statute and procedural safeguards. The person concerned certifies this with his/her signature. In those cases where an arrested person does not know the state language, this information is submitted in his/her native language or another language that he/she understands. The illiterate, blind or those with impaired eyesight, persons with a disability should be given the information orally; the information is communicated to deaf and mute persons with the help of the respective interpreter. The juveniles to be placed in a temporary detention isolator should be given the information in the form that makes this information comprehensible for them.⁴⁷¹

According to the information of the Ministry of Internal Affairs, each person placed in a temporary detention isolator is read their procedural rights in the language they understand; the rights related to their stay in a temporary detention isolator are explained as well. According to the Ministry, to this end, there are documents translated in various languages that are kept in isolators and they are handed to the person placed in an isolator. Having read the text, the person placed in the isolator signs the document which is

469 The Code of Administrative Offences of Georgia, Article 45.

470 The detailed information on the legality of administrative arrest for the purposes of conducting drug test is given in the Ombudsman's Annual Report of 2016, under the chapter *The Right to Liberty and Security*.

471 Order no. 423 of the Minister of Internal Affairs of Georgia, dated 2 August 2016, approving Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, annex no. 2, Article 3.9-11.

kept in his/her case-file. One copy is given to the detained person to keep with him/her in the cell.

The members of the Special Preventive Group revealed in several temporary detention isolators that the list of the rights to be given to persons to be placed in the isolator was incomplete and did not contain those rights that can be exercised in an isolator. In some cases, detained persons claimed they did not have the right to shower and therefore could not use this right.

The Public Defender of Georgia observed in the Parliamentary Report of 2015 that each person brought to a temporary detention isolator should be explained clearly and in the language that he/she understands not only the procedural rights, but also all the rights and duties related to his/her stay in the isolator. These rights are usually read upon a person's admission to a temporary detention isolator when this person is stressed and most likely unable to comprehend his/her rights fully. Therefore, it is imperative that these persons should be given the list of the rights when they are admitted to their cells so that they could later read their own rights in a relatively calmer situation.

According to the information submitted by the Ministry of Internal Affairs of Georgia, the obligation to hand the copy of the rights and duties to an arrested person has been stipulated in the Additional Instructions Governing the Activities of Temporary Detention Isolators of the Ministry Of Internal Affairs of Georgia approved by Order no. 692 of the Minister of Internal Affairs of Georgia, dated 8 December 2016. This is welcomed by the Public Defender of Georgia. Within the framework of the next monitoring, the Special Preventive Group will be paying particular attention to the practical implementation of these instructions.

4.4.2. NOTIFYING FAMILY

The UN Committee against Torture emphasises the right of arrestees to contact relatives.⁴⁷² European Committee for the Prevention of Torture also emphasises an arrested person's right to have his/her arrest notified to a third party from the very outset of police custody. Of course, the CPT recognises that the exercise of this right might have to be made subject to certain exceptions to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards.⁴⁷³ The rationale of the said right is to inform the family (or third party) of an arrestee about the arrest and his/her whereabouts in time.

Under Article 177.1 of the Criminal Procedure Code of Georgia, within three hours from the arrest of a person, a prosecutor, or upon the latter's instruction, an investigator shall

472 UN Committee against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, para. 13, available in English at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf [last visited on 10.03.2017].

473 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 15, para. 43.

notify the arrestee's family or third persons about the arrest. Article 245.1.c) of Code of Administrative Offences of Georgia provides for the right of arrested persons, upon their wish, to have the arrest and their whereabouts be notified to a relative named by them.

The practice of informing family or a lawyer about arrest by police is different. In some cases, a police officer allows an remand to contact his/her family with his/her own phone or a police officer calls the number given by an remand and notifies his/her family.

The analysis of the case-files studied by the Special Preventive Group in regional police divisions shows that only in 56% cases of the studied case-files families were contacted within the statutory term of three hours. In other cases, families were notified within the period of 3-24 hours, or a police division failed to present a document on informing families, or a Special Preventive Group was notified in writing that a family had been contacted but the exact time of contact remained unclear for the Group members. In 4.2% cases of the studied case-files, families have not been contacted at all.

The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced if a single and comprehensive custody record were to exist for each person arrested. The following aspects should be recorded on the comprehensive custody record: all aspects of his/her custody and action taken regarding them such as time of deprivation of liberty and reasons for that measure; time of informing the arrestee about his/her rights; signs of injury, mental illness, etc; time of informing the next of kin/consulate and lawyer and their visit; time of offering food; interrogation time; time of transfer or release, etc.). Furthermore, the detainee's lawyer should have access to such a custody record.⁴⁷⁴

It is noteworthy that a register documenting the number of persons requesting contact with relatives, how many were allowed to contact, who got in touch with relatives, what information was notified, etc., is not maintained either in police divisions or in temporary detention isolators. The absence of this register renders the exercise of the right to contact relatives dependent on the good will of the police, which increases the risk of arbitrariness. Therefore, the Public Defender considers it important that each case of contacting relatives should be documented and police divisions should maintain some kind of a register to enter each such request and follow-up actions.

Besides, during the meetings with the Special Preventive Group, the NGOs and lawyers practising in the regions stated that police divisions purposefully delay contacting families as it is used as a leverage to obtain desirable statements or ensure that certain investigative actions are conducted.

The right to contact relatives is directly related to the right to access to legal counsel, since involvement of a lawyer is most likely guaranteed by an arrestee's family. Therefore, it is important to ensure that an arrestee's relatives are immediately notified about the arrest and whereabouts of the arrested person so that they could chose a lawyer promptly and get involved in proceedings.

474 *Ibid.*, p. 7, para. 40.

4.4.3. ACCESS TO A LAWYER

The possibility for persons taken into police custody to have access to a lawyer is a fundamental safeguard against ill-treatment, especially in the initial hours of arrest.⁴⁷⁵ A lawyer should be present at all investigative actions carried out in respect of an arrestee. This, on the one hand, significantly decreases the risk of ill-treatment and, on the other hand, minimises the likelihood of lodging unsubstantiated charges against a police officer on the account of ill-treatment.

It is also important that the meetings between arrestees and their lawyers are confidential, without any possibility of eavesdropping by law enforcement officials. Under the Order of the Minister of Internal Affairs of Georgia, upon presenting certain documents by a lawyer (an identification card and a requisite order), a person placed in an isolator has the right to meet him/her without the presence of another person, without limiting the number and duration of meetings.⁴⁷⁶

The Public Defender has held before⁴⁷⁷ that access to a lawyer should be guaranteed in the shortest time possible after arrest as the risk for intimidation, pressure, insult and other ill-treatment is especially high at the initial stage of restriction of liberty, when a person is especially vulnerable. However, the analysis of the studied cases shows that in those instances where an arrestee had a lawyer, the latter was involved immediately after the arrest only in 7.8% of cases. Usually, a lawyer gets involved in the case after one or two hours from arrest (in 26.1% cases, a lawyer got involved within 24-36 hours from arrest, and in 30.6% of cases within 36-60 hours). Accordingly, in most of the cases, arrested persons are in police custody without a lawyer, which increases the risk of subjecting them to ill-treatment.

The study of the cases also shows that, in police divisions, various investigative actions, .e.g., interrogations are conducted from the moment of arrest until the involvement of a lawyer. Despite the fact that the right to a lawyer is guaranteed both in administrative⁴⁷⁸ and criminal proceedings,⁴⁷⁹ the monitoring revealed that the persons arrested in administrative proceedings never exercise their right to a legal counsel. As regards those arrested in criminal proceedings, in 46% of the studied cases, arrestees did not have a lawyer when they were under full control of police or were placed in temporary detention isolators. Accordingly, the study conducted in regions about involvement of lawyers in criminal proceedings showed that in 54% of studied cases, a lawyer was involved from various stages. A lawyer was involved at the initial stage of proceedings only in 3% of cases; in 27% cases, a lawyer was involved after charges were brought; in 18% cases, a lawyer was involved from the stage of interrogation; during concluding plea bargain 3.5% and at the stage of other investigative actions in 2.5% of the studied case-files.

475 Standards of the European Committee for the Prevention of Torture, p. 13; para. 41.

476 Annex no. 2, Article 8.2 of Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016 on Approving Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.

477 The Parliamentary Report of the Public Defender of 2014, p. 208; see at: <http://www.ombudsman.ge/uploads/other/2/2439.pdf> [last visited on 10.03.2017].

478 The Code of Administrative Offences of Georgia, Article 255.

479 The Code of Criminal Procedure of Georgia, Article 38.5.

Out of the studied case-files, in which an arrestee had a lawyer at least at some stage of the proceedings, the indicator of involvement of a lawyer in entire proceedings was separately processed. According to the findings, in the majority cases (37.1%), a lawyer was involved at the stages of interrogation and bringing charges; in 26.6% of cases, only at the stage of bringing charges; in 13.5% of cases, at the stages of charging, interrogation and conducting some other investigative action; in 10.1% cases, a lawyer was involved only at the interrogation stage; in 6.8% cases, only at the stage of concluding a plea bargain; in 0.4% cases, lawyers were involved in the interrogation and other investigative actions; also in 0.4% cases, lawyers were involved at the stages of charging and concluding a plea bargain; and in 2.5% cases, lawyers were involved at the stages of charging and other investigative actions. In all the above case-files, a lawyer was involved in all investigative actions only in 1.3% studied case files and in other 1.3% cases, a lawyer was involved apart from the above investigative actions in some another investigative action.

Under the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,⁴⁸⁰ the rights of an arrested person include the right to contact a lawyer and the right to meet a lawyer. Contact with a lawyer should be provided within a reasonable time from the time admission to an isolator. In those cases, where they know who the lawyer is and his/her contact details, isolators' personnel themselves contact him/her; and in those cases, where they do not, the arresting authority provides the contact with a lawyer.⁴⁸¹

Out of 178 case-files studied in the regions, in 123 (69.1 %) cases, a lawyer visited an detained person in an isolator; out of 143 case-files studied in Tbilisi, a lawyer visited in an isolator in 80 (55.9 %) cases.

According to the information provided by the Ministry of Internal Affairs of Georgia, the detained persons placed in temporary detention isolators exercise their statutory rights, such as access to a lawyer, adequate medical service, appeal etc., fully.

According to the data collected and processed by the Special Preventive Group, there are problems related to the exercise of arrested persons' right to a legal counsel in criminal cases in the regions. Out of the studied case-files, almost in half of the cases (46%), detained persons did not have a lawyer at all. The Public Defender is appalled by these statistics. Besides, even in those cases, where an arrested person had an access to a lawyer, the latter was usually involved after the lapse of certain time from the moment of arrest.

One of the reasons for declining to exercise the right to a lawyer is the cost of legal consultation. The European Court of Human Rights has held that the State is responsible not only to provide an arrested person with a legal counsel but also in case of a manifest failure by the counsel appointed under the legal aid scheme to provide effective representation; Article 6 § 3 (c) of the Convention requires the national authorities to intervene.⁴⁸²

480 Annex 2 to Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016 Approving the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.

481 *Ibid.*, Article 8.1.

482 *Güveç v. Turkey*, application no. 70337/01, judgment of the European Court of Human Rights of 20 January 2009, paras. 130-131.

Under the Law of Georgia on Legal Aid, legal aid is provided in cases directly prescribed by law; also, under the procedure established by this Law if an remand, convicted and/or acquitted person is insolvent.⁴⁸³ Therefore, legal aid lawyers are involved in criminal proceedings in one of the following cases: 1) if a person is insolvent; 2) if a person is eligible for mandatory defence; and 3) the Director of the Legal Aid Office, based on the criteria predefined by the Legal Aid Council, decides that legal aid should be rendered to a person who is not a member of a family registered in the unified database of socially vulnerable families.⁴⁸⁴

LEPL Legal Aid Office has 12 bureaus in Georgia (one in Tbilisi and eleven in various regions). As of 31 December 2016, there were 92 legal aid lawyers specialising in criminal law employed in the Office. Most of the lawyers were employed in Tbilisi Bureau.⁴⁸⁵ Besides, Legal Aid Office provides free legal services through contracted lawyers who are not staff members of the Office.

In 2016, legal aid lawyers had to be involved in 10973 cases; in 9233 cases, these were staff members of the legal aid bureau; in other 1740 cases, it was necessary to involve contracted lawyers.⁴⁸⁶

In 6800 cases, legal aid layers were involved right at the investigative stage, in other cases, they were involved at the trial stage or during execution of sentence.⁴⁸⁷

Accessible legal consultation and assistance especially in those cases, where an remand is arrested, is one of the main safeguards of the principles of fair trial and rule of law. Besides, involvement of a lawyer at the early stage of proceedings is an important mechanism of protection from torture and other forms of ill-treatment. The Public Defender welcomes the involvement of legal aid lawyers in criminal proceedings as early as the initial investigative stage. However, the Special Preventive Group is unaware specifically at which point of investigation the lawyers get involved.

The Public Defender reiterates the importance of providing a lawyer to an arrestee within the shortest time possible after arrest in those cases where he/she cannot pay the fees for legal services.

In accordance with the Statute of the LEPL Legal Aid Office, in cases of mandatory defence, the head of a legal aid bureau assigns a lawyer upon request. In those cases, where circumstances of the case do not necessitate reaching a decision immediately, there is a two-day term for taking a decision on assigning a legal aid lawyer to the proceedings.⁴⁸⁸

According to the information submitted by the Legal Aid Office, a lawyer is assigned to a criminal case practically immediately. The two-day term is used mainly in those cases where there is no need to immediately take a decision and a beneficiary's interests are

483 Law of Georgia on Legal Aid, Article 5.1.

484 *Ibid.*, Article 5.3.

485 Letter no. LA91700003629 of the Director of LEPL Legal Aid Office of 24 February 2017, pp. 1-2.

486 *Ibid.*, pp. 4-5.

487 *Idem.*

488 Statute of LEPL Legal Aid Office, Article 21.

not essentially compromised.⁴⁸⁹ The Public Defender welcomes the practice of immediate assignment of a legal aid lawyer; however, he observes that the involvement of a lawyer in the proceedings after two days from arrest could essentially compromise the rights and legitimate interests of an arrested person.

According to the information received from the Legal Aid Office, in 2016, 39.6% of the Office's budget was expended on the remuneration of the lawyers employed within the bureaus. It implies that there are sufficient financial resources available for the services of the existing number of legal aid lawyers. However, the Public Defender observes that future increase in human resources of the office is desirable.

In 2016, the lack of human resources was never a reason for a refusal to assign a lawyer to criminal proceedings.⁴⁹⁰ However, the Public Defender observes that under such conditions, where one lawyer conducts 100 criminal cases on average in a year, the quality of legal services and effectiveness of legal aid could be seriously questioned. This under no circumstances implies questioning the professionalism of lawyers themselves. Increasing the number of legal aid lawyers in bureaus of the Office would contribute to the better administration of justice.

Besides, it is problematic to document an arrestee's request for a lawyer. When an arrested person requests a lawyer, there is no mechanism in the form of either a report or other registered document that would show whether he/she was provided with one or this right was arbitrarily refused by police under a false pretext. The Public Defender raised this issue in the Parliamentary Report of 2015 as well.⁴⁹¹ However, the situation has not changed in this regard. Therefore, the Public Defender once more emphasises that each request of an arrested person for a lawyer should be documented and there should be some mechanism in place that would register every such request and the subsequent follow-up.

4.4.4. ACCESS TO A DOCTOR

Immediately upon arrest, arrestees should be given requisite medical assistance, which implies services rendered by a qualified health-care professional without any undue delay. Under the well-established case-law of the European Court of Human Rights, Article 3 of the European Convention imposes a duty on a State to ensure that arrestees are provided with the requisite medical assistance.⁴⁹²

A person in police custody should be given access to medical service from the very moment of arrest, which decreases the risk of ill-treatment. During medical examination, the health conditions should be described in detail and the findings of the examination

489 Letter no. LA91700003629 of the Director of LEPL Legal Aid Office of 24 February 2017, p. 6.

490 The grounds of refusal of involvement of a legal aid lawyer in criminal proceedings, see, Letter no. LA91700003629 of the Director of LEPL Legal Aid Office of 24 February 2017, p. 7.

491 Parliamentary Report of the Public Defender of 2015, p. 209, available at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf> [last visited on 10.03.2017].

492 *Kudła v. Poland*, application no. 30210/96, judgment of the Grand Chamber of the European Court of Human Rights of 26 October 2000, para. 94; *Kalashnikov v. Russia*, application no. 47095/99, judgment of the European Court of Human Rights of 15 October 2002, para. 95.

should be accessible for an arrestee or his/her lawyer. In accordance with the standards of the European Committee for the Prevention of Torture, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).⁴⁹³

The Public Defender positively assesses Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016⁴⁹⁴, which approved Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia. These Instructions apply to all isolators with an operational medical unit.⁴⁹⁵ In the opinion of the Public Defender of Georgia, the Instructions comply with the CPT standards.⁴⁹⁶ The Instructions reflect the Public Defender's recommendations made in 2014-2015 concerning timely and adequate medical services, medical ethics and documenting injuries, which is positively assessed.⁴⁹⁷

In accordance with the above-mentioned Instructions, medical assistance should be accessible for persons in temporary detention isolators at any time of the day and night. When placing a person in a temporary detention isolator, upon written informed consent, an arrested person is interviewed immediately and adequately examined by an on-duty doctor of the temporary detention isolator for the assessment of health condition. Upon admission to an isolator, an arrested person should also be informed about medical services available there, as well as the rules for benefiting from these services. The request for consultation with a health-care professional of an isolator should be fulfilled without limitations and delay. An detained person should be provided with the same quality of medical services in temporary detention isolators as free citizens in public health-care sector.⁴⁹⁸

According to the established practice, in those isolators with no operational medical units, upon admission to such temporary detention isolators, an ambulance is called in and its doctor examines an arrested person.

The above Order also provides for detailed instructions for documenting injuries and states that injuries should be described in accordance with the so-called Istanbul Protocol.⁴⁹⁹

493 The Standards of the European Committee for the Prevention of Torture, p. 15, para. 42.

494 Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016, annex, Article 1.2.

495 Presently there are such medical units in the following eight isolators: Tbilisi no. 1. TDI, Tbilisi TDI, Ajara and Guria Regional TDI, Shida Kartli and Samtskhe-Javakheti Regional TDI, Kvemo Kartli Regional TDI, Kakheti Regional TDI, Imereti, Ratcha-Lechkhumi and Kvemo Svaneti Regional TDI, Samegrelo-Zemo Svaneti Regional TDI.

496 23rd General Report of the CPT, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2013, para. 74.

497 See the Parliamentary Report of the Public Defender of Georgia of 2014, p. 218, also, the Parliamentary Report of the Public Defender of Georgia of 2015, p. 214.

498 Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, annex, Article 3.

499 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the so-called Istanbul Protocol.

The Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators provide for the form of medical examination to be provided to a person placed in an isolator upon admission. There are detailed instructions for health-care professionals as well as the tables for general information on a patient and his/her illness record. In the medical examination form, special attention is given to information about torture, inhuman treatment or sexual violence; information on alleged violence is entered in relevant rows and columns. Besides, under the said Instructions, a health-care professional has a duty to indicate in a graphical image of human anatomy the injuries found on an detained person, document them by taking photos and attach the material to the medical examination form.⁵⁰⁰ Furthermore, a doctor is obliged to open the medical case-file of a person upon his/her admission to an isolator and enter the findings of medical examination in a relevant form. Besides, doctors have the duty to give medical examination to detained persons, upon informed consent, when they are taken out from an isolator. In such case, a doctor fills in an additional form that is similar to the initial medical examination form. These forms will be annexed to the medical case-file of a patient.⁵⁰¹ Under the Instructions, the medical unit carries out the following actions: examination of a person to be placed in an isolator; registration of the injuries found; and if necessary, with the consent of the patient, submission of the information on the injuries to relevant authorities.⁵⁰²

The Public Defender welcomes such regulation⁵⁰³ and states that comprehensive medical examination upon admission and leaving at an isolator of an arrested person will significantly diminish risks of ill-treatment and contribute to the identification and documentation of incidents of alleged ill-treatment before both admission and staying in an isolator.

In the opinion of the Public Defender of Georgia, the recently approved Instructions enable health-care professionals to effectively identify and document the incidents of alleged ill-treatment during initial admission to temporary detention isolators as well as in all other instances; e.g., when an detained person is given medical services immediately after violent incidents in an isolator, or if he/she is taken out of an isolator for any reasons and is returned. Instructions also require observance of ethical standards such as medical confidentiality, medical examination after informed consent of a patient and submission of information about alleged ill-treatment, based on a patient's consent, to the competent authorities.

At the same time, the Public Defender emphasises the importance of the accurate and comprehensive implementation of the Instructions. As the Minister issued the Order by the end of 2016, the Special Preventive Group could not inspect the practical implementation of the Order within the monitoring carried out in the reporting period.

500 Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, annex 4.

501 *Ibid.*, annex, Article 7.2.

502 *Ibid.*, Article 25.

503 The Public Defender, in his Parliamentary Report of 2015, discussed the problem of incomplete documentation of injuries on persons placed in temporary detention isolators and emphasised the importance of the use of comprehensive and unified standards for documenting injuries that would be in compliance with the requirements of the Istanbul Protocol.

The Public Defender observes that all medical examinations should be carried out without eavesdropping and visual surveillance from non-medical personnel save those cases where either a doctor or a patient requests to make an exception. This should not be made into a practice though. In those cases where a doctor is not willing to stay alone with an detained person due to security issues, alternative measures should be introduced as the presence of an isolator’s staff member at the medical examination can be a reason for incomplete documenting of health condition as well as origin of injuries.

According to the Instructions, in those cases where a health-care professional requests the presence of a staff member, medical examination should be carried out of the hearing of the non-medical staff, maintaining a reasonable distance.⁵⁰⁴

The findings of the monitoring show that the initial medical examination of an arrestee is usually carried out in the presence of an isolator’s personnel due to the reason that a doctor is afraid to stay alone. In such cases, the close presence of the staff has its ramifications for openness of the arrestee (the real reason behind injuries, complaints against police, etc.). It is the observation of the Special Preventive Group that this practice is of routine and regular nature, which is further confirmed by the recordings of detained persons’ medical case-files. Usually, there is a notice in external examination reports that an examination was conducted with a doctor, which means that screening and medical examination of a person placed in a temporary detention isolator was jointly carried out by a health-care professional and the isolator’s staff member.

The below table lists incidents of admission to temporary detention isolators where an ambulance doctor does not indicate either absence or presence of bodily injuries (no recording) whereas an external examination report either indicates an injury or describes it and an ambulance doctor indicates that no injuries have been found on the body of a person in police custody.

Isolator	No Recording	Not Found
Kakheti Regional TDI (Telavi)	20	5
Sighnaghi TDI	0	3
Kvareli TDI	5	7
Imereti, Ratcha-Lechkhumi, and Kvemo Svaneti Regional TDI (Kutaisi)	6	5
Zestaponi TDI	0	2
Baghdati TDI	3	0
Tchiatura TDI	0	1
Samtredia TDI	8	3
Zugdidi Regional TDI	5	2
Zugdidi TDI	2	1
Senaki TDI	3	1

504 *Ibid.*, Article 4.6.

Poti TDI	1	1
Chkhorotsku TDI	3	3
Khobi TDI	1	1
Batumi TDI	13	9
Kobuleti TDI	5	1
Ozurgeti TDI	6	1
Lanchkhuti TDI	0	1
Borjomi TDI	2	1
Total	83	48

The study of case-files show that the situation on documenting injuries in isolators by ambulance doctors has been improved compared to the previous year.⁵⁰⁵ However, it is important that ambulance doctors always fully described injuries. They could be given special instructions in this regard.

During the monitoring carried out in 2016, the Special Preventive Groups did not receive any information about any bias on the part of medical personnel in isolators. The Public Defender of Georgia still observes that it is important that adequate medical assistance is provided by independent and impartial doctors in temporary detention isolators. This would enable detained persons to report openly and freely to doctors any injury or complaint that they could have during arrest or thereafter. It is an opinion of the Public Defender that relationship with the medical personnel that is under the Ministry of Internal Affairs would raise the feeling of fear and despair in detained persons and they would fear that their health condition would not be described adequately and alleged ill-treatment from police could remain unaddressed.⁵⁰⁶

It should be noted that a person in temporary detention isolator, if needs be, has the right to request medical examination throughout his/her stay in the isolator and to this end, contract an expert with his/her own financial resources.⁵⁰⁷

RECOMMENDATIONS

TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA:

- To ensure discontinuation of the practice of calling persons to police stations and divisions and ‘interviewing’ them without any procedural guarantees;

505 In 2015, out of 740 studied case-files, in 264 cases (35.7 %), an ambulance doctor did not indicate either absence or presence of bodily injuries and in 67 cases (9%), refused the existence of injuries, whereas the personnel of temporary detention isolators indicated the existence of bodily injuries in external examination reports. In 2016, out of 578 studied case-files, the same indicators are 83 cases (14.4 %) and 48 (8.3 %) cases respectively.

506 The Parliamentary Report of the Public Defender of Georgia of 2015, p. 213.

507 Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, Article 5.1.4.

- To ensure that all persons brought to police stations and divisions are registered indicating their status, the time of entering/leaving administrative buildings;
- To ensure all the persons entering, under any status, police administrative buildings to be expressly told in a language understandable about their status, as well as the purpose of their being brought to police and their rights;
- To ensure that in all cases the information about arrest of a person is communicated to family/relatives/consulate;
- To ensure that the request of a person in police custody to call his/her family or lawyer is documented through maintaining relevant register;
- To ensure that a person brought as a witness to a police station or division is explained in a physical and psychological pressure-free environment his/her right to a lawyer and upon request ensure unimpeded involvement of a lawyer in the proceedings;
- To ensure that medical units are set up in all temporary detention isolators and Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 applies to all temporary detention isolators;
- To ensure effective implementation of Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016;
- To ensure that non-medical staff attends medical examination of persons placed in temporary detention isolators only in exceptional cases and not regularly; and
- To examine the possibility of transfer of medical personnel employed in temporary detention isolators from the system of the Ministry of Internal Affairs to the Ministry of Labour, Health and Social Affairs for ensuring institutional independence and impartial activities.

TO THE GOVERNMENT OF GEORGIA:

- To ensure increase of the budget of the LEPL Legal Aid for increasing the human resources in the bureaus of the Office; and
- To take all necessary measures to ensure that in cases an ambulance is called in temporary detention isolators, doctors document fully the bodily injuries found on persons in police custody.

4.5. PROCEDURAL SAFEGUARDS

4.5.1. AUDIO AND VIDEO RECORDINGS

The electronic recording depicting all aspects of detention and the actions implemented in relation to it represents an important additional safeguard against the ill-treatment of detainees.⁵⁰⁸ Both the Committee against Torture⁵⁰⁹ and the European Committee for the Prevention of Torture welcome introduction of video surveillance systems in police establishments of Member States.

During videotaping, certain standards such as protection of personal data, processing and storage of the recorded material, supervision by the same staff personnel when it comes to the facilities of female prisoners; if an interrogation is videotaped, all those present and not only an arrestee should be recorded, etc., should be borne in mind.

Under Article 27.1 of the Law of Georgia on Police, to ensure public security the police may, as provided for by the legislation of Georgia, place/install self-operating photo and video devices on their uniforms, on roads, along external perimeters of buildings, use self-operating devices already installed and under the possession of other persons to prevent crime, to protect a person's safety and property, public order, and to protect minors from harmful influence.

Under Article 24 of the Law of Georgia on Police, special police control of a person, an item, or a vehicle shall be conducted if there are reasonable grounds to believe that a crime or other offence has been or will be committed. During a special police control, a police officer shall be equipped with switched-on video recording device fixed on his/her uniform.

It is noteworthy that only the patrol police officers of the Ministry of Internal Affairs conduct audio-video recording by body cameras.

The term for the storage of recordings depends on technical specifications but should not exceed three years.⁵¹⁰ The Public Defender, in his Parliamentary Report of 2015, recommended⁵¹¹ to the Minister of Internal Affairs to set forth the obligation for patrol police officers to use body cameras when communicating with citizens, as well as the procedure for the storage of the recordings and the terms for their storage. This recommendation has not been fulfilled. The Public Defender observes that the use of body cameras by police should be mandatory during any kind of communication with citizens and the recordings should be stored for a reasonable time.

It is important that not only the officers of patrol police department but also detective-investigators and district inspector-investigators should be equipped with body cameras

508 See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, (CPT/Inf/E (2002) 1 - Rev. 2015), para. 36, available in English at: <http://www.cpt.coe.int/en/docsstandards.htm> [Last visited on 29.03.2017].

509 CAT general comment N2 on art. 2 UNCAT, para.14.

510 Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015.

511 Report of the Public Defender of Georgia on the Situation of Human Rights in Georgia, 2015, p. 218, available at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf>.

and in-car video systems. In the Parliamentary Report of 2015, the Public Defender recommended⁵¹² the Minister of Internal Affairs regarding this issue; however, this recommendation has not been complied.

During interviews, some police officers stated that sometimes they record citizens' aggressive behaviour with their personal mobile phones. The Public Defender emphasizes that video recording is impermissible without certain normative regulation. In Public Defender's opinion, the fact that police officers record incidents once again indicates to the interest of the police officers themselves to record their communication with citizens. However, the Public Defender stresses the importance of making such recordings in accordance with legislation. It is important to store adequately the recorded material to prevent its arbitrary use in the future. The procedure for making video recordings and processing the material as well as the terms for its storage should be in compliance with the national standards and legislation on the protection of personal data.

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Internal Affairs to ensure that all police divisions were equipped with video surveillance systems in external and internal premises.⁵¹³ According to Letter no. 555482 of the Minister of Internal Affairs of Georgia, received on 4 March 2016, in 2014-2015, video cameras were purchased for structural sub-units of the Ministry and their installation was scheduled for 2016. The Public Defender's Office requested through letters nos. 03-1/8104 and 03-2/234 information from the Ministry of Internal Affairs about equipment of external and internal premises of police divisions as well as temporary detention isolators with video cameras. On 17 January 2017, the Ministry informed the Office in letter no. 105466 about external surveillance video cameras as of February-March 2016.

As showed by the information provided by the Ministry and the outcomes of the monitoring carried out by the members of the Special Preventive Group, it is still a problem in 2016 to have external and internal premises of police divisions covered adequately by video cameras. Video cameras were not installed either on external or internal premises of Chkhorotsku, Martvili, Senaki, Tsalenjikha, Mestia, Borjomi, Akhaltsikhe and Adigheni district divisions. In the great majority of those divisions, where internal premises are covered by video surveillance, the cameras are mostly installed at the entrance, in front of the place allocated for an on-duty operative.

After an arrestee is taken into a building, it is impossible to establish where and in what conditions he/she is kept in the police division and whether he/she was subjected to physical or psychological violence.

The Public Defender of Georgia considers it necessary that the buildings of police divisions were equipped with surveillance cameras and video recordings were stored for a reasonable time. This would be an additional safeguard against ill-treatment of an arrestee. Besides, it is important that the entire process, in each case, is video recorded starting from the arrest to the admission to a temporary detention isolator, for as long as arrestees are under the police control.

512 *Idem.*

513 *Idem.*

Video surveillance is carried out in all temporary detention isolators. However, for the purposes of adequate protection of arrestees from ill-treatment, it is important to ensure that video surveillance in temporary detention isolators is recorded and stored for a reasonable time. Upon request, the recordings should be available for the members of the Special Preventive Members. In his Parliamentary Report of 2015, the Public Defender recommended to the Minister of Internal Affairs to ensure that video surveillance in temporary detention isolators was recorded and stored for a reasonable time.⁵¹⁴ The fact that the minimum term of storage was defined in the reporting period is assessed positively.⁵¹⁵ Information is automatically recorded during video surveillance. The recorded material is stored in a central control room for not less than 24 hours. When the memory of the recording device is full, fresh information is recorded on the same device after erasing the existing information. However, the Public Defender believes that the storage of recordings for 24 hours does not ensure attaining the objective sought and accordingly all measures should be taken so that the recordings are stored for a reasonable time.

RECOMMENDATIONS

TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA:

- To ensure that surveillance cameras are installed in all police stations;
- To ensure that in all cases of police arrests an uninterrupted video recording is made of the process starting from the arrest to the admission to a temporary detention isolator, including arrest, reading of rights, carrying out investigative actions and transportation of a detained person;
- To set forth the obligation of patrol police officers to record with a body camera the communication with citizens and the procedure and terms of storing the recordings;
- To set forth the obligation of detective-investigators and district inspector-investigators to record with a body camera the communication with citizens and procedure and terms of storing the recordings;
- To ensure that the recordings from video surveillance installed in temporary detention isolators are stored for a reasonable time; and
- To ensure all the recordings are stored for a reasonable time.

4.5.2. COMPREHENSIVE PROCESSING OF DOCUMENTATION

During the visits carried out in 2016, the members of the Special Preventive Group examined the case-files of the detained persons of temporary detention isolators, as well as

⁵¹⁴ *Idem.*

⁵¹⁵ Article 11.7 of the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of the Minister of Internal Affairs of Georgia of 2 August 2016.

journals kept in police stations and units. The examination of the above documentation revealed various breaches and shortcomings, redeeming of which is necessary for comprehensive processing of documentation.

Annex no. 6 to Order no. 605 of the Minister of Internal Affairs of Georgia of 8 August 2014 approved the form of the Journal for Registration of Detained persons; Annex no. 7 to the same Order approved the form of the Journal of Registration of Detained persons Transferred to Prison (Temporary Detention Isolator). During the examination of these journals, both in 2015 and 2016, the staff members of the police stations and units were asking the members of the Special Preventive Groups about how they were supposed to fill in certain tables. It has turned out that the personnel of the Ministry of Internal Affairs fill in the journals erroneously. Besides, these journals are outdated and need revision and redesign.

According to the explanation given by the personnel in charge of maintaining the journals at police stations and divisions of the Ministry of Internal Affairs, they were trained to process the journals of registering detained persons and journals of registering detained persons transferred to prison (temporary detention isolators) comprehensively. However, in 2016, the monitoring conducted by the members of the Special Preventive Group showed that the aforementioned documentation is still maintained erroneously. In particular, in some cases the following cannot be established: the time of arrest, the date and time of admission to a police division; the situation of an arrestee; their numbering in the journals is mixed up; there are no indications where and under which circumstances an offence was committed; and in some cases, columns in the journals are not filled at all.

In 2016, the shortcomings in maintaining journals were identified in the police departments of Samegrelo-Zemo Svaneti, Samtskhe-Javakheti and Guria; in district divisions of Khobi, Zestaponi, Tkibuli, Borjomi, Adigheni, Akhalkalaki, Terjola, Kharagauli, Ambrolauri, Baghdati, Lanchkhuti, Oni, Tskaltubo, Khoni, Aspindza, Khelvachauri, Martvili, Chkhorotsku, Samtredia, Tchiatura, Sachkhere, Lentekhi, Tsageri, Akhaltsikhe, Ozurgeti, Kobuleti, Ninotsminda, Poti, Mestia, and Chokhatauri. The Special Preventive Group did not find any shortcomings in the entries of 2016 in the journals for registering detained persons and journals for registering detained persons transferred to prison (temporary detention isolators) of Ajara Police Department, Batumi City Police Division, District Divisions of Tsalenjikha, Senaki, Zugdidi and Vani.

It was revealed during the visits made by the Special Preventive Group that special journals are not maintained at police stations and divisions of the Ministry of Internal Affairs to register visitors.⁵¹⁶ E.g., when a person appears in a police division/station as a witness, his/her visit is not registered in the standard form journal. It is important to register in detail the date and time of entry/leaving as well as the purpose of the visit of citizens to police stations and divisions in order to ensure that later the voluntary nature of their visit and its duration as well as purpose of the visit are not questioned. In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Internal Affairs of Georgia regarding this issue. This recommendation, however, has not been fulfilled to-date.

⁵¹⁶ Except for several divisions, were the External Security Office notes down the information.

The Georgian legislation sets forth the forms of reports to be drafted on arrests made in criminal and administrative proceedings. Under Article 175.2 of the Criminal Procedure Code of Georgia, the following should be mentioned in the arrest reports: who, where, when, under what circumstances and on which basis of the Code has been arrested; the physical condition of the arrestee; what the charges are; exact time of his/her admission to police station or other law enforcement body; the list of the rights and duties under the Code; and the objective reason(s) due to which it was impossible to draft the report immediately upon arrest.

During the visits made in the reporting period, the members of the Special Preventive Group examined how comprehensively the law enforcement officers draft reports and it was revealed that there are frequent shortcomings in drafting arrest and body search reports. In particular, the following data is not mentioned in reports: the circumstances under which a person was arrested; whether he/she resisted police; whether proportional force was used and in which manner; and whether arrest was made in peaceful environment without resisting police.

In accordance with Article 245.5 of the Code of Administrative Offence of Georgia, the following is stated in the arrest report drafted in administrative proceedings: the date and place of drafting the report; the position, name and surname of the official drafting the report; data about an arrestee; and time and ground for arrest. The report is signed by the official who drafted the report and the arrestee. If the arrestee refuses to sign the document, it is mentioned in the report.

Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 on Approving the Procedure of Drafting Administrative Offences Report, Administrative Arrest Report, Body Search and Objects Search Report, Penalty Receipt, Temporary Driving Licence, Explanation and Notice and Submitting them to the Authority Examining an Administrative Case approved the form of administrative arrest report.⁵¹⁷ This report, unlike the report of arrest in criminal proceedings, does not require registering the time of drafting arrest report,⁵¹⁸ the injuries on the body of an arrestee and description of the circumstances of arrest (whether there was resistance, whether proportional force was used and in which manner; whether arrest was made in peaceful environment without resisting police). In the light of the foregoing it is necessary to improve the form of administrative arrest report by adding relevant columns for registering the time of drafting arrest report, the description of injuries on the body of an arrestee, and the circumstances under which a person was arrested. In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Internal Affairs of Georgia concerning improving the form of administrative arrest report. This recommendation, however, has not been complied with to-date.

After an arrest, the physical examination should identify any trace of violence that could have been inflicted as the result of torture or ill-treatment and should be duly described and documented. As the European Court of Human Rights has repeatedly stated, where a person is injured while in detention or otherwise under the control of the police, any such

517 Annexe no. 9.

518 The time of arrest is implied.

injury will give rise to a strong presumption that the person was subjected to ill-treatment.⁵¹⁹

The study of the information collected nation-wide showed that there were references to a bodily injury in 391 (68.7 %) cases of arrest reports (in 2015, in 419 [58.5 %] cases), and in 569 cases of external examination reports (in 2015, in 716 cases). Accordingly, in 178 (31.3 %) cases (in 2015, 297 [41.5 %] cases), there is no reference of those bodily injuries in arrest reports that are indicated in external examination reports. Similarly, in Tbilisi isolators, bodily injuries are indicated in external examination reports in 367 cases and in arrest reports in 233 (63.5 %) cases, therefore the reference to bodily injuries are missing in 134 (36.5 %) arrest reports. It is noteworthy in this context that the administrative arrest form does not impose an obligation on the arresting official to indicate the bodily injuries found on an arrestee. This is one of the reasons that approximately three fourths of those cases, where bodily injuries that are indicated in external examination reports are missing from arrest reports, are administrative arrests.

During the study of the information, the similarity of the number and location of bodily injuries in external examination reports and arrest reports was also examined. It was found out that there are identical recordings only in one fourth of the cases, which again indicates the shortcomings in processing documentation.

Regarding the similarity of the number of injuries see the below table.

Similarity of Recordings on Injuries	Region in 2015	Region in 2016	Tbilisi in 2016
Identical recordings	194 (29.6 %)	100 (26 %)	53 (23.5 %)
More injuries recorded in arrest report	36 (5.5 %)	50 (13 %)	28 (12.4 %)
More injuries recorded on external examination report	425 (64.9 %)	234 (61 %)	145 (64.1 %)
Total	655	384	226

Of the 234 studied cases in regions, where the number of injuries in external examination reports is higher, in 150 (64.1 %) cases (in 2015, 69.1 % cases), a person was arrested in administrative proceedings and in 84 (35.49%) cases (in 2015, 30.9% cases) a person was arrested in criminal proceedings. In the studied 145 cases in Tbilisi, where the number of injuries in external examination reports is higher, in 94 cases (64.8 %), a person was arrested in administrative proceedings, and in 51 (35.2 %) cases, a person was arrested in criminal proceedings.

In 2016, the study of the forms filled in during the monitoring conducted in Tbilisi and the regions, shows that the number of injuries in arrest reports and external examination reports do not coincide in 76.6% cases and in the rest of 23.4% cases, the data is identical. In 2016, in Tbilisi, there were more than 15.7% occasions than the cases in regions, where the number of injuries did not coincide in external examination reports and arrest

⁵¹⁹ Colibaba v. Moldova, application no. 29089/06, judgment of the European Court of Human Rights of 23 October 2007, para. 47.

reports.⁵²⁰ In Tbilisi, there are 16.1% less cases than the cases in the regions, where the recordings in external examination reports and arrest reports coincide.

It is noteworthy that the on-duty staff members in police stations usually transfer the data on arrested persons' bodily injuries from arrest reports into registration books. They do not document injuries of arrestees separately.

The study of 578 cases in the regions of Georgia showed that out of 384 cases, where resistance to the police was indicated in arrest reports, in 6 cases (in 2015, 3 [1.3 %]) the resistance is fully described by detailing what manifested as resistance; in 199 (51.8 %) cases (in 2015, 4 [1.8 %] cases), reports partially describe resistance incidents; and in 46.9 % cases (in 2015, [96.9 %] cases), police officers do not describe at all. As regards Tbilisi, only in 1 case (0.4 %), police resistance is fully described and in 126 (56%) cases, the description is partial; in 98 (43.6 %) cases, there is no description at all in arrest reports.

In 2016, in comparison to 2015, the law enforcement officers indicated more comprehensively the nature of resistance to police, which is a positive development.

In the 578 files studied in the regions, the incidents of use of force are indicated only in 33 (5.7 %) cases (in 2015, 46 [6.2 %] cases); in Tbilisi, out of 372 files, in 16 cases (4.3 %). Out of 33 cases of use of force, the method of the use of force is fully described only in 2 cases (6.1 %), (in 2015, 4.3% cases); in 10 cases (30.3 %), reports have partial descriptions (in 2015, 6.5 % cases); and in 21 cases (63.6 %), there is no reference to the method of use of force, (in 2015, 89.2 % cases). As regards Tbilisi, the method of the use of force is partially described only in one case.

The analysis of the study conducted by the Special Preventive Group showed how the factor of adequate light affected documentation of injuries. It was found that, in 2016, approximately in 1/4 of the cases (in 2015, in 1/3 of the cases) arrests were made in the daylight.

In 1/3 of the cases, where injuries were indicated only in external examination reports, arrests were made in the daytime. The study revealed 33 incidents in the regions (in 2015, 50 incidents) and 20 incidents in Tbilisi, where arrests were made during daylight and injuries in the head, face and eye-socket areas are only indicated in the external examination reports drafted by the isolator personnel. In 53 such cases, if a person had an injury, it had to be reported by police officers making the arrests.

It was revealed within the study that out of 578 case files studied in regions in 2016, in 9 (1.6 %) cases, in the relevant column of external examination report, personnel of a temporary detention isolator failed to indicate whether an arrestee had a claim against police, (in 2015, in 45 [6.1 %] cases). Out of 372 cases studied in Tbilisi, two such incidents have been revealed.

Within the study, it was examined whether there was a reference to the time of sustaining injury in the external examination reports. See the below table.

520 70.6% in regions, 86.7% in Tbilisi.

Time of Sustaining Injury	Regions In 2015	Regions in 2016	Tbilisi in 2016
Before arrest	581 (78.5%)	427 (73.9%)	314 (84.4%)
During arrest	116 (15.7%)	121 (20.9%)	46 (12.4%)
After arrest	11 (1.5%)	22 (3.8%)	9 (2.4%)
N/A	32 (4.3%)	8 (1.4%)	3 (0.8%)
Total	740	578	372

As the table data shows, in 2015, there was no reference to the time of inflicting an injury in the external examination reports drafted in regions in 32 (4.3%) cases. This data has been decreased by 2.9 % in 2016, which is positively assessed. In 2016, only in 11 (1.16 %) cases, the personnel of temporary detention isolators failed to indicate the time frame when an injury was sustained.

RECOMMENDATIONS

TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA:

- To take all necessary measures, including inspection to ensure comprehensive processing of documentation;
- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 on Approving the Procedure of Drafting Administrative Offences Report, Administrative Arrest Report, Body Search and Objects Search Report, Penalty Receipt, Temporary Driving Licence, Explanation and Notice and Submitting them to the Authority Examining an Administrative Case, to the effect of adding to the following information to be registered in administrative arrest report: the time of drafting arrest report, the description of injuries on the body of an arrestee, the circumstances under which a person was arrested; whether he/she resisted police; and whether proportional force was used and in which manner;
- To amend for revising and renewing the form of the Journal for Registration of Detained persons, approved by Annex no. 6 to Order no. 605 of the Minister of Internal Affairs of Georgia of 8 August 2014, and the form of the Journal of Registration of Detained persons Transferred to Prison (Temporary Detention Isolator) approved by Annex no. 7 to the same Order; and
- To elaborate a unified form of the journal for all police stations and divisions registering the date and time of entry/leaving as well as the purpose of the visit of citizens to police stations and divisions.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To amend Article 245.5 of the Code of Administrative Offences of Georgia to the effect of adding to the following information to be registered in administrative arrest report: the time of drafting arrest report; description of injuries on the body of an arrestee; the circumstances under which a person was arrested; whether he/she resisted police; and whether proportional force was used and in which manner.

4.5.3. COMPLAINTS

The essential component of the fight against torture is the right, afforded to all persons, to prompt and impartial examination of the complaints against representatives of State authorities. The said principle cannot be enforced practically without setting up legal remedies allowing lodging and examining relevant complaints by arrested persons.

For the above legal remedies to be accessible there should be simple and clear procedures in place governing the lodging and examining of complaints. It is important that procedures were easily comprehensible and accessible for both arrested persons and law enforcement authorities. Significant safeguards for arrestees' right to lodge a complaint are defined by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵²¹

Order no. 423 of the Minister of Internal Affairs of Georgia of 2 August 2016 approved the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia. The same Order invalidated Order no. 108 of the Minister of Internal Affairs of Georgia of 1 February 2010, which approved the Model Statute and Regulations of the Activities of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia. The right to lodge a complaint was also defined by Ministerial Order no. 108 of 1 February 2010. However, Article 30 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, additionally defined the term of examination of complaints by the Minister of Internal Affairs and the Director of a temporary detention isolator. This term should not exceed five days, which is welcomed by the Public Defender of Georgia.

It is noteworthy that 2015 was marked with the problem of nonexistence of the procedure allowing persons placed in temporary detention isolators the right to lodge a confidential complaint. If an detained person wished to complain, the complaint had to be sent electronically. This means, the complaint had to be scanned and uploaded electronically by an employee of the temporary detention isolator. This procedure did not allow the confidentiality of a complaint. In the Parliamentary Report of 2015, the Public Defender

⁵²¹ Under Article 2 of the Convention, each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Under Article 13, 'each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.'

recommended to the Minister of Internal Affairs to ensure the introduction of a procedure allowing lodging confidential complaints with the temporary detention isolators.

Article 23.6 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, defined that an detained person of a temporary detention isolator, upon request, should be provided with the necessary amount of the relevant stationery such as paper, envelopes for confidential complaints, writing utensils, etc., for drafting applications, complaints and other motions. The Public Defender welcomes the statutory regulation of the providing detained persons with envelopes for confidential complaints.

Besides, it is noteworthy that a specific procedure was not determined for notifying the prosecutor's office about detained persons' bodily injuries. In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Internal Affairs of Georgia to ensure determination of clear instructions by a relevant sub-legislative normative act on notifying the prosecutor's office if, during admission to a temporary detention isolator, injuries were found on an detained person's body.

It should be noted that the procedure for notifying investigative authorities about the incidents of alleged ill-treatment varies depending on whether there is a medical unit operational in a temporary detention isolator.

Under Article 6.4 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, in the isolator, where there is no operational medical unit, the shift supervisor calls in an ambulance for the first medical inspection of the person to be placed in the isolator. In such cases, after the medical examination, the isolator staff member drafts a report on the external examination in accordance with the medical note filled in by the ambulance team. The following is indicated in the external examination report: external condition of the person to be placed in a temporary detention isolator, possible signs of bodily injury, where and under which conditions and by whom these injuries have been inflicted, and whether the person complains about anybody, which is later confirmed by a signature. In those cases where the person complains about anybody or the injuries have been freshly inflicted, the Director of the isolator is obliged to inform immediately the Office of the Chief Prosecutor of Georgia and the Inspectorate General of the Ministry.

It should be noted that, in accordance with this rule, in those cases where an arrestee does not allege ill-treatment, the Director must notify investigative authorities regarding the bodily injury if the Director considers this is a freshly inflicted injury. It is, however, unclear in which situations and according to which criteria the injuries should be considered fresh. Moreover, Directors of temporary detention isolators are not requested to have medical education. Therefore, for ensuring there are effective legal safeguards in place, it is necessary that the respective normative act clearly defined the procedures and criteria for sending notification to investigative authorities.

In this regard, the following incidents identified during the inspections of temporary detention isolators by the Special Preventive Group are noteworthy: despite numerous

visible injuries on the face and around an eye-socket, notifications were not sent from Tbilisi temporary detention isolator in 17 cases; and in 111 cases from regional temporary detention isolators. There have also been cases where detained persons stated that they sustained injuries during and/or after arrest (four cases in total).

As regards isolators with an operational medical unit, under Article 6.3 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia approved by Order no. 423 of 2 August 2016, the non-staff member of Department's medical office, who has the respective qualification, conducts the initial medical examination and drafts a form on medical examination of the person placed in an isolator. If the health-care professional suspects torture and ill-treatment, he/she is obliged to notify the Director of the isolator who in turn will notify the Office of the Chief Prosecutor of Georgia and Ministry's Inspectorate General.

Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approved the Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, which only applies to the isolators with an operational medical unit.

Under Article 7 of the Instructions, during admission to an isolator, a person, after his/her informed consent, undergoes initial medical examination by the on-duty health-care professional of the isolator. The initial medical examination is the obligation of the on-duty health-care professional of the isolator. During the initial medical examination, the person is questioned about his/her health condition and visually examined for comprehensive documentation of bodily injuries; the data about the health-condition are also registered. During the initial medical examination, health-care professional, among other things, should pay special attention to the physical injuries and the documentation of their traces.

Under Article 25 of the Instructions, during the admission of a person to an isolator, the medical unit of that isolator carries out medical examination of his/her body, registering injuries and if needs be, with the consent of the detained person, notifies competent authorities about the injuries. During placement in an isolator, any trace of violence found out as the result of medical examination should be documented in detail, along with the relevant statement of the detained person and findings of a doctor. The similar approach should be taken always when a detained person receives medical services after a violent incident in the isolator or whenever, due to some reason, he/she is removed from the isolator and taken back.

The same Instruction approved the medical examination form (annex no. 4), which also includes the instruction of its use. In particular, in accordance with the Instructions, a health-care professional should obtain information about alleged ill-treatment and document the relevant medical evidence during a medical examination. The existence or absence of injuries related to alleged ill-treatment should be documented with photographs. The Instructions also set out the obligation of a doctor, in case of misgivings about ill-treatment, to submit the filled in form to investigative authorities. The said Instructions also require filling in tables with the information submitted by the detained person being examined as to whether he/she was subjected to violence or ill-treatment and in case of

a positive answer – when, where, in which manner and by whom. The form requires documenting the evidence of both physical and psychological violence. The instructions also contain illustrations of the human body, on which a health-care professional should indicate the visible injuries and their nature. The examining health-care professional should assess violence, whereby assessing compatibility between an injury and alleged method of inflicting it. There are several options and the health-care professional should choose and elaborate on one out of the following findings: not compatible – the trauma would not cause the indicated injury; compatible – the trauma would cause the indicated injury, however the latter is not specific and could be caused by many other reasons; compatible by high probability – the trauma could cause the indicated injury, the number of other possible reasons is not too high; and diagnosed – the indicated injury could only be caused by the trauma concerned and other reasons are excluded.

The Public Defender considers the approval of the above regulations and implementation of Istanbul Protocol standards to be clearly a step forward. However, the Public Defender points out certain changes (further discussed below) that are necessary to be made to the said regulations in order to ensure effective identification of the incidents of alleged ill-treatment.

The clause of Article 6 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of the Minister of Internal Affairs of Georgia of 2 August 2016, contradicts Article 25 of the Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016. In particular, in the first case, the health-care professional who suspects ill-treatment should notify the Director of an isolator, who in turn notifies investigative authorities. In the second case, the health-care professional is obliged to send the notification him/herself.

It is, therefore, necessary to amend the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, to the effect of determining that it is the obligation of a health-care professional to notify investigative authorities and thus bring the regulations in compliance with the standards established by Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016, approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia and Istanbul Protocol;

The position of the Public Defender remains the same concerning the creation of an independent investigative body. The Public Defender considers it of utmost importance to set up a mechanism that will be in charge of effective investigation of incidents of torture and alleged ill-treatment of detained persons by law-enforcement officers. The Public Defender observes that until the setting up of the aforementioned body, the incidents of alleged torture and ill-treatment should be investigated by the Office of the Chief Prosecutor of Georgia. Therefore, the Public Defender considers that notifications on alleged ill-treatment of detained persons are sent from temporary detention isolators to the Office of the Chief Prosecutor of Georgia instead of the Inspectorate General of the Ministry of Internal Affairs.

Furthermore, the findings of monitoring carried out both in 2015 and 2016 show that the Chief Prosecutor's Office does not adequately study and investigate the issues related to the complaints filed by detained persons of temporary detention isolators. The Office of the Public Defender of Georgia requested information from the Office of the Chief Prosecutor of Georgia regarding follow-up actions carried out with regard to the notifications on bodily injuries found on the detained persons of temporary detention isolators.

According to the information received from the Office of the Chief prosecutor of Georgia,⁵²² in 2016, 240 complaints were filed in total from temporary detention isolators with the prosecutor's office.⁵²³ Out of this, investigation was instituted in 60 criminal cases (in 59 cases under Article 333 of the Criminal Code of Georgia and in one case under Article 144¹); and 66 notifications have been examined. 15 notifications were annexed and studied in the criminal case of the detained person concerned; seven notifications were studied within the administrative proceedings pending before the detained person concerned; three notifications were sent to the Inspectorate General of the Ministry of Internal Affairs of Georgia; one case was sent to the State Security Agency and Anti Corruption Agency of the Ministry of Internal Affairs, and to the Division of Procedural Supervision of Investigation and Monitoring of Operative-Investigative Activities. In the cases of seven notifications, the detained persons refused to talk with the representatives of the Prosecutors' Office and in the cases of three notifications, the persons concerned could not be questioned as they could not be located; based on 138 notifications, prosecutors interviewed detained persons of temporary detention isolators. However, they did not confirm any assault inflicted by police officers and hence investigation was not instated.

The fact that, during enquiries, arrested persons denied being assaulted, was cited by the Prosecutor's Office as the reason for not instituting investigation in 138 cases; the fact that arrested persons refused to take part in prosecutorial enquiry, was cited in seven cases. The Public Defender believes that investigation should have started in independent criminal cases even if there were no formal complaints from arrested persons as the refusal to complain could have been a result of self-censoring, fear, stress and obscurity. It should also be borne in mind that at the initial stage of restriction of freedom, the risks of intimidation, coercion, assault and other ill-treatment are higher and the person concerned is especially vulnerable.

The position of the Public Defender remains the same concerning the creation of an independent investigative body and observes that it is of utmost importance to set up a mechanism authorised to investigate alleged torture and ill treatment of arrested persons by law enforcement officers.

RECOMMENDATIONS

TO THE CHIEF PROSECUTOR OF GEORGIA:

- To ensure that investigation is conducted by the investigative unit of the Office of the Chief Prosecutor of Georgia in separate proceedings in case of receiving

522 Letter no. 13/13869 of the Office of the Chief Prosecutor of Georgia of 1 March 2017.

523 Complaints of arrested persons have been lodged in 193 cases, in 2016.

notifications on alleged ill-treatment of arrestees by police, including in the absence of formal complaint of alleged victims.

TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA:

- To ensure express provisions in the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, on the procedure and criteria of notifying bodily injuries to investigative authorities;
- To ensure that the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, amended to the effect of determining that it is the obligation of a health-care professional to notify investigative authorities and thus bring the regulations in compliance with the standards established by Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia and Istanbul Protocol; and
- To ensure that notifications on alleged ill-treatment of detained persons are only sent from temporary detention isolators to the Office of the Chief Prosecutor of Georgia.

4.5.4. INSPECTION AND MONITORING

The importance attached to the protection of the rights of the persons subjected to arrest or any form of restriction of liberty, as well the adequate internal and external inspection is pointed out in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵²⁴ and the standards of the European Committee for the Prevention of Torture⁵²⁵.

The Inspectorate General of the Ministry of Internal Affairs of Georgia carries out internal inspection of the Police of Georgia. Under Article 2 of the Statute of the Inspectorate General, approved by Order no. 123 of the Minister of Internal Affairs of Georgia dated 23 February 2015, the objectives of the Inspectorate General are as follows: control over the

524 Under Article 11 of the Convention, each State Party shall keep interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction under systematic review for preventing any cases of torture.

525 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 12th General Report on the CPT's activities covering the period 1 January to 31 December 2001, [CPT/Inf (2002) 15], para 50: "The inspection of police establishments by an independent authority can make an important contribution towards the prevention of ill-treatment of persons held by the police and, more generally, help to ensure satisfactory conditions of detention. To be fully effective, visits by such an authority should be both regular and unannounced, and the authority concerned should be empowered to interview detained persons in private. Furthermore, it should examine all issues related to the treatment of persons in custody."

steady fulfilment of the requirements within the Ministry's system, set out in Georgian legislation; identification and adequate follow-up on the incidents of breach of ethics, disciplinary provisions, as well as inadequate fulfilment of official duties and commission of particular offences.

According to the information submitted by the Inspectorate General of the Ministry of Internal Affairs,⁵²⁶ the statistics of official inspection and imposed disciplinary penalties in 2015 and 2016 are as follows:

	2015	2016
Number of Official Inspections	22447	11196
Number of Disciplinary Penalties Imposed	2630	2294

The above data shows that the number of inspections was almost halved in 2016; the number of imposed disciplinary penalties was also decreased by 336.

The data on official inspections conducted regarding breaches of citizens' rights is as follows:

	2015	2016
Number of Confirmed Incidents of Human Rights Violations	172	149
Number of Disciplinary Penalties Imposed as a Result		
Recommendation Notices	0	14
Notices	19	43
Reprimands	44	60
Strict Reprimands	68	25
Demotions	5	1
Dismissals	36	4
Suspensions	0	2

76 applications/complaints were filed with the Inspectorate General concerning incidents of alleged violations of the rights of persons arrested or subjected to restriction of liberty in any other form. In 61 cases, the allegations were not confirmed; 13 cases were referred to the prosecutor's office and investigation is pending in two cases. As regards 2015, allegations were confirmed in two cases and a disciplinary penalty – reprimand- was imposed.

Apart from official inspections, Inspectorate General of the Ministry of Internal Affairs of Georgia is authorised, within the competence determined by the Criminal Procedure Code of Georgia, to conduct investigations and procedural acts on the criminal cases referred by the Chief Prosecutor of Georgia or an official authorised by the latter.

⁵²⁶ Letters nos. 31700195320 and MIA 61600048372 of the Ministry of Internal Affairs of Georgia dated respectively 25 January 2017 and 9 January 2016.

In the reporting period, in the Inspectorate General, investigations were pending on 31 criminal cases. Six cases were related to the alleged violations of citizens' rights, namely, theft – one case; fraud – four cases; and battery – one case. Out of the above six cases, criminal prosecution was instituted in four cases and conviction followed.

As regards 2015, investigation was pending in 42 criminal cases. Seven cases were related to the alleged violations of citizens' rights, namely, abuse of official power – one case; theft – two cases; rape – one case; hooliganism – one case; and fraud – two cases. Out of the above seven cases, one case was terminated; criminal prosecution was instituted in two cases; conviction followed in one case; and criminal instigation is pending on another case. No acquittals have been reached.

As already mentioned above, the position of the Public Defender remains the same concerning the creation of an independent investigative body. The Public Defender observes that until the setting up of the aforementioned body, the incidents of alleged torture and ill-treatment should be investigated by the Office of the Chief Prosecutor of Georgia.

As regards the monitoring of placement in temporary detention isolators, this is the function of the Temporary Detention Department of the Ministry of Internal Affairs of Georgia. The temporary detention isolators fall within the system of this department.

Under Article 6.a) of the Statute of the Department of Human Rights Protection and Monitoring, approved by Order no. 1006 of the Minister of Internal Affairs of 31 December 2015, it is the statutory task of the department, for enforcing a decision of a competent authority, to place the persons, arrested and/or detained in administrative proceedings, in temporary detention isolators and safeguard their rights. To this effect, there is a Monitoring Office functioning within the department, which controls the protection of the rights of the persons placed in isolators; monitors the protection of the rights of the persons placed in isolators by isolators' personnel; monitors living and hygiene conditions of the isolators' detained persons; and within its competence, follows up on the applications, information, and or alleged violations identified as the result of monitoring.

As regards external monitoring, under Articles 18 and 19 of the Organic Law of Georgia on the Public Defender of Georgia, the Public Defender of Georgia and his special representatives (including a member of the Special Preventive Group) are authorised to inspect temporary detention isolators and police stations in order to examine the human rights situation of detained persons.

In this respect, the fact that, during monitoring, the members of the Special Preventive Group of the Public Defender were given unimpeded access and the possibility to freely move around in the district divisions and temporary detention isolators of the Ministry of the Internal Affairs is positively assessed. Within the visits, the personnel of all divisions and isolators, in accordance with statutory requirements, extended full cooperation to the representatives of the Public Defender and assisted in comprehensive monitoring.

It is also noteworthy that, in the Parliamentary Report of 2015, the Public Defender emphasised the importance of unimpeded access of the members of the Special Preventive Group to the video surveillance systems installed in police stations and temporary deten-

tion isolators. To this effect, the Public Defender recommended to the Minister of Internal Affairs to ensure unimpeded access of the Special Preventive Group to the aforementioned video surveillance systems.

According to the position of the Ministry of Internal Affairs taken concerning the fulfilment of the above recommendation, video surveillance in the temporary detention isolators is conducted from the central control room located in the Temporary Detention Isolators Department of the Ministry. Admission to the said room is determined by an order of the Minister of Internal Affairs. As regards the access of the members of the Special Preventive Group to the video surveillance recordings, they have this right under the Law of Georgia on the Protection of Personal Data.

It should be pointed out in this context that admission to the central control room is determined by Article 11 of the Statute of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of the Ministry of Internal Affairs of Georgia of 2 August 2016. Namely, the following are authorised to enter/stay in the central control room: the Minister and Deputy Minister in charge of the Department; Director of the Department; Deputy Directors; employees of the Department's Monitoring Office; and any other person, based on interest in protecting human rights or official necessities, in accordance with a ministerial decision, based on a reasoned written motion of the director of the department.

As regards the video surveillance in the internal and external premises of police building, under Article 27 of the Law of Georgia on Police, to ensure public security, the police may, as provided for by the legislation of Georgia, place/install self-operating photo and video devices on their uniforms, on the roads, and along external perimeters of buildings, and use self-operating devices already installed and under the possession of other persons for the following purposes: a) to prevent crime and to protect a person's safety and property, public order, and to protect minors from harmful influence; b) to ensure observance of road traffic regulations; c) to prevent, detect, and suppress illegal crossing of the state border of Georgia, and to ensure safety of persons at the border; and d) to detect threats to persons and property at border crossing points in a timely fashion.

Under Paragraph 3 of Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs and the Data therein, the data on persons and means of transport entering and leaving administrative buildings of the Ministry is processed in accordance with Order no. 1084 of the Minister of Internal Affairs of Georgia of 10 October 2008 approving the Procedures for Admission of Employees and Visitors to the Buildings and Premises under the Protection of the Ministry of Internal Affairs of Georgia. The term of storage of the said data is three years.

Under Paragraph 4, the Ministry processes the recordings of the video cameras installed on internal and external premises of administrative buildings in accordance with Article 27 of the Law of Georgia on Police and Order no. 1035 of the Minister of Internal Affairs of Georgia of 23 December 2013 on Implementation of Certain Measures of Security by

the Ministry of Internal Affairs of Georgia. The term of storage of the said data depends on technical specifications but should not exceed three years.

Under Paragraph 5, the recordings of the video surveillance cameras installed on the roads and external premises of buildings are processed by the Ministry in accordance with Article 27 of the Law of Georgia on Police. The term of storage of the said data depends on technical specifications but should not exceed three years.

It should be pointed out that unlike temporary detention isolators, the procedure of conducting video surveillance and recordings in the police administrative buildings is not determined, neither is the group of persons authorised to examine the said recordings.

Therefore, it is evident that an unimpeded access of the members of the Special Preventive Group to recordings is not determined and accordingly the recommendation of the Public Defender has not been fulfilled.

RECOMMENDATIONS

TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA:

- To ensure that Article 11 of the Statute of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of the Ministry of Internal Affairs of Georgia of 2 August 2016, is amended to the effect of adding a representative of the Public Defender/a member of the Special Preventive Group to the group of persons authorised to enter the central control room; and
- To ensure the adoption of the relevant sub-legislative act guarantying unimpeded access of a representative of the Public Defender/a member of the Special Preventive Group to the recordings from video surveillance cameras installed on internal and external premises of the Ministry's administrative buildings.

4.6. WORKING CONDITIONS AND TRAINING OF EMPLOYEES

There are 7667 male and 886 female officers employed in police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia.⁵²⁷

Despite the fact that there are a small percentage of women employed in police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia, there are regions where there are no female employees at all or their number is too small.⁵²⁸

527 Letter no. MIA 517 00374701 of the Ministry of Internal Affairs of Georgia dated 15 February 2017.

528 For instance, there are 50 males and no females employed in the unit of detectives and district inspectors of the Khulo District Division of the Police Department of the Autonomous Republic of Ajara. Out of 12 employees, there are no females in the unit of detectives and district inspectors of the Kazbegi District Division

The Public Defender considers it important that the law enforcement authorities offered equal opportunities for employing men and women. Recruitment of women in the law enforcement bodies is important to ensure that female arrestees get gender specific treatment and undergo appropriate search procedures.

The Office of the Public Defender requested the Ministry of Internal Affairs of Georgia in writing to submit the information about the working schedule of those employed in police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia. This information, however, has not been provided.

The employees of police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia mostly work 24-hour shifts and their shift is in every three days. Some of the police officers work a 24-hour shift in every two days. Considering tourist seasons and other activities, there are frequent occasions where police officers work every alternate day.

During interviews with the Special Preventive Group members, some officers mentioned that considering their labour-consuming and tiresome job, it would be important to decrease the workload.

The working hours of female law enforcement officers usually cover the period from 9 a.m. until 6 p.m. (Monday-Friday). If necessary, a female officer may be called in at any time of the day and night to do such police work as a body search or external examination of female arrestees in police stations, attending a convoy during placement of an arrestee in a temporary detention isolator, as well as participation in an activity carried out by an operative group for arresting a person/persons.

The Public Defender considers it most important to regulate the police work schedule not only in terms of protection of police officers' labour rights, but also in the respect that it has significant effect on adequate treatment of arrestees by police. The police officers, working long hours without adequate break, are likely to get exhausted and be under stress. This, in turn, would adversely affect their psycho-emotional condition and, hence, behaviour.

The Public Defender observes that the objectives of control, security and protection of human rights are better attained in the environment where a citizen's dignity is respected. Fair, legal and polite treatment of citizens is not only critically important for ensuring the good environment; it also significantly contributes to maintaining public order. In the society where citizens' rights are protected, the authority of police and respect to it is acknowledged.

With the view of ensuring police attains the objectives of public safety and human rights protection, it is important to base police work on human rights approach. This is feasible only if human rights topics are integrated to a maximum extent in police training and re-training programmes. These programmes are implemented at regular intervals and allow theoretical and practical examination of knowledge with credible means.

of the Police Department of Mtskheta-Mtianeti Police Department. There are 35 male officers and 1 female officer in the unit of detectives, police and district inspectors of the Sachkhere District Division of the Police Department of Imereti, Racha-Lechkhumi and Kvemo Svaneti.

The Public Defender welcomes the fact that there is a compulsory special education programme for the youths recruited by law-enforcement bodies, junior lieutenants, district inspectors, detective-investigators and patrol-inspectors.

It can be concluded from the examination of the syllabuses of the study programmes that the major human rights topics are included. The Public Defender, however, considers that a single training on important human rights issues and the duration allocated for human rights topics in the curriculum cannot ensure theoretical and practical comprehension of key human rights problems within the special educational programme of law enforcement officers.

According to the information received during monitoring by the Special Preventive Group members, in some cases, district inspectors are recruited so that they have not undergone special professional educational programme for training district inspectors. The Public Defender considers this practice impermissible.

The results of the monitoring conducted by the Special Preventive Group members show that the majority of the persons employed in law enforcement bodies are not aware of topics such as the standards of interviewing citizens (interview basis, venue, submitting detailed information to citizens about the applied police measure, obligation to explain procedural rights concerning each measure, and prohibition of arbitrary arrests); informing an arrestee about his/her rights and their exercise (informing his/her family, and access to a lawyer and a doctor); the standards of use of physical force, special means and measures of coercion (about the use of different amount of force and special means in different situations); obligations arising in the situations where physical force, special means and measures of coercion have been used (comprehensive documentation of injuries inflicted and drafting a report and informing competent authorities); use of non-violent methods (mediation, effective communication, management of conflict situation and citizens' aggression); use of firearms in accordance with statutory requirements; giving first aid; procedures for admission and inspection of arrestees (inspection of transgender/LGBT persons); procedures and standards for documenting injuries, inspection, search, superficial inspection, special inspection and examination; procedures and techniques of questioning arrestees; questioning a minor/witness/person volunteering to give a statement; specifics of questioning the persons under the influence of drugs, alcohol, etc., and persons with mental disorders; code of conduct for police officers, penalties to be imposed for the breach of disciplinary provisions, inadequate performance of official duties, specific violations; and processing documentation (arrest reports, filling in and processing journals at police stations)

The Public Defender, in the light of the foregoing, considers that police employees should be retrained periodically. It is important to elaborate short-term police retraining courses for police personnel. It is possible to conduct these courses as distance learning and extend them to each employee in a year. Besides, it is important to ensure that law enforcement officers have access to the retraining course material, which will help them to study issues related to policing and human rights independently.

It is revealed from the letter received from the Ministry of Internal Affairs⁵²⁹ that it is not required to have undergone any special study course for the employment at a temporary detention isolator. The letter also shows that since 2016, retraining of temporary detention isolators' personnel has been started in the Academy of the Internal Affairs, within training and retraining educational programme for the employees of temporary detention isolators of the Ministry of Internal Affairs of Georgia.

According to the submitted information, until now, twenty employees of temporary detention isolators of the Ministry of Internal Affairs underwent the said programme and the entire personnel of isolators will have completed the programme by 2017. The Public Defender welcomes this initiative and will be actively monitoring its implementation.

According to the information provided by the Ministry of Internal Affairs of Georgia, in the course of 2016, the personnel of temporary detention isolators participated in training sessions on the following topics: documenting injuries in accordance with Istanbul Protocol; creating healthy environment and preventing diseases in temporary detention isolators; training-retraining education programme; and training on emergency assistance.

According to the information provided by the Ministry of Internal Affairs, within the retraining programme for the personnel of temporary detention isolators, it is envisaged to cover the topics on the particularities of communication with persons with mental disorders. The Public Defender welcomes this initiative and considers it important to have it included in the retraining programme training sessions on particularities of communication with juveniles.

The Public Defender considers it important that the methodology of each study programme and training session includes examination and assessment of participants through observation of their involvement in various practical moot situations and role plays.

RECOMMENDATIONS

TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA:

- To take all necessary measures, including revision of working schedules, for minimising the risks of aggravating psycho-emotional condition and professional burnout of police officers due to hard working conditions;
- To take all measures to create equal opportunities for women and men to be employed in police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia as well as equal working conditions;
- To take all measures so that district inspectors are not appointed without undergoing the special professional educational programme for district inspectors;

529 Letter no. 247190 of the Ministry of Internal Affairs of Georgia dated 1 February 2017.

- To take all measures for ensuring periodical retraining of law enforcement officers. It is important to elaborate short-term police retraining courses for police personnel. It is possible to conduct these courses as distance learning;
- To take all measures to ensure that law enforcement officers have access to the retraining course material and material of any other study courses;
- To take all measures for including training sessions on particularities of communication with juveniles in the retraining programme for the personnel of temporary detention isolators; and
- To take all measures for ensuring that personnel of temporary detention isolators are not appointed without undergoing the educational programme designed for the employees of temporary detention isolators.

4.7. SITUATION IN TEMPORARY DETENTION ISOLATORS

In 2016, the members of the Special Preventive Mechanism monitored 27 temporary detention isolators of the Ministry of Internal Affairs. Monitoring was conducted in the following regions: Kakheti, Imereti, Samtskhe-Javakheti, Guria, Ajara, Samegrelo, Racha-Lechkhumi, Kvemo and Zemo Svaneti and Tbilisi. During the above monitoring visits, the members of the Special Preventive Group examined physical environment of the isolators, interviewed the personnel of temporary detention isolators and studied the documentation in the case-files of the persons arrested in 2016. The members of the Special Preventive Group were guided by instruments elaborated in advance.

In 2016, Gardabani temporary detention isolator was not operational. Borjomi, Lentekhi, Khobi, Zugdidi, Tetrtskaro, Terjola, and Chokhatauri temporary detention isolators were also closed off in 2016. Rustavi and Kutaisi temporary detention isolators were under reconstruction during the entire year.

According to the information submitted by the Ministry of Internal Affairs of Georgia, in 2016, 13,081 persons were placed in the below temporary detention isolators. The data on the placement of detained persons in each temporary detention isolator in 2015 and 2016 respectively are given in the below table.

no.	Name of a Temporary Detention Isolator	Number of Detainees in 2015	Number of Detainees in 2016
1	Tbilisi no. TDI	417	690
2	Tbilisi and Mtskheta-Mtianeti TDI	5,556	4,836
3	Mtskheta TDI	379	341
4	Dusheti TDI	29	27
5	Telavi TDI	503	333
6	Sagarejo TDI	224	160
7	Sighnaghi TDI	189	153

8	Kvareli TDI	359	307
9	Gori TDI	581	566
10	Khashuri TDI	325	233
11	Borjomi TDI	118	49
12	Akhaltsikhe TDI	214	203
13	Akhalkalaki TDI	36	54
14	Rustavi TDI	356	109
15	Tetritskaro TDI	34	5
16	Tsalka TDI	29	6
17	Marneuli TDI	545	653
18	Kutaisi TDI	1,104	397
19	Lentekhi TDI	11	5
20	Zestaponi TDI	330	183
21	Baghdati TDI	64	172
22	Tchiatura TDI	146	82
23	Samtredia TDI	325	211
24	Ambrolauri TDI	25	40
25	Zugdidi regional TDI	366	304
26	Zugdidi TDI	661	125
27	Senaki TDI	288	328
28	Khobi TDI	143	126
29	Poti TDI	219	264
30	Chkhorotsku TDI	162	101
31	Mestia TDI	16	17
32	Batumi TDI	2,039	1,515
33	Kobuleti TDI	355	308
34	Ozurgeti TDI	153	132
35	Lanchkhuti TDI	82	31
36	Chokhatauri TDI	28	15
Total		16,416	13,081

It is noteworthy that, in 2016, the total number of persons placed in temporary detention isolators decreased by 20.3 %.

According to the information submitted by the Temporary Detention Isolators Logistics Department of the Ministry of Internal Affairs, in 2016, various renovation works have been conducted in temporary detention isolators of the Ministry of Internal Affairs; sleeping boards were replaced by individual beds in Kvemo Kartli⁵³⁰ regional temporary detention isolator. The isolator was completely overhauled and equipped with the necessary

530 Rustavi.

furniture; toilets were isolated and temporary detention isolator for disabled persons adapted. A walking yard and medical rooms were also arranged in the same isolator.

Kvareli temporary detention isolator was completely overhauled as a result of renovation works. Toilets were isolated. Apart from renovation works, medical rooms were arranged in Kvemo Svaneti⁵³¹ regional temporary detention isolator and Imereti, Ratcha-Lechkhumi temporary detention isolators.

According to the received information, in 2016, medical rooms were arranged in five temporary detention isolators in Mtskheta-Mtianeti⁵³² Regional temporary detention isolator, Shida Kartli and Samtskhe Javakheti regional,⁵³³ Kakheti regional,⁵³⁴ Samegrelo-Zemo Svaneti Regional,⁵³⁵ Ajara and Guria regional⁵³⁶ temporary detention isolators.

New ventilation systems were installed in Tbilisi no. 2 temporary detention isolator and Kvemo Kartli regional detention isolator,⁵³⁷ Imereti, Ratcha-Lechkhumi and Kvemo Svaneti regional temporary detention isolators, Baghdati, Ambrolauri, Dusheti, Akhalkalaki, Kobuleti and Tsalka temporary detention isolators. The existing ventilation systems were repaired in Tbilisi no. 1 temporary detention isolator, Ajara and Guria, Ozurgeti and Lanchkhuti temporary detention isolators.

Apart from the above-mentioned, new heating systems were installed in Imereti, Ratcha-Lechkhumi, and Kvemo Svaneti regional temporary detention isolators, Tchiatura, Rustavi, Dusheti and Tbilisi no. 2 temporary detention isolators; the existing heating systems were repaired in Shida Kartli and Samtskhe-Javakheti regional temporary detention isolators.⁵³⁸

The Public Defender welcomes the renovation of the infrastructure and living conditions at the temporary detention isolators of the Ministry of Internal Affairs in 2016. However, the existing conditions in temporary detention isolators still need considerable improvement and bringing closer to international standards.

4.7.1. LIVING SPACE

According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'the issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order

531 Kutaisi.

532 Mtskheta.

533 Gori.

534 Telavi.

535 Zugdidi.

536 Batumi.

537 Rustavi.

538 Response by letter no. MIA 8 17 00412954 dated 20 February 2017.

of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling.⁵³⁹ Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,⁵⁴⁰ living space per person placed in a temporary detention isolator should not be less than 4 m².⁵⁴¹

There are seven cells for seven detained persons in Tbilisi no. 1 temporary detention isolator. The space of the cells is around 10m²-11m². There are three cells for three detained persons in Samtredia temporary detention isolator, which are around 11m²–13m². There are three cells for four detained persons in Ozurgeti temporary detention isolator the size of which is approximately 6.3 m². There are four cells for three detained persons in Sagarejo temporary detention isolator, the space of which is around 9 m²– 9.65 m².

It is noteworthy that when the temporary detention isolators, mentioned above, are fully occupied, each detained person will not be provided with 4 m² living space. This is in violation of the standard set out in the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.⁵⁴²

4.7.2. PHYSICAL CONDITIONS

According to the standards established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ‘all police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench)’...⁵⁴³

The windows in the cells of Akhaltsikhe and Tbilisi no. 1 temporary detention isolators would not open. The cells, therefore, are not naturally ventilated; sunrays cannot reach into the cells and accordingly sufficient natural light is not available there. There is insufficient artificial ventilation in the temporary detention isolators of Akhaltsikhe. There are metal plates with holes covering the windows in the cells of Ozurgeti, Tchiatura, Sagarejo and Samegrelo-Zemo Svaneti regional temporary detention isolators. These plates prevent adequate ventilation and lighting of the cells.

Sufficient natural and artificial ventilation is absent in the temporary detention isolators of Poti and Akhalkalaki. There is a problem in terms of natural light and ventilation in Batumi (Ajara and Guria’s regional) temporary detention isolator too. Sufficient natural ventilation, natural and artificial light are not available in the cells of Ambrolauri and Signaghi

539 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), p. 8, para. 43, available at: <http://www.cpt.coe.int/en/documents/eng-standards.pdf> [Last visited on 13.02.2017].

540 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.

541 Article 26.2.

542 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.

543 The Standards of the European Committee for the Prevention of Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), para. 42, available at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [last visited on 26.03.2017].

temporary detention isolators. The natural light in the cells of Zestaponi and Akhalkalaki temporary detention isolators is insufficient.

In some temporary detention isolators, personnel from the outside regulate the light and artificial ventilation in cells. For instance, personnel from the outside regulate light in the cells of Ambrolauri, Tchiatura, Zestaponi, Poti, Sagarejo, and Samegrelo-Zemo Svaneti (regional) temporary detention isolators. Artificial ventilation in the cells of Ozurgeti temporary detention isolator is controlled from the outside.

There are sleeping boards instead of individual beds in the temporary detention isolator of Akhalkalaki. There are no tables and chairs in the cells.

4.7.3. SANITATION AND HYGIENE CONDITIONS

Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,⁵⁴⁴ the living conditions in temporary detention isolators should comply with sanitation and hygiene standards; ensure safety of detained persons and maintain their health; should not violate the dignity of a person and respect the right to private life.⁵⁴⁵ Detained persons placed in a temporary detention isolator should be provided with the following items of personal hygiene: sanitary paper, soap, tooth brush, tooth paste, towel, as well as the place to keep them. A person serving an administrative detention should be additionally provided with a shaving kit; female prisoners placed in temporary detention isolators should be given other additional items of hygiene according to their gender-specific needs.⁵⁴⁶

The sanitation and hygiene conditions in the temporary detention isolator of Poti and Samegrelo-Zemo Svaneti regional temporary detention isolator are unsatisfactory. There is dampness in cells; traces of mould and dampness are noticeable on the walls and there is a strong smell in cells. There is dampness in Batumi (Ajara and Guria's regional) temporary detention isolator. The sanitation and hygiene conditions in temporary detention isolators of Zestaponi and Akhaltsikhe are unsatisfactory and need renovation works.

The mattresses in the cells of Tbilisi no. 2 temporary detention isolator are damaged and need to be replaced. During the visit to Tchiatura temporary detention isolator,⁵⁴⁷ it was noticed that there were no towels in stock and during the visit to Ambrolauri temporary detention isolator;⁵⁴⁸ disposable forks were not in stock.

There were items of personal hygiene in stock (tooth brushes and tooth pastes) during the visit⁵⁴⁹ to Zestaponi temporary detention isolator. However it was found out that none of the detained persons had been provided with those items. Moreover, they had no in-

544 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.

545 Article 26.1.

546 Article 27.2.

547 14.09.2016.

548 15.09.2016.

549 13.09.2016.

formation about those items. None of the three detained persons had a towel and there were only two towels in stock.

Unfortunately, temporary detention isolators are not provided with sanitary pads and isolators' staff members buy those items with their money for female detained persons.

4.7.4. FOOD AND DRINKING WATER

Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,⁵⁵⁰ the food designated for the detained persons placed in isolators should contain the components necessary for life and health; it is prohibited to decrease the number of calories as a measure of punishment.⁵⁵¹ Each detained person should be provided with three meals a day.⁵⁵² The sick detained persons, detained persons with express and significant disabilities and juveniles should be provided with nutrition adequate for their situation.⁵⁵³

The Daily Nutrition Standards for the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia⁵⁵⁴ determines a daily ration for detained persons placed in temporary detention isolators⁵⁵⁵, as well as for juveniles,⁵⁵⁶ pregnant women and nursing mothers, those suffering from tuberculosis, dystrophy, ulcerated beriberi and malignant tumours.⁵⁵⁷ As the monitoring revealed, the detained persons of temporary detention isolators are only given dry food ration consisting of⁵⁵⁸ bread, canned soup, canned beef, pâté, sugar and tea (for single use).

It is noteworthy that the majority of isolators in the regions do not get the rationed bread for detained persons. These isolators do not even have contracts concluded on bread supply. There are cases where isolators' staff members buy bread for detained persons with their money. The detained persons get food mostly from parcels. It should be also borne in mind that sometimes detained persons do not have anyone to send in food and bread. A person serving an administrative detention can be placed in an isolator for up to 15 days. It is particularly important to provide them adequately with food and living conditions.

The food provided to detained persons in Tbilisi temporary detention isolators nos. 1, and 2 is different. In these establishments, food is prepared in a kitchen which is positively assessed.

550 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.

551 Article 28.1.

552 *Ibid.*, Article 28.3.

553 Article 28.3.

554 Approved by Order no. 457 of the Minister of internal Affairs of Georgia of 5 May 2005.

555 Annexe no. 1.

556 Annexe no. 3.

557 Annexe no. 2.

558 Annexe no. 4.

The detained persons placed in Tbilisi temporary detention isolator no. 1 are provided with three meals a day in accordance with the menu drafted one week in advance. The main menu is composed of grains, tea, bread, vegetables, meat and fish. The food is prepared in the kitchen located in the same building designed for service personnel.

One cook who is specifically in charge of detained persons' food prepares meals according to statutorily required number of calories.⁵⁵⁹ The food is placed in special containers and delivered to detained persons in their cells.

The case-files of 284 detained persons were studied during the visit of 10 November 2016 to Kobuleti temporary detention isolator. In three cases, detained persons had poisoning from the food provided in the temporary detention isolator.

For instance, on 23 June 2016 (at 2:51 a.m.), E.E. was arrested by the police officers of 3rd Unit of Batumi City Police Division. The same day, at 06:41a.m, he was placed in Kobuleti temporary detention isolator. According to the minutes recorded by the ambulance team called in the temporary detention isolator, the patient suffered general weakness, dizziness, nausea and diarrhoea. The team diagnosed food poisoning and transferred⁵⁶⁰ the detained person to Kobuleti hospital. According to medical notes made in the hospital, the patient suffered nausea, vomiting, diarrhoea and abdominal pains (diagnosis – food poisoning).

The facility personnel stated during the interview, conducted by the Special Preventive group, that E.E. did not receive a parcel from relatives in the period concerned. In the temporary detention isolator, he had pâté and drank tea.

Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,⁵⁶¹ each detained person should have access to unlimited amount of clean drinking water.⁵⁶²

There are no sinks in the cells of temporary detention isolators. There is a water pipe 20 cm above the WC in Ambrolauri temporary detention isolator. This is uncomfortable and unhygienic both for washing hands and face, and drinking. A similar situation is found in the temporary detention isolators of Tchiatura and Zestaponi.

There is no water in the cells of Tbilisi no. 1 temporary detention isolator. The isolator's personnel give detained persons drinking water with glasses/bottles in their cells in Tchiatura, Samtredia and Tbilisi no. 1 temporary detention isolators.

559 The Daily Nutrition standards for the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia approved by Order no. 457 of the Minister of internal Affairs of Georgia of 5 May 2005.

560 On 25.06.2016 at 11:22 a.m.

561 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.

562 Article 28.5.

4.7.5. PRIVACY AT WATER CLOSETS

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner, as well as to have a bath or shower.⁵⁶³

Water closets are absent in Sighnaghi, Sagarejo, Akhaltsikhe, Akhalkalaki, and Tbilisi no. 1 temporary detention isolators. Detained persons placed in these establishments use a common water closet of the respective isolator.

There are semi-isolated water closets in Ambrolauri, Tchiatura, Zestaponi, Samtredia, Ozurgeti, Poti, Batumi (Ajara and Guria regional isolators), and Tbilisi no. 2 temporary detention isolators. This is especially problematic in double cells and the cells with multiple occupancy, where a detained person is not alone and has to comply with the needs of nature in the presence of others.

There is no flushing device in the water closets of the cells of Samtredia, Ozurgeti, Poti, Ambrolauri, Zestaponi, and Tchiatura temporary detention isolators. Instead, there is a narrow pipe approximately 20-30 cm above the floor, which cannot flush properly. There is a flushing pipe installed one metre above the floor in Batumi temporary detention isolator. This is uncomfortable and unhygienic for both flushing a toilet and washing hands and face.

The toilets in temporary detention isolators of Zestaponi, Poti, and Batumi⁵⁶⁴ (Ajara and Guria regional isolators) can only be flushed from outside cells, by taps installed in corridors. Therefore, when a detained person needs to flush the toilet, he/she has to call a staff member and asks to open the tap.

4.7.6. THE RIGHT TO ACCESS TO OPEN AIR

Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,⁵⁶⁵ only those persons who have been ordered by a court to administrative detention as an administrative penalty for more than one day are allowed to walk in the open air.⁵⁶⁶ Detained persons are taken into a yard from 10 a.m. until 6 p.m. according to the schedule drafted by the director of an isolator. The duration of the walk is no less than an hour.⁵⁶⁷ Unfortunately, walking is allowed for those arrested in criminal proceedings.

There are no benches in the yards of temporary detention isolators. Tbilisi temporary detention isolator no. 1 does not have a yard and therefore does not admit those serving

563 The Standards of the European Committee for the Prevention of Torture, The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, para. 42, available at <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [last visited on 26.03.2017].

564 Eight toilets are regulated from outside, the other two are regulated in cells.

565 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.

566 Article 32.1.

567 *Ibid.* Article 32.2.

administrative detention. There are no yards provided for temporary detention isolators in Ambrolauri, Akhaltsikhe, Sighnaghi, and Sagarejo.

The yards of Akhalkalaki, Samegrelo-Zemo Svaneti (regional) and Tbilisi no. 2 temporary detention isolators are only covered with an iron net which makes walk impossible in rainy/snowy weather.

As the visits carried out in 2016 revealed, the following issues remain problematic in temporary detention isolators of the Ministry of Internal Affairs: insufficient heating, lack of natural and artificial light and ventilation, non-isolated water closets, absence of sinks in cells, insufficient nutrition, and items of personal hygiene. Besides, there are sleeping boards instead of individual beds in some of the temporary detention isolators. It should be pointed out regrettably that the above problems were also identified by the Public Defender in his Parliamentary Report of 2015. However, these recommendations have not been fulfilled.

In accordance with the changes made into the Code of Administrative Offences of Georgia, the term of administrative detention decreased from 90 days to 15 days, which is undoubtedly assessed as a positive change. It is however, to be noted that the existing conditions in temporary detention isolators are unfit for accommodating persons imposed with administrative detention.

RECOMMENDATIONS

TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA:

- To ensure that central heating is installed and adequate natural/artificial light and ventilation is provided in the cells of all temporary detention isolators;
- To ensure that water closets are completely isolated in all temporary detention isolators;
- To ensure that each detained person is provided with an individual bed in temporary detention isolators;
- To ensure that there are sanitation and hygiene standards observed in all temporary detention isolators;
- To ensure that all detained persons are provided with items of personal hygiene including sanitary pads;
- To provide new mattresses in all temporary detention isolators;
- To ensure that 4 m² living space is provided per detained person in temporary detention isolators;
- To ensure that benches are installed in all temporary detention isolators, the spots sheltered from rain and sun are arranged and waste bins are provided;

- To amend the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia approved by Order no. 423 of the Ministry of Internal Affairs of 2 August 2016 and give the right to time in the open air to those arrested in criminal proceedings; and
- To provide all detained persons with adequate and nutritious food, including dietary food.

5. MONITORING OF THE JOINT RETURN OPERATIONS

Since 2014, the Prevention and Monitoring Department of the Office of the Public Defender of Georgia has been monitoring the joint return operations to Georgia of Georgian citizens who do not, or no longer, fulfil the conditions for entry into, to be present in, or residence on the territories of one of the Member States of the European Union.

The joint return operations are conducted based on the Agreement between the European Union and Georgia on the Readmission of Persons Residing without Authorisation (hereinafter 'Readmission Agreement'). The main objective of the Readmission Agreement is to strengthen cooperation between the High Contracting Parties in order to combat illegal immigration more effectively and safe and orderly return of persons from Europe to Georgia or *vice versa*.

The Readmission Agreement imposes the obligation on the High Contracting Parties to determine administrative and procedural aspects of the return. Besides, the agreement provides for the general principles, according to which, human rights and freedoms should be respected and the processing and treatment of personal data in a particular case shall be subject to law.

Council of Europe's twenty guidelines on forced return takes into account the risks that can accompany the execution of forced return and calls upon the States to be guided by these Principles. The Committee of Ministers emphasises the obligation of the States imposed by Article 1 of the European Convention on Human Rights, namely, member states shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention.⁵⁶⁸

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) is in charge of coordinating the joint return operations. It has elaborated the Code of Conduct for joint return operations⁵⁶⁹ and the Guide for Joint Return Operations which set out the principles governing

568 Council of Europe's Twenty Guidelines on Forced Return, September 2005, Principle 16, available in English at: http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf [Last visited on 14.06.2017].

569 European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), Code of Conduct for joint return operations coordinated by frontex,

joint return operations with the view of respecting human rights and fundamental freedoms in the process.

It falls within the jurisdiction of the State submitting an application on the readmission of Georgian citizens residing without authorisation on the territories of one of the Member States of the European Union, to decide about the process and ensure respect for human rights in this process (taking a decision, execution, arrest, appeal right, etc.); whereas, the Georgian party (escort provided by the officials of the Ministry of Internal Affairs of Georgia) ensures 'safe and orderly return' of the persons after they have been transferred on board of an aircraft.

In the course of 2016, the employees of the Prevention and Monitoring Department of the Office of the Public Defender, on five occasions (10 March, 15 April, 7 June, 27 September, and 29 November) carried out monitoring of joint return operations of 206 citizens of Georgia residing without authorisation on the territories of one of the Member States of the European Union.

The representatives of the Public Defender at the special place arranged in the airports of Dusseldorf (Germany) and Athens (Greece) observed the process of check-in, loading luggage, escorting on board by the representatives of the respective EU member state, and the transfer of the persons to be returned to Georgia by the escort of the Ministry of Internal Affairs of Georgia, flight and admission to Georgia.

In 2016, all joint return operations were mostly carried out in a peaceful environment. However, there were important issues identified during the return operations, which need adequate follow-up.

Under the Code of Conduct for joint return operations coordinated by Frontex, prior to the joint return operation, the relevant Participating Member State of the European Union, with due respect for personal data, should inform the Organising Member State in advance about any medical condition of a returnee which would need special care and attention.⁵⁷⁰

Under the Council of Europe's Twenty Guidelines on Forced Return, persons shall not be removed as long as they are medically unfit to travel. Member states are encouraged to perform a medical examination prior to removal of all returnees, either where they have a known medical disposition or where medical treatment is required, or where the use of restraint techniques is foreseen. A medical examination should be offered to persons who have been the subjects of a removal operation that has been interrupted due to their resistance in cases where force had to be used by the escorts. Host states are encouraged to have 'fit-to-fly' declarations issued in cases of removal by air.⁵⁷¹

Article 7, available in English at: http://frontex.europa.eu/assets/Publications/General/Code_of_Conduct_for_Joint_Return_Operations.pdf [Last visited on 14.06.2017].

570 European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), Code of Conduct for joint return operations coordinated by Frontex, Article 7, available in English at: http://frontex.europa.eu/assets/Publications/General/Code_of_Conduct_for_Joint_Return_Operations.pdf [Last visited on 15.03.2017].

571 Council of Europe's Twenty Guidelines on Forced Return, September 2005, Principle 16, available in English at: http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Re

Under the Code of Conduct for joint return operations coordinated by Frontex, the returnees are to be removed only as long as they are ‘fit-to-travel’ at the time of the joint return operation. The Organising Member State must refuse the participation in a joint return operation of a returnee who is not fit-to-travel.⁵⁷²

The monitoring of joint return operations revealed incidents where the doctor within the escort of the Ministry of Internal Affairs of Georgia was not duly notified about the health condition and diagnoses of some of the returnees.

The Public Defender observes that the medical personnel of the Organising Member State’s escort should have prior information about the health condition of returnees. It will assist the personnel to make provisions for the special needs of returnees and be ready to give adequate medical assistance.

The CPT has observed that a constant threat of forcible deportation hanging over detainees who have received no prior information about the date of their deportation can bring about a condition of anxiety that comes to a head during deportation and may often turn into a violent agitated state. In this connection, the CPT has noted that, in some of the countries visited, there was a psycho-social service attached to the units responsible for deportation operations, staffed by psychologists and social workers who were responsible, in particular, for preparing immigration detainees for their deportation⁵⁷³

The monitoring of joint return operations revealed incidents where some of the returnees had mental disorders and abstinence syndrome.

The monitoring of joint return operations revealed that the provision of telephone contact of returnees with their family is problematic.

It is noteworthy that during the execution of joint return operations, due to the absence of specific regulations on ensuring returnees’ telephone contact with their family, the representatives of the Public Defender were submitting information to the authorities of the relevant Participating Member State and Frontex representatives, who within their competence ensured the returnees’ contact with their families.

RECOMMENDATIONS

TO THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA:

- To take all measures to ensure, through coordination with the organisers of joint return operations and the competent authorities of the relevant Participating Member State, that returnees are provided with adequate medical assistance and that their telephone contact with their family is ensured.

turn_en.pdf [Last visited on 4.03.2017]. Guide for Joint Return Operations by Air coordinated by Frontex, Warsaw, 12 May 2016, p. 21 available in English at: http://frontex.europa.eu/assets/Publications/General/Guide_for_Joint_Return_Operations_by_Air_coordinated_by_Frontex.pdf [Last visited on 17.06.2017].

572 European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), Code of Conduct for joint return operations coordinated by Frontex.

573 Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 7 to 17 September 2003, p. 56, available in English at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTM-Content?documentId=0900001680695808> [Last visited on 13.02.2017].

pating Member State of the European Union, that the prior information is obtained about health conditions and diagnoses of returnees;

- To take all measures to ensure, through coordination with the organisers of joint return operations and the competent authorities of the relevant Participating Member State of the European Union, that returnees contact their family;
- To ensure that a psychologist is included in the Ministry of Internal Affairs' escort, who will provide psychological assistance to returnees if needs be; and
- To take all measures that, if according to the prior information on the returnees there is a person with mental disorders, a psychiatrist is included in the escort of the Ministry of Internal Affairs, who will provide adequate psychiatrist assistance.

6. MONITORING OF THE STATE CARE INSTITUTIONS FOR PERSONS WITH DISABILITIES

In 2016, Human Rights situation of persons with disabilities in state care institutions were monitored within the frameworks of the activities of the National Preventive Mechanism and the mechanism for the monitoring of popularization, protection and implementation of UN Convention on the Rights of Persons with Disabilities – the two significant mandates granted to the Public Defender's Office under internationally recognized obligations.⁵⁷⁴

The representatives of the public defender's office inspected the level of protection of human rights of PWD beneficiaries placed in five state residential institutions: Tbilisi Infants' House, Kojori Boarding House for Children with Disabilities, Dzevri Boarding House for Persons with Disabilities, Dusheti Boarding House for Persons with Disabilities, Martkopi Boarding House for Persons with Disabilities and their compliance with the standards established by the UN Convention on the Rights of Persons with Disabilities, other international documents and national legislation.

The monitoring revealed that institutional arrangement of the daily specialized institutions for persons with disabilities, non-adapted infrastructure, lack of professional and support staff, lack of psycho-social services and relevant professional personnel and their low qualification creates significant challenges in terms of offering services relevant to the individual needs of people with disabilities.

574 Findings of the monitoring have been released as a thematic report "*Legal Situation of Persons with Disabilities in the State Care Institutions*" October 21, 2016 <<http://www.ombudsman.ge/en/reports/specialuri-an-garishebi/legal-situation-of-persons-with-disabilities-in-the-state-care-institutions.page>> [Last accessed: 07.06.2017].

Non-adapted infrastructure, lack of communication with the outside world and their families (including children), social inactivity and isolation from the society, as well as deficiencies related to administration and medical care are also among main challenges in the process of implementation of the convention.

The monitoring showed that care for beneficiaries' safety and security, their emotional, physiological well being and mental health, also the level of the service providers' awareness on the violence-related legal regulations and standards is extremely low. The beneficiaries are not aware of their rights. The administrations of the institutions do not consider the issues as an important care standard.

It is worrisome that all existing situation in the state care institutions leads to the blatant violation of the beneficiaries' rights, including discriminatory treatment, and sometimes violation of the persons with disabilities right to life. Based on identified problems the Ombudsman has developed recommendations for relevant state agencies, administration of specialized daily institutions for people and children with disabilities.

Despite the recommendations reflected in the Special report, the situation has not changed in most of the boarding houses during the reporting period. After the monitoring, the Public Defender's Office has received information about increased dynamics of transferring Martkopi boarding house beneficiaries to the Mental Health Institutions,⁵⁷⁵ as well as about the increased numbers of conflicts between the beneficiaries of the same boarding house.⁵⁷⁶

The study of the cases revealed that the facility is overcrowded, administration doesn't have management mechanism of persons with severe disability, mental health and behavioral problems, and as a result, transferring beneficiaries in mental health institutions or threat of such transfer is a commonly established mechanism for conflict management.

The recommendation addressing Martkhopi boarding House problems was drafted and represented to the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking by the Public Defender of Georgia.⁵⁷⁷

575 Public Defender's Office Case N11746/16–12.09.2016; N12558/16–28.09.2016; N14619/16–14.11.2016.

576 Public Defender's Office Case N14098/16–02.11.2016.

577 Recommendation concerning Problems in Martkopi Boarding House for Persons with Disabilities <http://www.ombudsman.ge/en/recommendations-Proposal/rekomendaciebi/recommendation-concerning-problems-in-martkopi-boarding-house-for-persons-with-disabilities.page>