



## **Public Defender of Georgia**

National Preventive Mechanism

Visit report on the Temporary Accommodation center of the Ministry of Internal Affairs

(20 February 2019)

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## 1. PROTECTION OF MIGRANTS FROM ILL-TREATMENT

Whether a place where those held during migration proceedings is a place of detention depends on whether the individuals held there are free to leave it at will. If not, these constitute places of deprivation of liberty and all the safeguards applicable to those held in detention must be respected fully.<sup>1</sup> Foreigners being in Georgia without a legal basis can be placed in the Temporary Accommodation Centre (hereinafter the “TAC”) up to 3 months for their expulsion from Georgia. This term can be extended for another 6 months based on the reasoned motion filed with a court.<sup>2</sup> Besides, asylum-seekers arrested in accordance with Article 9.2 of the Law of Georgia on International Protection can be placed in the centre.<sup>3</sup>

In the reports published in 2015-2017, the Public Defender issued the following recommendations for the protection of persons placed in the TAC from ill-treatment and improvement of their living conditions: 11 recommendations were made to the Ministry of Internal Affairs of Georgia; 1 proposal was made to the Parliament of Georgia and 1 recommendation was made to the Government of Georgia. 1 out of the 11 recommendations made to the Ministry of Internal Affairs has been fulfilled; 2 recommendations have been fulfilled partially and 8 recommendations have not been fulfilled. The proposal made to the Parliament of Georgia and the recommendation to the Government of Georgia has not been fulfilled.

The monitoring findings of the Special Preventive Group are given in the chapters below.

## 2. ALTERNATIVE MEASURES TO PLACEMENT IN THE TAC

Under international human rights law, the right to liberty and security of person has paramount importance. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of their liberty except on the grounds and procedures established by law.<sup>4</sup> It is important to apply these principles to migrants, among others, especially to asylum seekers who, by virtue of their status, are not persons accused of committing a crime.<sup>5</sup>

In the view of the United Nations Special Rapporteur on the human rights of migrants, the obligation to always consider alternatives to detention (non-custodial measures) before resorting to detention

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<sup>1</sup> Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, para. 45, published on 7 February 2018.

<sup>2</sup> The Law of Georgia on the Legal Status of Foreigners and Stateless Persons, Article 64.

<sup>3</sup> The Law of Georgia on International Protection, Article 9.

<sup>4</sup> International Covenant on Civil and Political Rights, Article 9(1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 16(4); Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5.

<sup>5</sup> Under the legislation concerning refugees and international human rights law, arrest of asylum seekers must be considered a last resort.

should be established by law. Detailed guidelines and proper training should be developed for judges and other state officials, such as police, border and immigration officers, in order to ensure a systematic application of non-custodial measures instead of detention.<sup>6</sup>

Detention of migrants should only be used as a last resort and only after less restrictive alternatives have been found to be unsuitable in the individual case considered. It may be important to consider whether detention is being used as a last resort, or if it is being used in an automatic fashion.<sup>7</sup>

Under Article 65.1 of the Law of Georgia on the Legal Status of Foreigners and Stateless Persons, “The court may decide to impose alternative measures to the placement of aliens at a temporary accommodation centre.” Besides, Article 21<sup>42</sup>.4 of the Administrative Procedure Code also lays down the possibility of using alternative measures by a court instead of placing migrants into the TAC. However, it is to be noted that, under Article 4 of the Rules<sup>5</sup> on Arresting a Foreigner and Placement in the Temporary Accommodation Centre,<sup>8</sup> the Migration Department is authorised to apply to a court with a motion to place a foreigner in the TAC only. Interviews of the members of the Special Preventive Group with the administration of the establishment revealed that, stemming from the aforementioned rule, the TAC does not apply to the court requesting the application of alternative measures. Considering the fact that the TAC possesses and processes important personal data about a person in custody (identity, place of residence, financial situation and flight risk),<sup>9</sup> it is important to increase its role and it should be vested with the authority of filing motions on the application of alternative measures.

### 3. ADMISSION TO THE TEMPORARY ACCOMMODATION CENTRE

Under Article 5.3 of the Rules of Arresting and Placing a Foreigner in the Temporary Accommodation Centre, a foreigner is subject to inspection along with his/her personal items and undergoes a preliminary medical examination. It is noteworthy that this procedure is conducted for security reasons.<sup>10</sup> However, obtaining information about the state of health and external examination are cited as the objectives of the preliminary medication examination.<sup>11</sup>

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<sup>6</sup> Report of the Special Rapporteur on the human rights of migrants, para. 53, 2 April 2012, A/HRC/20/24.

<sup>7</sup> Visiting Immigration Centres: A Guide for Parliamentarians, p. 28, the Council of Europe (2013), available at : <http://tiny.cc/hies8y>, (accessed 10.04.19).

<sup>8</sup> Approved by Order no. 631 of the Minister of Internal Affairs of Georgia of 19 August 2014.

<sup>9</sup> In the motion filed with a court concerning placing a foreigner in the TAC, the migration centre refers to such circumstances as the impossibility of identifying the person, the absence of permanent place of residence, financial situation, etc.

<sup>10</sup> A foreigner and his/her personal items are inspected in order to avert threats if there is a threat that a foreigner will use his/her items to harm himself/herself, another person, or another person’s property.

<sup>11</sup> The medical personnel of the TAC interview the person about his/her state of health and conducts scrupulous external examination.

During the monitoring, the Special Preventive Group learned that, when admitting arrested foreigners to the TAC (interviews with arrested persons), the personal inspection of foreigners and their preliminary medical examination are not completely separated in the practice and these two procedures are conducted at the same time. Moreover, these procedures in most cases involve requests to strip completely and squat.

The Special Preventive Group emphasises that the personal examination of an arrested foreigner should be a completely separate procedure from the preliminary medical examination. The personal examination is a security measure that should be carried out by security staff following a particular procedure. The preliminary medical examination should be aimed at identifying medical needs by a medical professional as well as identifying incidents of possible torture and other ill-treatment, documenting them and referring to the respective investigative authorities.

It is noteworthy that strip-searches can only be conducted on the basis of a concrete suspicion and in an appropriate setting and carried out in a manner respectful of human dignity.<sup>12</sup> Persons who are searched should not normally be required to remove all their clothes at the same time<sup>13</sup> and do squats. An arrested person should be able to opt for an alternative method of full search (scanner) when personal examinations and strip-searches are necessary.

The Special Preventive Group believes that medical examination in the TAC should be carried out in accordance with the standards of medical service instructions applicable to persons placed in TDIs, approved by Order no. 691 of the Minister of Internal Affairs of Georgia.

**The CPT in its report on the visit to Georgia, carried out on 10-21 September 2018, emphasises that the same screening, recording injuries and reporting procedures be applied at the TAC as those already in place at the TDIs with on-site health-care staff,<sup>14</sup> and that the doctors working at the Centre be provided with appropriate training in this respect.**

## 4. LEGAL SAFEGUARDS OF PERSONS IN CUSTODY

**The right of access to a lawyer** should include the right to talk with a lawyer in private, as well as to have access to legal advice for issues related to residence, detention and deportation. This implies that

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<sup>12</sup> 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 March to 3 April 2014, published on 29 January 2015.

<sup>13</sup> 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, para. 85, published on 31 March 2015.

<sup>14</sup> 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 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 38, available in English at: <https://rm.coe.int/1680945eca>, (accessed 17.06.19).

when irregular migrants are not in a position to appoint and pay for a lawyer themselves, they should benefit from access to legal aid.<sup>15</sup>

Under Article 2.4 of resolution no. 525 of the Government of Georgia on Approving the Procedure for the Removal of a Foreigner from Georgia, legal consultation<sup>16</sup> is provided for a foreigner in the removal procedure. During the monitoring, foreigners have not had any complaint regarding legal consultations available for them. However, some of them expressed their wish to have full legal aid concerning the removal process.<sup>17</sup>

It is noteworthy that the access to legal consultation under the law cannot be considered to be a full-scale legal aid. It is important to ensure that persons set for removal should benefit from full legal aid in the decision-making process about their removal.

It should be taken into account that the Law of Georgia on Legal Aid determines the group of persons eligible for legal aid and foreigners set for removal are not among them. Therefore, in order to ensure the exercise of this right, it is necessary to make appropriate changes to the legislation. It is noteworthy that the Public Defender made a recommendation in the 2015 parliamentary report regarding this issue. This recommendation has not been fulfilled to this day.

## 5. CONDITIONS IN THE TEMPORARY ACCOMMODATION CENTRE

Similar to the visits made in 2015 and 2017, the infrastructure in the TAC and situation in terms of sanitation and hygiene conditions should be positively assessed in 2018 too. However, individuals held in the TAC cannot move freely in the facility's premises. The individuals held in the TAC are mostly locked in their wings and only at the specified time,<sup>18</sup> together with the security personnel of the TAC, can go to the yard, dining room, computer and meetings room.

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<sup>15</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Safeguards for irregular migrants deprived of their liberty, extract from the 19th General Report of the CPT, published in 2009, para. 82, available in English at: <https://rm.coe.int/16806cce8e>, (accessed 01.05.19).

<sup>16</sup> Legal consultation means legal advice available for all regarding any legal issues.

<sup>17</sup> Legal aid means drafting legal documents, representation before court on criminal, administrative and civil cases as well as administrative bodies at the state's expense.

<sup>18</sup> Free time spent in the daytime at the TAC covers 6 hours. During this period, a person in custody can use a computer twice a day for 30 minutes each time; besides, in good weather (the yard is not covered and therefore, it is impossible to use it in bad weather), a person accommodated in the centre can go into the establishment yard; there is a basketball court arranged in the yard but there is no exercise equipment (in practice, persons accommodated in the centre can only spend one hour in the open air. In addition, arrested persons can use one TV set placed in the meetings room, which often leads to conflict among persons in custody. Evening activities include one-hour rest in wings, dinner, roll call and allocation to rooms.

Considering that a person can be placed in the TAC for up to 9 months,<sup>19</sup> it is important to ensure that the TAC infrastructure, regime and recreational activities provide to the maximum extent possible psychological and emotional relief for the persons placed in custody to be removed from Georgia. To this end, it is necessary to arrange a recreational room in the TAC, equipped with recreational means (for instance, table games).

**The CPT, in its report to the Georgian Government on the visit to Georgia carried out on 10-21 September 2018, invited the Georgian authorities to make more efforts to offer some organised activities (e.g. lectures, handicraft, art and cooking classes) to foreign nationals accommodated at the Centre for extended periods (up to several months).**

In order to maintain the physical and mental health of the persons accommodated in the centre, it is necessary to ensure in practice that they can stay in the open air for an unlimited period of time and arrange exercise equipment in the yard. Besides, in order to ensure contact with the outside world for the persons in custody, it is necessary to increase the time allocated for the use of computers in the centre in the daytime.

### **Nutrition**

The Public Defender welcomes that the recommendation regarding including vegetables on the menu has been fulfilled. However, there is still no fruit on the menu.<sup>20</sup> The steps made based on the Public Defender's recommendation towards providing cards for persons placed in the TAC so that the persons in custody could buy food in the canteens serving the TAC personnel on the centre's premises.

**The CPT made a recommendation that offering the detainees the possibility to cook their meals by themselves should be seriously considered.<sup>21</sup>**

### **Medical Services**

The centre employs two doctors and one psychologist. During the daytime, from 9 a.m. until 6 p.m., there is always one medical professional present in the centre. If a medical professional is needed at night, the centre's doctor or an ambulance is called in. During the visit, arrested persons did not

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<sup>19</sup> Foreigners being in Georgia without a legal basis can be placed in the TAC up to 3 months with a view of their expulsion from Georgia. This term can be extended for another 6 months based on the reasoned motion filed with a court.

<sup>20</sup> The same is mentioned by the CPT in its 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 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 35, available in English at: <https://rm.coe.int/1680945eca>, (accessed 17.06.19).

<sup>21</sup> 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 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 35, available in English at: <https://rm.coe.int/1680945eca>, (accessed 17.06.19).

complain about medical services. It is commendable that, as a result of the fulfilment of the Public Defender's recommendations, the practice of destruction of expired medicines has been introduced.

It is noteworthy that, when placed in the Migration Centre, the arrested person undergoes the initial examination by the medical personnel. This covers external examination and gathering short anamnesis.<sup>22</sup> There is no screening when admitting a person to the TAC. It is important to ensure that the preliminary examination covers screening for contagious diseases<sup>23</sup> and mental health. During the visit to the establishment, the group met a person with disabilities who needed appropriate care. Due to the absence of a nurse, the physician had to take up those duties. It is important that the TAC should be able to contract a nurse in such cases.

**The CPT is of the view that it would be advisable to recruit nursing staff and organise a 24/7 health-care coverage at the TAC.<sup>24</sup>**

**Proposal to the Parliament of Georgia:**

- In 2019, amend the Law of Georgia on Legal Aid to the effect of determining that an alien set to be removed shall be eligible for legal aid at the state's expense.

**Recommendation to the Ministry of Internal Affairs of Georgia:**

- In 2019, amend the Rules of Arresting and Placing a Foreigner in the Temporary Accommodation Centre approved by Order no. 631 of the Minister of Internal Affairs of Georgia of 19 August 2014 and determine the power of the arresting authority, at any stage of the arrest procedure and motion before the court regarding the application of alternative measures instead of applying for placing the foreigner into custody;
- Differentiate strip-search and cavity search; establish the respective procedures for each;
- In 2019, amend Order no. 631 of the Minister of Internal Affairs of Georgia approving Arresting a Foreigner and Placement in the Temporary Accommodation Centre to the effect of:
  - determining that personal examinations and strip-searches are only conducted based on concrete and reasonable suspicion;
  - determining that removal of all the clothes at the same time, doing squats during personal examinations and strip-searches are prohibited; and

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<sup>22</sup> Medical history about the patient's relevant circumstances before the disease and the history of the development of the disease; it is gained by a medical professional based on the information given by the patient or other people who know the person and can give suitable information.

<sup>23</sup> Tuberculosis, Hepatitis B and Hepatitis C, HIV/AIDS.

<sup>24</sup> 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 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 37, available in English at: <https://rm.coe.int/1680945eca>, (accessed 17.06.19).

- laying down the right of an arrested person to opt for an alternative method of full search (scanner) when personal examinations and strip-searches are necessary.
- In 2019, take all necessary measures to ensure that medical examination in the TAC is carried out in accordance with the standards of medical service instructions applicable to persons placed in TDIs approved by Order no. 691 of the Minister of Internal Affairs of Georgia. Furthermore, ensure the retraining of the medical personnel in documenting injuries in accordance with the instructions;
- In 2019, arrange a recreational room in the TAC, equipped with recreational means (for instance, table games);
- In 2019, offer organised activities (e.g., lectures, handicraft, art and cooking classes) to persons placed in the TAC for up to 9 months;
- In 2019, ensure in practice that persons placed in the TAC can stay in the open air for an unlimited period of time; arrange exercise equipment in the yard;
- In 2019, increase the time allocated for the use of computers in the centre in the daytime to ensure contact with the outside world for the persons in custody;
- In 2019, include fruit in the menu;
- In accordance with the CPT recommendation, offering detainees the possibility to cook their own meals should be seriously considered.
- In 2019, take all the measures to ensure that the preliminary examination covers screening for contagious diseases (Tuberculosis, Hepatitis B and Hepatitis C, HIV/AIDS, etc.) and mental health screening with appropriate means; and
- To ensure that a nurse is called in the TAC in the cases of placement of a person with special needs.