



Public Defender of Georgia

The Report of the National Preventive Mechanism

2020

2021

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Table of contents

1. Review of the National Preventive Mechanism Activities	6
Introduction	6
Preventive visits	7
Drafted/Published Reports	7
Exercising the mandate of the National Preventive Mechanism without obstacles – assessment tool	8
Assessment of the Implementation of Recommendation	14
Dialogue with International Partners.....	16
Relations with the Public	18
Relations with NGOs and donor organizations	19
Working Methodology	20
Employee Education	21
2. Penitentiary System	22
2.1. Introduction	22
2.2. The Status of recommendation implementation	23
2.3. Protection from torture and other cruel, inhuman or degrading treatment or punishment	32
2.3.1. Violence.....	32
2.3.2. A practice that equates to ill-treatment	35
2.3.3. Risk factors causing the ill-treatment	40
2.3.4. Deficiencies in detecting and documenting ill-treatment	46
2.4. Epidemiological conditions	48
2.5. Penitentiary Health Care.....	52
2.6. Contact with the outside world	55
2.7. Conditions of Imprisonment	59
2.7.1. Physical environment.....	59
2.7.2. Daily schedule and rehabilitation activities	60
2.8. Vulnerable categories of persons	62
2.8.1. Juveniles.....	62
2.8.2. Foreign nationals and persons without citizenship	68
2.8.3. Convicts sentenced to life imprisonment	70
3. Ministry of Internal Affairs.....	81
3.1. Monitoring methodology.....	81
3.2. The Status of recommendation implementation	82

3.3. Ill-treatment.....	90
3.4. Guarantees of protection from torture and ill-treatment.....	95
3.4.1. Definition of rights	95
3.4.2. Access to a lawyer and informing the family	96
3.4.3. Medical examination.....	97
3.4.4. Audio and video recordings	99
3.4.5. Maintenance of documentation in police stations.....	103
3.4.6. Detecting alleged cases of ill-treatment	105
3.5. Conditions in Temporary Detention Isolators.....	107
3.5.1. Physical environment.....	107
3.5.2. Epidemiological situation.....	108
3.5.3. Withdrawal syndrome management	109
3.6. Temporary Accomodatoin Center of the Ministry of Internal Affairs (status of implementation of recommendations).....	111
4. Psychiatric institutions	116
4.1. Introduction	116
4.2. The Status of recommendation implementation	116
4.3. Protecting patients from violence, inhuman or degrading treatment	119
4.4. Practice of Using Restraint Methods	121
4.5. Legal safeguards.....	123
4.6. Therapeutic and safe environment.....	128
4.7. Nutrition.....	129
4.8. Epidemiological conditions	130
4.9. Psychiatric Assistance	132
4.9.1. Treatment with antipsychotic medications	132
4.9.2. Psycho-social rehabilitation	133
4.10. Somatic (physical) health.....	136
5. Places of restraints caused by quarantine measures directed against New Coronavirus (COVID-19). 142	
5.1. Introduction	142
5.2. Legal protection guarantees	143
5.2.1. Proportionality of the measure used and complaint mechanisms.....	143
5.2.2. Guarantees of protection from ill-treatment	145
5.3. Placing a person in a quarantine space in decent conditions.....	145

5.4. Healthcare of persons placed in quarantine space.....	146
5.4.1. Somatic health	146
5.4.2. Mental health.....	146
6. Opinion of the Public Defender on the Action Plan for Combating Torture 2021-2022	149
6.1. Penitentiary system	150
6.2. Psychiatric institutions	151
6.3. System of the Ministry of Internal Affairs.....	152

1. Review of the National Preventive Mechanism Activities



Introduction

The pandemics caused by the new coronavirus has been a major challenge for the whole world. Countries had to tighten public health and safety rules and take various non-standard measures in an emergency situation, which led to significant restrictions used on people's daily lives. Against this background, the risks of human rights violations have naturally increased.

The new coronavirus was a novelty for Georgia too, where appropriate measures were taken to protect public health, including the creation of non-traditional places for limitation of freedom such as quarantine areas. Since, when a person is placed in a quarantine space, s/he is under the effective control of the state authorities and since this constitutes the restriction of liberty, in the period of March-May 2020, a special prevention group monitored the quarantine spaces.

Despite the pandemics, throughout the year the Special Prevention Group, in compliance with all security measures, actively continued the emergency monitoring of closed facilities. In 2020, 141 visits were carried out to 109 facilities of restriction/deprivation of liberty. The purpose of the visits was to assess the measures taken to prevent the spread of the new coronavirus (COVID-19) in places of restriction and deprivation of liberty and the impact of these measures on the rights of persons placed there, their necessity and proportionality, as well as collecting information on working conditions of the staff.

Preventive visits

141 visits to 109 facilities of deprivation/restriction of liberty:

- housing - 1 visit
- 3 psychiatric facilities - 5 visits
- Temporary placement centers - 2 visits
- 62 police divisions/departments - 62 visits
- 27 temporary placement isolators - 38 visits
- 10 penitential establishments - 28 visits
- 3 boarding houses for persons with disabilities - 3 visits
- 2 homes for children with disabilities - 2 visits

12 meetings were held in 5 different regions of Georgia with local lawyers working in the field of criminal justice and representatives of Non-Governmental organisations in the regions of Georgia.

Drafted/Published Reports

As a result of ad hoc visits the National Preventive Mechanism drafted 10 reports¹. The reports were submitted to the relevant agencies who were asked to submit information on the discussions and implementation of the recommendations provided for in the report

- ✓ [National Preventive Mechanism Report 2019](#)
- ✓ [The follow-up report on the monitoring visit to N3 establishment](#)
- ✓ [The follow-up report on the emergency monitoring visit to N3 establishment](#)
- ✓ [Report on emergency monitoring carried out to N17 establishment](#)
- ✓ [The follow-up report of the visit to Batumi medical center psychiatric inpatient department](#)
- ✓ [Ad hoc Monitoring Report on the Center for Mental Health and Prevention of Drugs](#)
- ✓ [Report on the monitoring of the places of liberty restriction caused by the quarantine measures directed against new coronavirus \(COVID-19\)](#)
- ✓ [Report on the ad hoc monitoring carried out in the temporary detention center](#)

¹ 8 reports from 10 were published in 2020 and the remaining 2 – in 2021. The reports published in 2021 are: Report on the monitoring carried out in N10 penitentiary establishment available at: <https://cutt.ly/Bx2SiCQ>; The report on the monitoring carried out in Tbilisi mental health center, available at: <https://cutt.ly/9x2SkLl>

Numerous international partners of Georgia underline the recommendations prepared within the framework of the National Preventive Mechanism and the importance of their implementation in the process of improving the quality of human rights protection in Georgia. It is worth mentioning that the European Union clearly declared at the dialogue held on the human rights issues with Georgia that the recommendations of the Public Defender need to be implemented.²

Exercising the mandate of the National Preventive Mechanism without obstacles – assessment tool

In order to assess the fulfillment of the the obligations set forth in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the state agencies, we have developed a tool, in which the obligations set out in the Protocol are presented as indicators.³ The performance of each indicator is assessed with relevant points:

- 0 points - the issue raised in the indicator constitutes a systemic problem
- 1 points - the issue raised in the indicator was partly problematic
- 2 points - no significant problems were identified with the issue raised in the indicator

Indicators \ Agencies	MIA system	Penitentiary system	Ministry of Healthcare
Monitoring visit carried out safely, without restrictions and obstacles;	2	1	2
Full access to information necessary for the monitoring	2	1	2
Opportunity to have a confidential conversation with persons under restriction/deprivation of liberty	2	1	2
Timely submission of the information/data requested from the state agencies	2	1	2
Readiness of the state agencies to carry out constructive dialogue and hold working meetings with the prupose of implementation of the recommendations or regarding the measures taken so far	1	0	1
Total points	9	4	9

The assessments in the table show the extent to which agencies have fulfilled their obligations in 2020 under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without obstructing the mandate of the National Preventive Mechanism. The assessments show that the situation in this regard is positive in the system of the Ministry of Internal

² The information is available - < <https://bit.ly/3e36SKO> >

³ Articles 19, 20 and 22 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Affairs and in the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia. Unfortunately, the situation is quite complicated in terms of cooperation with the Ministry of Justice, which ultimately fails to meet the obligations under the Optional Protocol.

Ministry of Internal Affairs of Georgia

In 2020, the monitoring visits to the temporary detention isolators of the Ministry of Internal Affairs, Police Establishments and the Temporary Accommodation Center of the Migration Department were conducted safely, without any restrictions or obstructions. A collaborative environment was created for the special preventive group. During the visits, the group fully received the necessary information and talked to the persons placed in police divisions and temporary detention isolators in a confidential environment without delay. The Ministry also provided us with the requested information in full and in a timely manner.

The very fact that the Ministry of Internal Affairs is conducting a constructive dialogue with the Public Defender's office is welcoming. A good example of a constructive dialogue is the meeting held with the Department of Migration, where we received information on both the recommendations implemented and the measures planned for the implementation of the recommendations in the near future.

During the reporting period the National Preventive Mechanism communicated with the Ministry of Internal Affairs regarding the implementation of one of the recommendations. In particular, as a result of communication, a list of the rights of persons under administrative / criminal detention was prepared and placed in a visible manner in the common areas of the relevant structural subdivisions and territorial bodies of the Ministry and the police departments in 2020.

Notwithstanding the abovementioned, the systemic recommendations issued by the Public Defender for the Ministry of Internal Affairs have not been implemented. Further, no dialogue was held between them to discuss the recommendations. The Public Defender expresses hope that the Ministry of Internal Affairs will carry out an active dialogue in 2021 to implement the remaining recommendations.

The Ministry of Justice of Georgia

In 2020, the Public Defender of Georgia published a special report⁴ in which we talked about the fact that the management model of semi-open type establishments was based on the informal hierarchy of prisoners, where the so-called "prison watchers" provided fictitious order in prisons aiming at silencing inmates and prevent them from talking about their problems. The publication of this report was followed by public attacks on the Public Defender and illegal actions by the Minister of Justice and the Penitentiary Service. Encouragement of illegal actions against the Public Defender and representatives of the Public Defender's Office started on January 21, 2020 at the sitting of the Human Rights and Civil Integration Committee of the Parliament of Georgia, where the Minister of Justice of Georgia tried to discredit the Public Defender in response to an important speech made by her. At the mentioned sitting, with the gross violation of the law, the Minister of Justice played video recording of a confidential meeting held in a

⁴ The follow-up report of the monitoring visit to N2, N8, N14 and N15 penitentiary institutions is available at the following address: <https://www.ombudsman.ge/res/docs/2019121618092132463.pdf> [last visited 01.03.21].

prison cell between the Public Defender's representative and a detainee and then she criticized the ombudsman's actions. By doing so, she tried to discredit the Public Defender personally as well as the entire institution, to reduce trust towards her and to provoke aggression by radical groups.

On January 22, 2020, the Public Defender addressed the State Inspector and requested the investigation of the legality of the Minister of Justice's action of publishing of the video recordings at the sitting of the Human Rights and Civil Integration Committee on January 21, 2020, in the Parliament of Georgia. Two of the video recordings showed specific parts of the Public Defender's visits to penitentiary establishments. The recordings were published on the same day on the official Facebook page of the Ministry of Justice. In the published video recordings the faces of Public Defender's representatives are not covered and they can be easily identified. It is noteworthy that the Organic Law of Georgia on the Public Defender of Georgia prohibits the Ministry of Georgia to carry out any kind of surveillance or eavesdropping of the meeting between the Public Defender's representative and a prisoner.⁵

According to the decision N1/100/2020, the State Inspector found that the Ministry of Justice as well as the Special Penitentiary Service had violated the Law of Georgia on Personal Data Protection in the part of publishing the video recordings and fined both agencies for it. In addition, the State Inspector's Office accepted the request of the Public Defender and made a decision to study the legality of data processing through the electronic surveillance in penitentiary institutions. After the inspection, the Special Penitentiary Service was given 16 recommendations and instructions to eliminate the existing problems.

On January 23, 2020, the Public Defender and her deputy visited N9 establishment to meet with prisoners. Upon completion of the visit, when leaving the building, the representatives of the media were mobilized at the N9 establishment. Information about the visit to the establishment was provided to them by the Special Penitentiary Service and it was approved by the Ministry of Justice. At approximately 20:30, information about the visit was posted on the Special Penitentiary's web and social media pages, listing the names and surnames of the inmates whom the Public Defender and her deputy had met and/or expressed the wish to meet. The Public Defender considers that the Special Penitentiary Service / Ministry of Justice grossly violated Article 19 of the Organic Law on the Public Defender of Georgia: „The meeting of the Public Defender of Georgia / member of the Special Preventive Group with imprisoned or otherwise detained persons and convicts, as well as with persons in psychiatric institutions, nursing homes for elder persons and children's homes shall be confidential. No surveillance or eavesdropping of any kind shall be allowed. This provision stipulates that any meeting of the Public Defender with prisoners must be confidential until the Public Defender makes a decision to the contrary. Against this requirement, information may be disseminated only with the clear consent of the prisoner. The same requirement is laid down in Article 21 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states that personal data should not be disclosed without the clear consent of the party concerned.

⁵ Organic Law on the Public Defender of Georgia, Article 19(3).

Article 35 of the Constitution of Georgia explicitly states that hindering the activities of the Public Defender shall be punishable by law. The activity of the Public Defender's Office of Georgia - as a constitutional body is based on such important and fundamental principles as are full independence from any branch of government, impartiality, objectivity and confidentiality in the implementation of activities. Disclosure of the issue with whom the Public Defender is meeting increases the risk of ill-treatment of and/or illegal actions towards prisoners, leading to a deterioration of their rights conditions. Disclosure of such information may force prisoners to refrain from appealing to and meeting with the Public Defender in the future. Following this fact, all prisoners will suspect that their meeting with the Public Defender will be monitored by the Ministry of Justice / Penitentiary Service and that it may be made public at any time by the agency.

According to Article 352 of the Criminal Code of Georgia, it is punishable to influence the Public Defender of Georgia in any form in order to hinder his / her official activities. According to part 2 of the same article, the same act committed by using official position is also punishable. Disclosure of the names and surnames of the prisoners who meet with the Public Defender and/or his/her representative is the influence on his/her activities. This contradicts the requirements of the Organic Law of Georgia on the Public Defender of Georgia, which states that any meeting shall be confidential. The purpose of this obstruction was to cause the prisoners distrust the Public Defender's Office and to limit its effective functioning. Based on the abovementioned, on January 24, 2020, the Public Defender addressed the General Prosecutor's Office of Georgia to launch an investigation under Article 352 of the Criminal Code, to conduct all necessary investigative actions in a timely and effective manner and to determine the relevant responsible persons.

The reply received from the General Prosecutor's Office of Georgia on January 31, 2020 stated that the legal and factual basis for initiating the investigation could not be identified by the investigation agency. The prosecutor's office did not consider the disclosure of the secrecy of the meeting of the Public Defender with the convicts as a breach of confidentiality.

The above-mentioned facts were assessed as interference in the activities of the Public Defender by the UN Special Rapporteur on Human Rights Defenders, the European Network of National Human Rights Institutions (ENNHRI), the Global Alliance of National Human Rights Institutions (GANHRI), the International Ombudsman Institute (IOI) and the European Union.⁶

It is unfortunate that notwithstanding the abovementioned, in 2020 the visits to and monitoring of penitentiary institutions for the representatives of the Public Defender's Office became not only difficult, but also dangerous. In particular, in recent months, the administration of establishments and a certain group of prisoners led by "prison watchers" have been systematically carrying out verbal attacks, threats and aggression on representatives of the Public Defender's Office.

⁶ Available at the webpage < <https://bit.ly/3cs1eyF> > [last visited on 01.03.21].

The purpose of these illegal actions was to disrupt our communication with prisoners and the monitoring of the prison area. Similar cases occurred:

- On October 31, 2020 and then again, on January 14, 2021 in Ksani Establishment N15, where a specific group of prisoners did not allow the Public Defender's representatives to monitor the application of the right to vote, and then to interview the institution's doctor. This is particularly troubling in the light of the fact that one of the inmates of Establishment N15 died a few days before with complications of Covid-19 and several family members of the inmates approached us with a request to visit the inmates.
- On December 4, 2020 and on January 13, 2021, the same prisoner threatened the representatives of the Public Defender's Office in Gldani N8 Establishment and demanded to terminate the visit to the prison. Establishment N8 is a closed type of prison and it is noteworthy that this prisoner always moves to a specific area of the prison when our representatives are carrying out the visits.
- On January 13, 2021, in Rustavi Establishment N17, a specific group of prisoners behaved aggressively with the representatives of the Public Defender, who also demanded the Public Defender to stop the visits because „everything was fine“in the prison.

It's the impact of the so-called criminal subculture that, while about half of the inmates serve their sentences in semi-open establishments (N14, N15 and N17), the number of referrals and appeals from the mentioned institutions to the Public Defender decreases from year to year. For instance, out of 1384 applications received from inmates in 2020, only 57 were sent by inmates of the abovementioned three establishments. This confirms that many problems of prisoners unfortunately do not reach us and are not heard out due to the influence of the so called criminal subculture. Therefore our proactive work in the semi-open establishments is important.

In order to resolve these issues the Public Defender referred to a number of state agencies to react.

In addition to the abovementioned, the Public Defender provided information to the UN Subcommittee on Prevention of Torture (SPT) and the Council of Europe Committee on Prevention of Torture (CPT) asking them to carry out a visit to Georgia with the purpose of protection of the rights of inmates.

The most important component of the mandate and methodology of the Special Prevention Group is the processing of voluminous information obtained from various documents in conformity with the principle of confidentiality. It is unfortunate that members of the special prevention group still face obstacles in terms of accessing special categories of personal data. In 2020, members of the Special Prevention Group were not allowed to study the unified electronic database in N6, N10 and N18 establishments, which was necessary for the Public Defender to assess the adequacy and timeliness of medical services. It should be noted that Article 20 (b) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly obliges countries to ensure unimpeded access of the National Preventive Mechanism to all information regarding the treatment of detainees and conditions of detention.

At the end of 2020, the National Preventive Mechanism started working on the annual report. On November 13, 2020, a letter N03-3/11348⁷ was sent from the Public Defender's Office to the Special Penitentiary Service of the Ministry of Justice, requesting information on the implementation of the recommendations given in the 2019 report of the National Preventive Mechanism, but they did not respond to the letter. The reply was also not provided for most of the letters⁸ sent in November and December 2020. This has significantly hindered the process of various data-analysis and assessment of the implementation of recommendations.

In a letter of October 16, 2020, the Deputy Public Defender offered the General Director of the Special Penitentiary Service to hold a face-to-face or remote (online) working meeting where representatives of the Special Penitentiary Service and the National Preventive Mechanism would discuss the recommendations in a working format. However, no response has been received.

Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia

In 2020, monitoring visits to psychiatric institutions were conducted safely, without restrictions and barriers. A collaborative environment was created for the special prevention group. During the visits, the group received the necessary information in full and talked to the beneficiaries in psychiatric institutions in a confidential environment without delay. The Ministry provided us with the requested information in a timely manner.

The readiness of the Ministry to provide the Public Defender with information on the implemented/planned reforms in the field of mental health should be positively noted. In addition, the National Preventive Mechanism had periodic communication with various representatives of the Ministry.

Despite the abovementioned, the systemic recommendations issued by the Public Defender to psychiatric institutions were not implemented during the year.

Cooperation with the State Inspector's Service

A two-day working meeting was held on February 21-22, 2020 between the representatives of the National Preventive Mechanism and the State Inspector's Service. During the meeting, various issues of cooperation between the Public Defender's Office and the Inspector's Service were discussed.

Cooperation with the Ministry of Economy and Sustainable Development

Cooperation with the National Tourism Administration of the Ministry of Economy and Sustainable Development of Georgia should be positively assessed. In the framework of remote monitoring of the quarantine areas, in case of identification of problems of quarantined persons by a special prevention

⁷ On 22 December, 2020 the letter N03-3/12560 was resent but no response was received.

⁸ For example, the letter N03-2/12933 of the Public Defender's Office of December 30, the letter N 03-6/11346 of November 13, the letter N03-6/11167 of November 10, the letter N 03-6/11166 of November 10, the letter N03-1/11142 of November 9, the letter N 03-3/12392 of 15 December, the letter N03-3/12391 of 15 December.

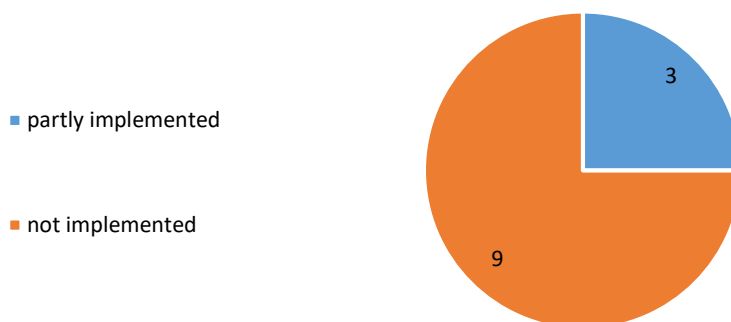
group and in case of referral of persons from quarantine areas to the Public Defender's Office, a special prevention group contacted the National Tourism Administration, which would solve the problems in a timely manner.

Assessment of the Implementation of Recommendation

System of the Ministry of Internal Affairs

In the 2019 report of the National Preventive Mechanism, the Public Defender of Georgia issued 12 recommendations and 1 proposal for the prevention of ill-treatment in police institutions and temporary detention isolators of the Ministry of Internal Affairs. One proposal to the Parliament of Georgia was not implemented. Out of 12 recommendations issued to the Ministry of Internal Affairs of Georgia, 3 recommendations have been partly implemented, and 9 recommendations are unfulfilled.

12 recommendations issued for the prevention of ill-treatment in police institutions and temporary detention isolators of the Ministry of Internal Affairs



The Public Defender issued 11 recommendations to the Minister of Internal Affairs of Georgia in the special monitoring report⁹ carried out at the Temporary Accommodation Center, out of which 6 recommendations were implemented, 2 recommendations were partly implemented, and 3 recommendations were not implemented.

11 recommendations issued to the Temporary Accommodation Center

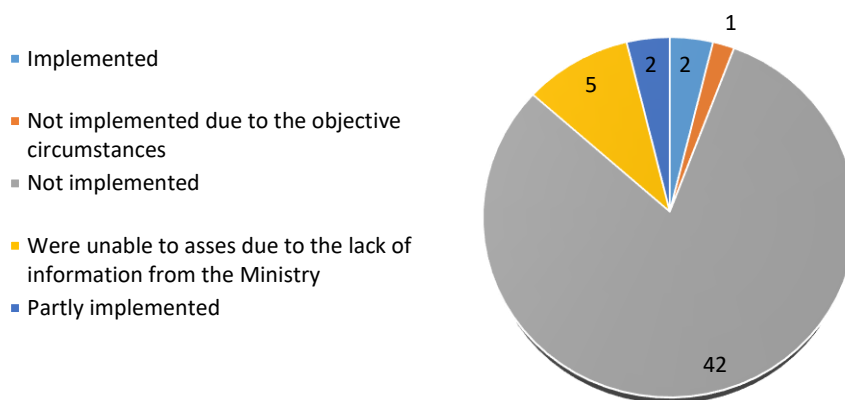
⁹ The report of the Public Defender on the emergency monitoring carried out in the temporary placement center is available at the following address: <<https://bit.ly/3pWVr9C>> [last visited 09.01.21].



Penitentiary System

In the 2019 report¹⁰ of the National Preventive Mechanism, the Public Defender of Georgia issued 53 recommendations and 7 proposals for the prevention of ill-treatment in the penitentiary system. None of the 7 proposals submitted to the Parliament of Georgia was implemented. One recommendation issued to the Government of Georgia was not implemented.

Out of 52 recommendations issued to the Minister of Justice of Georgia, 2 recommendations were implemented, 2 recommendations were partly implemented, 1 recommendation could not be implemented due to objective reasons, implementation of 5 recommendations could not be assessed, and 42 recommendations are not implemented at this stage.



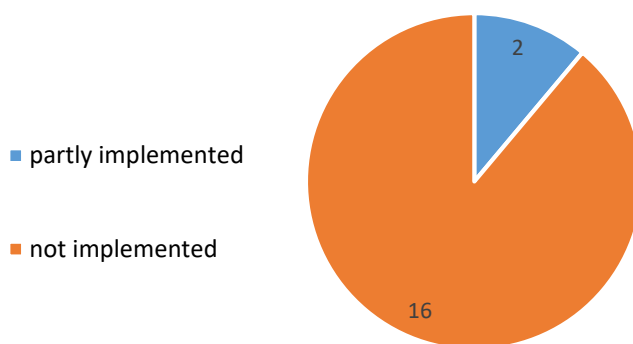
Number of recommendations issued to the Ministry of Justice - 52

¹⁰The report of the Public Defender on the emergency monitoring carried out in the temporary placement center is available at the following address: <https://bit.ly/3pWVr9C> [Last visited: 09.01.21].

Psychiatric institutions

In the 2019 report of the National Preventive Mechanism, the Public Defender of Georgia issued 19 recommendations and 1 proposal for the prevention of ill-treatment in psychiatric institutions. 18 of them were reflected in the resolution of the Parliament of Georgia and the relevant tasks were given to the state agencies.¹¹ The proposal to the Parliament of Georgia was implemented. One recommendation to the Government of Georgia has been partly implemented.

Out of 18 recommendations issued to the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, 2 were partly implemented, while 16 recommendations are not implemented at this point.



18 recommendations issued to the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs

Dialogue with International Partners

On March 30, 2021, the United States Department of State released its 2020 Human Rights Report on Georgia. The report reviews the situation in penitentiary establishments and presents the findings of the 2019 report of the National Preventive Mechanism of the Public Defender.¹²

The Association for the Prevention of Torture (APT) positively assessed the activities of the National Preventive Mechanism of the Public Defender of Georgia and posted a video¹³ of the activities of the Mechanism on its social networks. The Association for the Prevention of Torture (APT) emphasizes that

¹¹ Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2019.

¹² United States Department of State 2020 Report available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/georgia/> [last visited 31.03.21].

¹³ Association for the Prevention of Torture (APT), available at the following address: <https://cutt.ly/6x2DdXN> [last visited 17.02.21].

the purpose of the monitoring and recommendations issued by the National Preventive Mechanism of the Public Defender of Georgia during the COVID-19 pandemic is:

- Reducing the number of prisoners
- Protection of prisoners' health and provision of adequate medical services
- Compensate for restrictions set on contact with the outside world

The ombudsman's monitoring of closed establishments carried out during the crisis is also positively assessed in a handbook issued by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Association for the Prevention of Torture.¹⁴

During the reporting period, the National Preventive Mechanism had active communication with international organizations both in Georgia and abroad. Due to the pandemic in the country and in the world in general (Coronavirus), the Public Defender and the representatives of the National Preventive Mechanism participated mainly online in various forums and meetings held under the auspices of international organizations. On April 23, 2020, a member of the National Preventive Mechanism participated in an international webinar organized by the Association for the Prevention of Torture (APT): "Places of Restriction of Liberty in the COVID-19 Pandemic: Safety Measures and Health Issues for Monitors";

The Public Defender sent letters to the UN Subcommittee on Prevention of Torture (SPT), the Council of Europe Committee for the Prevention of Torture (CPT) and the Special Rapporteur on Torture regarding alleged ill-treatment of prisoners in a number of penitentiary establishments;

- On January 31, 2020, the Public Defender Nino Lomjaria and the Deputy Public Defender Giorgi Burjanadze met with the President of the European Committee for the Prevention of Torture (CPT) Mykola Gnatowski, the Executive Secretary of the same Committee Regis Brillat and the Head of the Section Boris Vodz;
- On February 11-12, 2020, Deputy Public Defender of Georgia Giorgi Burjanadze held meetings in Geneva to discuss the activities and challenges of the National Preventive Mechanism with the relevant United Nations bodies;
- On February 3, 2020, an online meeting was held with a representative of the Association for the Prevention of Torture. Obstacles to the enforcement of the Public Defender's mandate were discussed during the meeting;
- On January 9, 2020, a meeting was held with the ICMPD Representative of the International Center for Migration Policy Development regarding the planned project of the joint operation of return flights;
- On March 10, 2020, National Preventive Mechanism representatives met with Mr. Randall Burroughs (Head of the Penitentiary and Probation Systems' Support Project). During the

¹⁴ OSCE Office for Democratic Institutions and Human Rights (OSCE / ODIHR) and the Association for the Prevention of Torture (APT), COVID-19 Pandemic Monitoring Guidelines for Detention Facilities, p. 10, available at the following address: <https://www.osce.org/files/f/documents/7/5/453543.pdf> [last visited 17.02.21].

meeting, the current situation in the penitentiary system and prospects for future cooperation were discussed;

- On March 24, 2020, the representatives of the National Preventive Mechanism participated in the remote conference on National Preventive Mechanisms. The conference was organized by the Association for the Prevention of Torture. Issues related to monitoring penitentiary institutions during COVID-19 were discussed at the conference;
- On April 7, 2020, the representatives of the National Preventive Mechanism participated in an online meeting to discuss an initiative by international organizations and international treaty bodies (SPT, CPT) to launch prisoner release mechanisms during pandemics;
- On April 10, 2020, an online meeting was held with a representative of the National Preventive Mechanism of Armenia. Parties to the meeting discussed the legal nature of quarantine measures used in pandemic conditions and their compatibility with national and international law;
- In April 2020, an online meeting was held with Ms. Barbara Bernat, Secretary General of the Association for the Prevention of Torture. Future plans for the study of the impact of the activities of the National Preventive Mechanisms were discussed during the meeting;
- On December 18, 2020, the Deputy Public Defender of Georgia, Giorgi Burjanadze, participated in the online international conference "Monitoring of Deprivation of Liberty Facilities in the Conditions of the COVID-19 Pandemic" organized by the Tunisian National Preventive Mechanism.

Relations with the Public

Informing the public about the human rights situation in places of deprivation and restriction of liberty is one of the main priorities of the National Preventive Mechanism. Information is provided to the public through the publication of post-visit, special and annual reports, as well as through the organization of various events, meetings and the media.

- On 20 February 2020, an EU-funded conference entitled "From Committing a Crime to Returning to Society" was held for representatives of criminal justice. An employee of the National Preventive Mechanism made a speech on the topic: "First Contact with the Criminal Justice System: Investigation and Prosecution"; At the conference of the same name, the next day, on February 21, an employee of the National Preventive Mechanism made a speech on the topic: "Enforcement of a Judgment: Objectives of the Judgment, Assessment of Risks and Needs, Rehabilitation";
- In April 2020, a webinar on torture and ill-treatment was organized by the Georgian Young Lawyers' Association, where a speech was made by an employee of the National Preventive Mechanism;
- On June 21, 2020, the organization International Prison Reform organized an online conference on the opportunities and challenges for the protection and realization of minority rights in the penitentiary system, presentation prepared by the Initiative for Social Change. The online event also featured a presentation of the service guide for convicts, ex-convicts and probationers,

prepared by Social Workers for the Welfare of the Community. The mentioned event was organized by the EU-funded project "Support and Monitoring of Penitentiary and Probation Reform with the Involvement of Civil Society". The project is implemented by the organization Prison Reform International in partnership with the Initiative for Rehabilitation of Vulnerable Groups and the Human Rights Center;

- On December 26, 2020, an online meeting was held with the students of the Georgian National University. The representatives of the National Preventive Mechanism (Department) informed the students about their mandate and monitoring findings;
- During 2020, the Special Prevention Group held 5 different information meetings in Georgia. The meetings were attended by students from local schools and representatives of civil society. The participants had the opportunity to get acquainted with the mandate of the National Preventive Mechanism and the findings of the monitoring.

Relations with NGOs and donor organizations

In 2020, the National Preventive Mechanism actively collaborated with various local and international NGOs and donors.

In 2020, under a memorandum¹⁵ signed with the NGOs Human Rights Center and International Prison Reform, the conditions of detention and treatment in Establishment N8¹⁶ were studied in relation to three groups of prisoners belonging to a special vulnerable category: Juvenile defendants and convicts, persons sentenced to life imprisonment and foreign citizens (accused, convicted) prisoners. The NGOs carried out monitoring in the framework of projects funded by the European Union and the Georgian Open Society Foundation.

NPM Advisory Council

The purpose of the Advisory council is to promote the effective operation and transparency of the National Preventive Mechanism. The council submits an opinion to the Public Defender on the following issues: a) on the plan of activities to be implemented by the National Preventive Mechanism; b) on the working methodology; c) on the thematic studies; d) on the professional training of the members of the National Preventive Mechanism; e) on other strategic documents of the National Preventive Mechanism; f) on other issues important for the effective operation of the National Preventive Mechanism. The opinion of the Council is of an advisory nature. Its invited members contribute to establishing communication by the National Preventive Mechanism with academia, donor organizations and other stakeholders.

In addition to the representatives of the Public Defender's Office, the members of the Council are invited members, who may be a) a person engaged in educational/academic activities in the field related to the mandate of the National Preventive Mechanism; b) a member of an international organization working

¹⁵ In accordance with the rule of the Public Defender's Office on cooperation with non-governmental organizations. Available: < <https://bit.ly/3r8l4G7> > [last visited: 25.02.2021].

¹⁶ Visits to the N8 establishment took place on 4,5,6,7 August 2020. The reports is available: < <https://bit.ly/3uQjoDF> > [last visited: 25.02.2021].

in the field of prevention of torture and criminal justice; c) a member of an international non-governmental organization working in the field of prevention of torture and criminal justice; d) a member of a local non-governmental organization working in the field of prevention of torture and criminal justice.¹⁷

On March 11, 2020, a meeting of the Advisory Council of the National Preventive Mechanism was held, at which the application submitted by non-governmental organizations regarding the visits to the penitentiary establishments together with the National Preventive Mechanism was discussed. Other activities of the National Preventive Mechanism were also discussed at the meeting. And on December 28, 2020, the second meeting of the Advisory Council of the National Preventive Mechanism was held, at which the work carried out by the National Preventive Mechanism during the year was discussed. The participants spoke about the challenges faced by the members of the National Preventive Mechanism in the implementation of their activities.

Working Methodology

The National Preventive Mechanism pays special attention to reviewing and improving the working methodology. Numerous events and meetings were held with this purpose.

Against the background of the epidemic caused by the new coronavirus in Georgia, in 2020 the National Preventive Mechanism had to conduct monitoring visits under special conditions. Prior to the monitoring visits, the Special Prevention Group adapted the working methodology to the existing challenges. The rules for conducting a safe monitoring visit in a pandemic were developed and members were instructed accordingly. Individual protective equipment was purchased and members were explained the rules for their use. The purpose of these measures was to minimize the risk of new coronavirus spreading during the monitoring visit, and to protect staff and persons held in the establishments.¹⁸

Monitoring tools prepared in 2020	
1	Tools of monitoring places of restriction of liberty caused by quarantine measures against COVID-19
2	Tool of ad hoc monitoring in penitentiary establishments under the conditions created by COVID-19
3	Election Monitoring Tool in Penitentiary Establishments
4	Monitoring tool of monitoring the housing of people with mental health problems

¹⁷ Please refer to the following link <<https://bit.ly/2O1Ekqg>> [last visited: 25.03.2021].

¹⁸ In the wake of the aggravation of the epidemiological situation in the country, the Public Defender took additional measures to minimize the risk and members of the special prevention group underwent PCR testing before entering the establishments.

Employee Education

- From September 30 to October 2, 2020, an employee of the National Preventive Mechanism participated in a training tailored for managers of public institutions. The Civil Service Bureau, with the support of the United Nations Development Program (UNDP), is implementing the project - "Facilitating the introduction of new ways of implementation of the civil service reform";
- On October 27, 2020, an employee of the National Preventive Mechanism participated in an online meeting/training on election monitoring;
- On October 8-10, 2020, the employees of the National Preventive Mechanism participated in the training on the prevention/investigation of torture.

2. Penitentiary System

2.1. Introduction

Against the background of the epidemic caused by the new coronavirus in Georgia, in 2020 the National Preventive Mechanism had to conduct monitoring visits under special conditions. In order to fully implement the mandate provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Public Defender has not suspended preventive visits to penitentiary establishments during 2020. Monitoring visits were carried out in N17, N3, N10, N11, N12, N8, N18 and N6 penitentiary establishments.¹⁹ In addition, in 2020, a special prevention group was visiting penitentiary establishments for a variety of purposes and talking to the inmates and employees on the spot.²⁰

The assessments presented in this report are based on the analysis of the relevant national legislation and international legal acts as well as the voluminous information obtained by the Special Prevention Group. The working methodology of the Special Prevention Group includes obtaining information from various sources: individual and group interviews with prisoners, ex-prisoners, employees; Familiarity with the documentation produced in the institutions; studying the documents processed in the establishments; on-site monitoring and assessment of the physical environment; analysis of applications/complaints received by the Public Defender's Office; requesting information from various agencies; collecting official statistical data and reports/articles published by the agencies, etc.

Prior to the monitoring visits, the Special Prevention Group adapted the working methodology to the existing challenges. The rules for conducting a safe monitoring visit in a pandemic were defined and members were instructed accordingly. Personal protective equipment were purchased and members were explained the rules for their use. The purpose of these measures was to minimize the risk of spreading a new coronavirus during a monitoring visit, and to protect employees and the persons being in the establishments.²¹

The relevant chapters of this report present in detail the situation in penitentiary establishments in 2020 in different directions. The epidemiological situation in the country has made healthcare a priority.

¹⁹ The dates of monitoring visits to the penitentiary establishments are: N17 - April 30, 2020, May 1 and May 7, 2020; the part of the N8 penitentiary institution located in Ksani - June 26, 2020; N3 - July 12-13, 2020; N10 - September 3, 2020; N11 - November 26, 2020; N12 - November 26-27, 2020; N8 - December 3-4, 2020; N18 - December 3-4, 2020; N6 - December 17-18, 2020.

²⁰ In 2020, members of the National Preventive Mechanism visited the former N9 establishment to obtain information on the transfer of prisoners to the N12 establishments (05.04.2020), to interview detainees at the N2 penitentiary establishment (06-07.07.2020, 26.09.2020 and 29.09.2020), to interview the convicts in N8 establishment (01-02.09.2020); within the framework of the memorandum signed with the non-governmental organizations "Human Rights Center" and "International Prison Reform", joint monitoring visits were carried out to the N8 establishment (04-07.08.2020); emergency visits were carried out to N8 and N15 establishments to monitor the voting process of prisoners (31.10.2020).

²¹ In the wake of the aggravation of the epidemiological situation in the country, the Public Defender took additional measures to minimize the risk and members of the special prevention group underwent PCR testing before entering the facilities.

Therefore, one of the main focuses of the 2020 monitoring was the current state of health and epidemiology as well as the impact of preventive measures on the rights of prisoners. In 2020, in the light of the epidemic and the preventive measures taken by the Special Penitentiary Service, the systemic problems that the Public Defender has been pointing out in the reports for years have become even clearer.

The first and foremost noteworthy in the context of the epidemic is the problem of overcrowding in penitentiary establishments. The UN Subcommittee on Prevention of Torture called on member states in April 2020 to reduce prison populations as much as possible and to actively use early release mechanisms, non-custodial sentences and preventive measures.²² The Public Defender indicated the need for this in the report following the monitoring visit to the N17 facility in April-May 2020.²³ In many countries prison population reduction measures were implemented in the early stages of the pandemic,²⁴ however, this process started in Georgia only in 2021, when the Parliament of Georgia adopted the Law of Georgia on Amnesty as a one-time, temporary and special measure.²⁵ According to this act the amnesty will cover about 1,000²⁶ prisoners, and the exact number will depend on court rulings, which must also examine the victims' consent in cases of a number of articles. The Public Defender welcomes the adoption of the Amnesty Law as a humane act and hopes that the reduction in the number of prisoners will have a positive impact on the conditions of the inmates in penitentiary establishments. The Public Defender emphasizes that in addition to the one-time act, it is important to introduce an approach in both the penitentiary system and criminal justice policy that will activate the mechanisms of early release, non-custodial sentences and preventive measures.

2.2. The Status of recommendation implementation

The purpose of this subsection is to review the recommendations made in the 2019 report of the National Preventive Mechanism and the level of their implementation. Information on these issues is further presented in the relevant thematic subsections.

In the 2019 report of the National Preventive Mechanism the Public Defender of Georgia issued 53 recommendations and 7 proposals for the prevention of ill-treatment in penitentiary establishments. 44

²² Recommendations of the Subcommittee on Prevention of Torture regarding the Coronavirus Pandemic for States Parties and National Preventive Mechanisms, paragraph 9 (b). CAT/OP/10, 7 April 2020. Available at: < <https://undocs.org/CAT/OP/10> >, [last visited: 28.01.2021].

²³ Follow-up report of the special visit of the Public Defender to the N17 penitentiary establishment. P.14. Available at: < <https://www.ombudsman.ge/res/docs/2020061009033574571.pdf> >, [last visited: 29.01.2021].

²⁴ A table of prisoners leaving penitentiaries to prevent Covid-19 in Council of Europe member countries can be found in the study "Prisons and Prisoners in Europe during a Pandemic Times: an evaluation of the short-term impact of the COVID-19 on prison populations", p. 14, available at: < <https://bit.ly/3t1U6Bj> >, [last visited: 29.01.2021]. For information about the United States, see: <https://www.prisonpolicy.org/virus/virusresponse.html> >, [last visited: 29.01.2021]. 22% of the total number of prisoners in Iranian penitentiary establishments and 30% in Turkey were released.

²⁵ Law of Georgia on Amnesty of January 11, 2021, available at: < <https://bit.ly/36oBNML> >, [last visited: 29.01.2021].

²⁶ The explanatory note to the Law of Georgia on Amnesty states that the amnesty is expected to apply to 800 prisoners, with more than 30 articles added to the third reading of the bill, after which the estimated number was increased to 1,000. Explanatory note to the bill is available at: https://info.parliament.ge/file/1/BillReviewContent/266349?_, [last visited 29.01.2021].

of them were reflected in the resolution of the Parliament of Georgia and the relevant tasks were given to the public agencies²⁷.

None of the 7 proposals submitted to the Parliament of Georgia was implemented. One recommendation issued to the Government of Georgia was not implemented. Out of 52 recommendations issued to the Minister of Justice of Georgia, 2 recommendations were implemented, 2 recommendations were partly implemented, 1 recommendation could not be implemented due to objective reasons, Implementation status of 5 recommendations could not be assessed, and 42 recommendations are unimplemented at this stage. A penitentiary system compatible with international standards is inconceivable without the development of an appropriate legislative framework. An important role in this process is played by the Parliament of Georgia, on the effective work of which the improvement of the legal status of prisoners depends significantly. It is unfortunate that most of the proposals made to Parliament over the years are still unimplemented. The Public Defender expresses the readiness to enable substantial changes in the penitentiary system through close cooperation and communication with the Parliament.

In the 2019 report of the National Preventive Mechanism the Public Defender drafted substantive proposals to the Parliament in order to improve prisoners' contact with the outside world. Among the proposals were: increasing the number of meetings and telephone calls for prisoners in special risk establishments and granting them with the right to use video conferencing; granting the accused with the right to use a long meeting taking into consideration the interests of the investigation; possibility to replace a long meetings with a telephone conversation or a video meeting; enabling foreign citizens to use short and long video conferencing for convicts whose families live abroad; prohibition of any kind of restriction on contact with the family in the form of a disciplinary sanction, unless such contact is related to a crime;²⁸ however, it is unfortunate that none of the recommendations have been implemented. The implementation of the above proposals is especially important in the context of a pandemic as the extraordinary conditions in penitentiary institutions have significantly limited the contact of the accused/convict with the outside world.

The Public Defender also requested that the obligation to provide the accused with a minimum living space of 4 sq.m. like that of the convicts to be determined at the legislative level, was also not fulfilled.

For its part, the Government of Georgia has not complied with the recommendation to ensure that the country conducts forensic medical examinations in accordance with the Istanbul Protocol in order to effectively document and investigate torture and other cruel, inhuman or degrading treatment or punishment.

During 2020, the quality of cooperation with us by the Special Penitentiary Service of the Ministry of Justice of Georgia was low. Responses to the most of the letters sent to them were received late or not at all, which significantly hampered the process of analyzing various data and evaluating the

²⁷ Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2019.

²⁸ Visit of the European Committee for the Prevention of Torture to Georgia, par. 119, CPT/Inf (2015).

implementation of the recommendations. Pursuant to Article 22 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, public authorities are obliged to consider the recommendations made by the National Preventive Mechanism and to enter into a dialogue with it on possible measures of implementation. It is unfortunate that the representatives of the Ministry of Justice / Special Penitentiary Service do not consider themselves obliged to provide the National Preventive Mechanism with information on the review and implementation of the recommendations issued in the various reports, thus clearly violating the international obligations of the country. It should be noted that the Ministry of Justice / Special Penitentiary Service only sent information to the Parliament of Georgia on the implementation of the tasks reflected in the resolution of the Parliament of Georgia, which was sent by the Parliament of Georgia to the Office of the Public Defender on March 26, 2021. The information provided by the Ministry of Justice to the Parliament of Georgia does not fully cover the responses to all the recommendations issued by the National Preventive Mechanism in the 2019 report.

The evaluation of the implementation of the recommendations presented in this chapter is based on the responses provided by the Ministry of Justice to the Parliament of Georgia on the implementation of the tasks reflected in the Resolution of the Parliament of Georgia, as well as information from available sources during the reporting period.

The Public Defender is concerned with the fact that the rate of implementation of the recommendations issued to the Ministry of Justice is still extremely low. Clearly, the epidemic situation caused by the pandemic had a significant impact on the implementation of some of the recommendations, including recommendations that could not be implemented objectively, although implementation most of the recommendations were not hindered by the pandemics, on the contrary, their implementation was even more important during the pandemic. It should also be noted that the implementation of the recommendations that have not been implemented is not related to the mobilization of significant financial and other resources.

Unfortunately, there is an impression that the Ministry of Justice, instead of engaging in a constructive dialogue to implement the recommendations of the Public Defender,²⁹ by not acknowledging the system's problems and creating obstacles for the monitoring body, it violates the obligations incurred by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³⁰

In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the country undertakes obligation to ensure that the National Preventive Mechanism has unimpeded access to all information relating to the treatment of detainees and the conditions of their detention.³¹ Nevertheless, the National Preventive Mechanism has

²⁹ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 22.

³⁰ Ibid. Articles 19, 20, 21.

³¹ Ibid. Article 20 (b).

encountered obstacles over the years in terms of access to a particular category of personal data. Non-compliance with the obligations set out in the Optional Protocol has been addressed several times by the UN Subcommittee on Prevention of Torture (SPT) in written communication with the Government of Georgia. The subcommittee emphasizes the need for the National Preventive Mechanism to have unimpeded access to all relevant data, including medical records, registers and other records.

Despite the recommendation of the Public Defender the employees of penitentiary establishments were not trained on the mandate and authority of the National Preventive Mechanism.

Establishing a constructive and trust-based, positive relationship between staff and prisoners is essential to maintaining order and security in the establishments³². In 2020, penitentiary establishments did not train security and legal regime staff on issues such as conflict prevention, mediation, and the ethics of penitentiary staff. The Ministry of Justice sent a reply to the Parliament stating that in 2020-2021 the process of retraining the staff of the Penitentiary Service on the principles of conflict prevention, mediation and ethics was delayed due to the epidemiological situation caused by the new coronavirus (COVID 19) in the country.

The Ministry of Justice has not implemented the Public Defender's recommendation requesting that the plan to tackle the problem of overcrowding in penitentiary establishments should increase the number of regime staff working in the wards of residential buildings so that at least one staff member responsible for maintaining order and security is assigned to 15 inmates. The Ministry of Justice sent a reply to the Parliament stating that as of March 1, 2020, the number of employees of the Legal Regime Department in penitentiary institutions had increased by 34, which is welcome, but not enough to substantially change the situation. The Public Defender hopes that the process of hiring new employees will continue actively.

Despite the recommendation issued by the Public Defender, the accused and the convicts are still placed together in the N2 and N8 institutions, which is also a frequent cause of conflicts. Consequently, international standards³³ and the requirements of the Imprisonment Code³⁴ are being violated. During the reporting period, the implementation of the recommendation regarding taking into consideration the family's place of residence during the placement of the prisoner could not be assessed. The National Preventive Mechanism will pay particular attention to the implementation of this recommendation during subsequent monitoring visits. The Public Defender has been urging the Minister of Justice for years to ensure that the use of the de-escalation room as an extreme measure is done only with proper justification, for not more than 24 hours and in conditions of multidisciplinary work. Nevertheless, a long, unreasonable and punitive placement of prisoners in the de-escalation room still takes place, which in the Public Defender's assessment equates to cruel, inhuman and degrading treatment.

Given the importance of the issue, our focus is directed to the criminal subculture and informal ruling in penitentiary establishments, which is often the cause of violence among inmates. The Public Defender's

³² Nelson Mandela Rules, Rule 38 (2), Rule 76,1 (c).

³³ According to UN General Assembly Resolution 70/175 (Rules of Nelson Mandela) on the UN Standard Minimum Rules for the Treatment of Prisoners, accused persons and convicts should be placed separately. (Rule N11 (b)).

³⁴ Imprisonment Code, Article 9(2).

recommendation to develop a strategy to tackle the criminal subculture and informal governance in penitentiary establishments has not been implemented.

Despite the recommendation of the European Committee for the Prevention of Torture (CPT)³⁵ and the Public Defender, victims of violence have not been protected (transferring to other establishments or avoiding contact with prisoners from a criminal subculture). As a result of the monitoring, it is clear that in 2020, the administration of the establishments not only did not protect the prisoners who were victims of violence, but did not protect the representatives of the Public Defender's Office from the verbal attacks, threats and aggression carried out by the so called "prison watchers" due to which the Public Defender made a number of public statements.³⁶

The Public Defender welcomes the adoption of a new rule to increase the effectiveness of the procedure for detecting, documenting and reporting cases of violence to the investigative body,³⁷ which defines the obligation of the doctor to send a notification about the alleged fact of ill-treatment directly to the State Inspector of Georgia. A change is also welcome, according to which the doctor, in case of suspicion of torture and ill-treatment, is obliged to describe the injury, take a photo and send it to the investigating authority regardless of whether s/he received informed consent of the prisoner. It is regrettable that during the reporting period, the doctors of the penitentiary establishments did not undergo training on documenting the injury and taking photos. The response sent to the Parliament by the Ministry of Justice states that a new training module had been developed in accordance with the new order, according to which it was planned to train medical staff. The response states that the training process was delayed due to COVID 19. We hope that the training process will start in the near future.

The basic recommendations on improving living conditions have not been implemented either. Improving the conditions in penitentiary establishments and unloading cells is especially important in pandemic conditions, because the sanitary-hygienic conditions in overcrowded cells pose a great challenge in terms of the spread of infection in cells.

In order to provide 4 sq.m. living space to each prisoner the Public Defender requested equal distribution of prisoners in the cells of N2, N8, N14, N15, N17 establishments and transfer to other institutions of the same type, taking into account the place of residence of the prisoners. The recommendation has not been fulfilled. It should be noted that the number of prisoners in N2, N8, N14, N15, N17 establishments has not changed significantly compared to the previous year. Consequently, the above-mentioned penitentiary establishments were not unloaded. Moreover, in 2020, N15, N2 and N8 penitentiary establishments still housed more prisoners than provided by the limit.³⁸ Despite the recommendation of

³⁵ Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT/Inf (2019) 16), para. 47, September 10-21, 2018, available in English at: <https://rm.coe.int/1680945eca> [last visited: 21.01.21]

³⁶ The special statement of the Public Defender of Georgia regarding the situation in the penitentiary establishments is available at the following address: <https://cutt.ly/0j0Uo6Q> [last visited: 21.01.21]

³⁷ Order №663 of the Minister of Justice of Georgia of November 30, 2020, on the approval of the rules for the registration of injuries of accused/convicts as a result of possible torture and other cruel, inhuman or degrading treatment in penitentiary institutions.

³⁸ For detailed information, see the relevant subchapter - Conditions of Detention.

the Public Defender, the deficiencies described in the reports on the physical environment after the visit to the institutions N2, N3, N8, N14, N15 and N17 were not resolved. One of the recommendations of the Public Defender was to correct the deficiencies related to the physical environment described in the reports after the visit to the institutions N2, N3, N8, N14, N15 and N17. The recommendation was partly implemented. The response sent to the Parliament by the Ministry of Justice states that during 2019, 19 cells with shower rooms were renovated in N2 penitentiary institution; 14 rooms for short meetings were arranged; installation of buffer zone security systems has been completed. Reconstruction of barrack-type residential buildings in the N14 penitentiary establishments was completed, equipped and converted into cell-type housing; installation of buffer zone security systems has been completed. Renovation of quarantine rooms and solitary confinement cells has been completed. Solitary cells were repaired in N15 penitentiary institution. Nevertheless, other important shortcomings remain in the above institutions, which need to be remedied.

In the reporting period it was not possible to assess the implementation of the recommendation regarding the abolition of "barrack" type housing in the N17 establishment. It is true that the response sent to the Parliament by the Ministry of Justice states that several cells for 30 people were reconstructed in the N17 penitentiary establishment and the so-called "barrack" type housing in penitentiary establishment N17 was abolished, however, given the fact that the multi-place cells in the establishment N17 are problematic, we have not received any information about the fate of the other multi-place cells. These cells are a challenge from an epidemiological point of view. It is impossible to observe sanitary-hygienic conditions in the mentioned cells, and most of the convicts are not provided with 4 sq.m. private living space. The National Preventive Mechanism will pay particular attention to the implementation of this recommendation during subsequent monitoring visits.

Despite the recommendation of the Public Defender, the Office of the Public Defender was not given the opportunity to study the concept of small establishments prepared by the Ministry and to present its opinions.

Being in the fresh air can have a positive effect on the physical and mental health of inmates. Inmates in closed and special risk prisons are not allowed to walk outside for more than 1 hour as in previous years. Given the possibility of only 1 hour of walking during the day, in the establishments N2 and N8 carrying out the walks according to the time-schedule is also problematic. Most of the prisoners do not want to walk. The main reason is that 6:00-7:00 in the morning is too early for a walk, also the walking area is not arranged with appropriate infrastructure. Walking spaces in establishment N8 are arranged on the roof of the building. According to the prisoners, it is not interesting for them to spend time there, because nothing can be seen from the walking space except the sky, nor is it a means of contact with nature.

Instead of introducing new and diverse rehabilitation activities in N2, N3, N8, N14 and N15 establishments, due to the introduction of special conditions in penitentiary establishments, re-socialization-rehabilitation measures have been severely curtailed and the current situation has worsened.³⁹ One of the

³⁹ Detailed information is available in the relevant subchapter - Schedule and Rehabilitation Activities.

recommendations of the Public Defender requested to start working to create incentive mechanism for prisoners to be involved in various rehabilitation activities in 2020, which would have a direct impact on reducing the remaining sentence or changing the type of sentence. The recommendation was partly implemented. The response sent to the Parliament by the Ministry of Justice states that work is underway on this issue, a study and analysis of foreign practices and experiences is being carried out, which is being tested and adapted to the Georgian reality and the justice system.

One of the recommendations of the Public Defender was to increase the number of social workers and psychologists in the establishments N2, N8, N14 and N15 in order to balance the number of social workers and psychologists in those establishments with the number of prisoners. The recommendation was partly implemented. The response sent to the Parliament by the Ministry of Justice states that the Ministry shares this recommendation and provides information on the steps taken in this direction in 2020. In particular, the response states that in 2019, the number of psychologists increased from 30 to 40, while the number of social workers (case administrators and case managers) increased from 90 to 120 in 2020.

Despite the request of the Public Defender the recommendation to train social workers who do not have a bachelor's, master's degree, a degree equal to master, or a doctoral degree in social work has not been implemented. The response sent to the Parliament by the Ministry of Justice states that 9 social workers were involved in the training program in 2020, however, the training was stopped due to the epidemiological situation. The received answer shows that in 2021 the certification process will be renewed.

Due to the introduction of special conditions in penitentiary establishments, social workers are based on the outer perimeter and carry out activities from there, meet convicts beyond the glass barrier and consult them via the internal telephone of the establishment. Contact between social workers and prisoners was significantly reduced during the year. It should also be noted that in such a situation, naturally, the recommendation issued by the Public Defender in previous years to ensure the implementation of short meetings in all penitentiary establishments without a glass barrier could not be implemented objectively. The Ministry of Justice sent a reply to the Parliament stating that the Ministry and the Special Penitentiary Service consider it important to make short meetings without a glass barrier in order to further improve the conditions of convicts. For this purpose, penitentiary establishments N12, N5, N2 and N6 have already installed infrastructure without glass barrier (in N6 establishment the application of the infrastructure started, which was interrupted by special conditions imposed due to the epidemiological situation in the country), while in other establishments the necessary infrastructure is planned to be ensured gradually. The response states that, as of today, short meetings are made in all penitentiary establishments using a glass separating barrier, given the epidemiological situation in the country and the special conditions introduced to prevent the spread of the new coronavirus.

Despite the recommendation issued by the Public Defender, the role of social workers has not increased in periodically informing prisoners about their rights, responsibilities, submission of requests/complaints and review procedures.

The ombudsman's recommendation to equip the telephone booths in the N3 establishment with additional insulation in such a way that the confidentiality of the convicts' speech was fully protected was not implemented. The Ministry of Justice sent a reply to the Parliament stating that the facilities for telephone conversations in the N3 penitentiary establishments will be equipped with additional insulation means after the completion of the termination of the conditions introduced in the penitentiary institutions and the change of the epidemiological situation caused by the new coronavirus in the country.

Sending a confidential letter is still a problem in closed and special risk establishments. In particular, in these types of establishments it is impossible to obtain the envelope required to write a confidential complaint without identifying the prisoner. Further, most of the prisoners do not have access to material and technical means (sheet, pen, envelope).

Despite the request of the Public Defender, no recommendation has been implemented on investigation by the General Inspectorate of the Ministry of Justice of cases related to the breach of confidentiality in the N2, N8, N14 and N15 penitentiary establishments.

It should be noted that linguistic, religious and cultural peculiarities were not taken into account during the allocation of prisoners. Among them, the needs of the representatives of different religious denominations were not taken into account during the preparation of the food. The language barrier was still a significant challenge for foreign prisoners who were not provided with information about the services and regulations in the establishments in a language they could understand.

In N8 penitentiary establishment, the practice is still ongoing that if the day of the phone call determined for the cell does not coincide with the international call day,⁴⁰ the prisoners will not be able to call abroad. Added to this is the lack of telephone equipment, due to the queue the day may pass without a possibility of an inmate to make a call.

Rehabilitation activities tailored to individual needs are not provided for juveniles in N2 and N8 establishments. In addition, juveniles are not provided with healthy meals four times a day.

During the reporting period, it was not possible to assess the implementation of the recommendation regarding the provision of meals on time to the juveniles in the establishment N2 prior to the provision of four healthy meals. The National Prevention Mechanism will pay particular attention to the implementation of this recommendation during subsequent monitoring visits.

Juveniles are still placed in the de-escalation room. Instant verbal de-escalation methods are not used to ease the situation before placement of a juvenile in the de-escalation room, nor is there any multidisciplinary work carried out with juveniles after placement in the de-escalation room.

The Public Defender made important recommendations to ensure timely and quality somatic (physical) health care services in penitentiary establishments. Recommendations included: at least doubling the number of support medical staff in penitentiary institutions, including nurses on duty; ensuring direct

⁴⁰ For international calls there are three days a week designated in the N8 establishment.

contact between inmates and doctors without the involvement of non-medical staff; installation of a call button in the establishments and the obligation of medical staff to inspect the cells on a daily basis; providing at least one meal for medical staff at the facility; addition of dental nurses in the establishments; conducting professional trainings for the medical staff of the institutions; ensuring the appropriate frequency of specialists' visits to the N8 and N15 facilities so that the waiting time for patients does not exceed 2 weeks; correcting deficiencies in filling outpatient medical records; introduction of electronic information system in the penitentiary system; taking all measures so that the term of the regular outpatient referral does not exceed 1 month, the term of regular inpatient referral does not exceed 4 months and urgent referral does not exceed - 5 days. Unfortunately, none of the above recommendations have been implemented.

In the reporting period, it was not possible to assess the implementation of the recommendation regarding the elimination of the deficiencies related to the supply of medicines in the N8 establishment by taking into account the analyzed data on the demand and consumption of medicines prescribed during the procurement period. The National Preventive Mechanism will pay particular attention to the implementation of this recommendation during subsequent monitoring visits. Against the background of the restrictions imposed in penitentiary establishments, the issue of mental health protection of prisoners became even more urgent. It is unfortunate that managing mental health problems remains a significant challenge for the penitentiary health care system. Significant recommendations issued by the Public Defender in this regard have not been implemented: the strategy of attracting providers of mental health services has not been implemented; there is no periodic mental health screening in penitentiary establishments. The number of psychiatrists has not been increased, therefore the number of patients admitted by a psychiatrist in one day exceeds 15; the proper frequency of visits to the psychiatrist is not provided in the facilities and the waiting time of the patient exceeds 2 weeks; the composition of the psychiatric multidisciplinary team, the functions of each team member and the procedure for organizing and provision of psychiatric care are not described at the statutory level; no crisis prevention and management guidelines have been developed. The medical staff of the facility was not trained in crisis prevention and management; the multidisciplinary team did not assess the needs of patients with mental health problems who did not require inpatient treatment. An individual needs-tailored bio-psycho-social assistance plan has not been developed; Clinical-laboratory dynamic assessment and control of the risk of developing agranulocytosis, metabolic processes and especially hyperglycemia is not provided for the management of side effects of drugs. During the reporting period, it was not possible to assess the implementation of the recommendation on whether despite the request of the Public Defender the Medical Service Quality Management Division of the General Inspectorate of the Special Penitentiary Service examined the practice of issuing psychotropic drugs and what measures were taken to prevent misuse of psychotropic drugs. The National Preventive Mechanism will pay particular attention to the implementation of this recommendation during subsequent monitoring visits.

2.3. Protection from torture and other cruel, inhuman or degrading treatment or punishment

2.3.1. Violence

2.3.1.1. Violence by the personnel of the establishment

During the monitoring visits to the penitentiary establishments in 2020,⁴¹ the special preventive group received information about the alleged cases of physical violence against the prisoners by the staff of the establishments in only two cases. In one case, a prisoner explained that the personnel at the N8 facility had twisted his arms and beaten him with their hands and feet. In the second case, the prisoner stated that the staff of the N6 facility forced him into the de-escalation room, laid him on the floor, and because the prisoner was screaming, covered his face with a sweater. According to the prisoner, as a result of covering with the sweater, he could no longer breathe, had a panicked feeling of suffocation and suffered severe psychological suffering.

During visits to closed and high-risk penitentiary establishments, the Special Preventive Group were notified of 4 cases⁴² of aggressive treatment and verbal abuse of prisoners by staff. According to the information received, in the above-mentioned cases, the staff of the institution verbally abused the prisoners because they were going on a hunger strike in protest, sending complaints and calling the Public Defender's Office. In some cases, inmates reported that staff at the facility did not provide them with a pen and paper so as not to write a complaint, and threatened to restrict their right to telephone conversations as a disciplinary sanction if they called the Public Defender.⁴³

In assessing the situation with regard to violence against prisoners in penitentiary institutions, in addition to the information received during preventive visits, the letters/complaints sent by prisoners to the Public Defender's Office, where prisoners indicated physical and psychological violence by staff should be taken into account. In 2020, the Office of the Public Defender received 12 such letters/complaints from closed and special risk penitentiary institutions, which in all cases were sent to the State Inspector to take action. Out of the mentioned 12 cases, 6 letters/complaints were received from the N6 penitentiary establishment, 3 letters/complaints - from the N3 facility facility and 3 letters/complaints - from the N8 penitentiary facility.

In all three letters/complaints received from the N3 penitentiary establishment, inmates reported allegations of physical violence by staff of the facility, including management, while in the de-escalation rooms. According to the inmates, the violence was manifested in beatings, hand-wringing, and long-term handcuffing, which resulted in inmates receiving bodily injuries. In one case the prisoner claimed to be beaten with the bottles full of water in order not to leave the trace of violence on the body. In all four cases reported from the N6 penitentiary facility the prisoners indicated that the personnel of the facility

⁴¹ In 2020, monitoring visits were carried out to N17 Penitentiary Establishment, N8 Penitentiary Establishment, N3 Penitentiary Establishment, N10 Penitentiary Establishment, N11, N12, N8, N18 and N6 Penitentiary Establishments.

⁴² 2 reports about a prisoner in facility N6 and 2 reports about a prisoner in facility N8.

⁴³ In all of the above cases, the prisoners refused to have a legal action from the Public Defender.

including people on managerial positions carried out violence against them when they were placing or had already placed them in the de-escalation room. Apart from the physical violence the prisoner from the N6 establishment mentioned the threatening of rape also took place, while the other one claimed that in the de-escalation room he was not provided with drinking water for a long time. As for the three reports received from the penitentiary establishment N8, one of them reported the alleged violence against 3 inmates. The prisoners from the N8 establishment reported that together with the violence by the personnel and the management, a threat of rape also took place. In one case attaching to a pipe for 10-15 minutes using handcuffs, as well as not providing medical care, food and drinking water in the de-escalating room.

When assessing the extent of violence against prisoners by penitentiary staff, in addition to the information received during preventive visits, the available data on criminal cases produced by the State Inspector's Office are to be taken into account. According to the State Inspector's Office,⁴⁴ an investigation has been launched on 30 criminal cases involving alleged physical and/or psychological violence against prisoners by Penitentiary Service staff in 2020, including 5 criminal cases under Article 144³ and 25 criminal cases - under Article 333. In 27 of the mentioned 30 criminal cases, the prisoner indicated the fact of physical violence, and in 3 cases there was inhuman and degrading treatment. Out of the mentioned 30 cases, the alleged violence took place in the following penitentiary institutions: 1 case in N2 establishment, 4 cases in N3 establishment, 9 cases in N6 establishment, 1 case in N7 establishment, 13 cases in N8 establishment, 2 cases in N18 establishment. It should be noted that the Prosecutor General's Office of Georgia has not initiated criminal proceedings against any employee of the Special Penitentiary Service on any of the criminal cases.

2.3.1.2. Violence among the inmates

In conflicts between individuals in penitentiary establishments, a positive obligation of a state to protection arises.⁴⁵ The administration of the facility is obliged to know if there is a threat of violence and to take reasonable measures to prevent it.⁴⁶ In 2020, overcrowding and informal ruling in penitentiary establishments are still problematic, often leading to physical and psychological violence among prisoners. The reason for the dispute is mainly everyday life issues, unauthorized use of the phone card of another prisoner, request/seizure of cigarettes and extortion of money.

Prisoners talk to a special preventive group about conflicts and physical confrontations taking place in the establishments and that this is a normal story of "prison life" as well as for an outside life. However, due to the influence of the criminal subculture and the fear of repression, most prisoners avoid talking about the details of conflicts with a special preventive group. During a visit to the N8 penitentiary establishment, a special preventive group received three reports of physical and psychological abuse of

⁴⁴ Letter SIS 22000020027 of December 8, 2020 from the State Inspector of Georgia.

⁴⁵ Report of the UN Special Rapporteur on Torture, Other Inhuman and Degrading Treatment E / CN.4 / 2003/68, para.26. Available at: < <https://undocs.org/E/CN.4/2003/68> >, [last visited: 01.12.2020].

⁴⁶ The decision of the European Court of Human Rights on the case of I.E. against Moldova (I.E. v. The Republic of Moldova (app no. 45422/13)), para. 46.

inmates by other inmates. According to the information received, foreign prisoners were being beaten by Georgian inmates, their personal belongings were being confiscated and they used their plastic cards without permission to call on the phone and buy products in the store. According to the above-mentioned prisoners, they appealed to the prison staff with a request to change the cell, but the administration did not respond in a timely manner, causing them to self-harm in protest and only then they were transferred to another cell. In one case, an elderly prisoner who is a Georgian citizen unfamiliar with the Georgian language informed members of a preventive group that young Georgian prisoners in his cell had systematically verbally abused, threatened to kill and humiliate him. The prisoner said that he could not reveal the problem to the employees of the establishment for fear of retaliation from the inmates. The prisoner cried during the interview and asked for help. The members of the group, in agreement with the prisoner, provided information to the administration of the establishment, as a result of which the prisoner was transferred to another cell.

Examination of the documentation produced by the establishments N2 and N8 reveals that cases of physical and verbal confrontations between inmates are frequent. There are still cases when a confrontation takes place between the accused and the convict placed in the same cell. In addition, there are frequent cases when one inmate is confronted by several inmates in a cell, which in Public Defender's opinion, is particularly dangerous, because the risk of serious damage to the health of the inmate and loss of life is high in such cases.

In the case of semi-open penitentiary establishments, managing the establishments with informal methods remains a serious challenge. This is aimed at silencing prisoners, banning them from talking about problems, and maintaining illusory order in institutions. Informal ruling is characterized by physical and severe psychological violence among prisoners, which is mainly manifested in extortion, humiliation, expulsion and punishment of prisoners who do not obey the rules of informal ruling.

According to the information provided by the Medical Department of the Special Penitentiary Service, 2,574 inmates in the penitentiary institution received body injuries in 2020, of which 302 were identified as injuries inflicted by another person and 177 inmates did not indicate the source of the injuries.⁴⁷ In cases of violence among inmates, the administrations of the facilities send a report to the General Inspection of the Ministry of Justice, which launches an investigation. In 2020, the General Inspection of the Ministry of Justice received information about 465 alleged cases of violence among prisoners.⁴⁸ Between January 1, 2020 and December 31, 2020, 17 inmates were prosecuted for crimes committed against other inmates in a penitentiary establishment, including one inmate under Article 144³, which incriminates degrading or inhuman treatment.⁴⁹

⁴⁷ Letter №287296/01 of December 3, 2020 and letter №19225/01 of January 27, 2021 of the Medical Department of the Special Penitentiary Service of the Ministry of Justice of Georgia.

⁴⁸ Letter №15562 of December 1, 2020 and letter №306 of January 14, 2021 of the General Inspection of the Ministry of Justice of Georgia.

⁴⁹ Letter №13/66231 of November 26, 2020 and letter №13/10082 of February 23, 2020 of the General Prosecutor of Georgia.

2.3.2. A practice that equates to ill-treatment

2.3.2.1. Existing regime and restrictions in high risk and closed type penitentiary facilities as ill-treatment

As in previous years, the management of high risk and closed establishments is based on the principles of static security, which imposes the strictest limitations, prohibitions, regime and is not focused on a positive change in the behavior of convicts.⁵⁰ In addition, in the absence of proper multidisciplinary work in these establishments, isolation of prisoners and placement in a de-escalation room are actively used, which is discussed in the relevant sub-chapter below.

Inmates in closed and high risk penitentiary facilities are kept in a cell for 23 hours without any activities of interest to them, and only for 1 hour in walking yards, meager infrastructure of which does not allow for the leisure and recreation of prisoners.⁵¹ Convicts who have been identified having a high risk of danger are more likely to have limited contact with the outside world by law. Restrictions on physical contact with the outside world as a result of the imposition of special conditions have had an even greater impact on prisoners placed in special risk facilities. It is unfortunate that during the period of special conditions, when meetings were restricted, the ban to use the telephones and personal correspondence in the form of disciplinary sanctions was still used in penitentiary facilities in certain cases.

A significant proportion of inmates in penitentiary establishments suffer from psychological problems and regularly receive psychotropic medications. Consequently, the restrictive regime in the facility and the restriction of contact with the outside world aggravate their mental state. The existing restrictive environment leads to aggression on the part of prisoners towards both staff and other prisoners and creates a violent environment, followed by protests by prisoners in the form of starvation and self-harm and the use of security measures by the administration.

Facility staff perceive hunger and self-harm by inmates as a deliberate attempt by inmates to complicate their working conditions. For example, according to the employees of the N6 establishment, there are frequent cases of abuse of employees by prisoners. They say that prisoners transfer aggression to employees, try to complicate their work and create tension. It is noteworthy that according to the information sent to the investigative body from the Establishment N6, from January 1, 2020 to December 18, 2020, there were 7 alleged cases of physical confrontation, of which 3 were conflicts between inmates and 4 between inmates and personnel.

According to the Special Preventive Group, the current practice of limiting the communication of prisoners in closed (N2 and N8) and special risk (N3 and N6) penitentiary establishments and the lack of

⁵⁰ "Regulations of ordinary prisons should be extended as much as possible to the special risk facility. Security measures in prisons of exceptional risk should be applied only to the extent necessary" Council of Europe, Committee of Ministers, Committee of Ministers Recommendation (82) at the 350th Meeting of Deputy Ministers, available in English at: https://bit.ly/39DLIFD_ [last visited: 31.01.2021].

⁵¹ These yards are cell-type rooms with a wall enclosed on all four sides and metal lattices with open ceilings. Exercise equipment is minimally present in the yards.

activities tailored to their needs not only contradicts the principle of normalization⁵² but also negatively affects physical and mental health, which in turn increases the risk of violence against prisoners,⁵³ directly contradicts to international standards⁵⁴ and may amount to cruel, inhuman or degrading treatment.

In the assessment of the Special Preventive Group, it is important that the facility systematically investigates the causes of each incident and develops a specific prevention plan aimed at positively changing the behavior of prisoners and implement it in an atmosphere of communication and care. Prisoners in closed and high-risk facilities should enjoy a relatively light day regime within their facility. In particular, they should be given the opportunity to meet with other inmates of the facility and engage in various activities. The aim should be to establish a positive relationship between staff and prisoners.

2.3.2.2. Prolonged isolation of prisoners as ill-treatment

A monitoring conducted in 2020 reveals that, as in previous years, the practice of long-term isolation of prisoners in closed and high risk establishments is problematic.

During a visit to facility N3, it was found that the number of inmates placed in the cells alone had increased. During the visit in 2020, 34 prisoners were placed alone in the cell, while during the visit on September 16-17, this number in 2019 was 27. The facility still holds inmates alone for months and years. For example, in one case the inmate was placed in solitary confinement from 22 March 2018, and in two cases from 18 August 2018 onwards, and their solitary confinement continued during the special preventive group visit (July 2020).

In addition, during a visit to the facility N6 in 2020, more than half of the inmates were placed in solitary confinement, a significant portion of whom had been in solitary confinement for months.

According to the statute of the penitentiary institution, prisoners are usually placed in single or double cells.⁵⁵ The decision to place a prisoner in a single or double cell is at the discretion of the director and the obligation to substantiate this decision is not normatively set fourth. Accordingly, this provision allows the director of a special risk detention facility to place a prisoner in a solitary confinement cell for a long time without a reasoned decision and to limit for a long time the possibility of contact with another prisoner.

The European Committee for the Prevention of Torture always pays special attention to the issue of isolation of prisoners, as this measure can be extremely harmful to a person's mental, somatic or social well-being. This damage may arise immediately and increase as long as the inmate keeps being isolated

⁵² "Prison life should be as close as possible to the positive aspects of public life." European Prison Rules, Rule N5. Available at: <<https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>> [last visited: 31.01.2021].

⁵³ See the report of the Public Defender "Impact of detention conditions on the health of prisoners", 2018, p. 118-124, available at: <<http://www.ombudsman.ge/res/docs/2019060317571314166.pdf>>, [last visited: 31.01.2021].

⁵⁴ European Committee for the Prevention of Torture (CPT) 21st General Report, CPT/info (2011) 28, Strasbourg, Council of Europe, 2011, para: 52.

⁵⁵ Statute of the N6 Penitentiary Establishment approved by the Order N108 of the Minister of Corrections and Probation of Georgia on August 27, 2015, Article 15.

for a longer and indefinite period of time. Imprisonment does not in itself imply the imposition of additional restrictions on prisoners and, therefore, their use must be justified.⁵⁶

Being in solitary confinement for months and years is in direct violation of international standards and in the view of Public Defender constitutes ill-treatment.⁵⁷ In the 2018 report of the National Preventive Mechanism, the Public Defender issued a recommendation requesting the establishment of a maximum term for the isolation of prisoners, as well as setting forth of an obligation to review the isolation measure in 14 days after the application and thereafter, at the same interval.⁵⁸ It is unfortunate that this recommendation remains unimplemented.

2.3.2.3. Placing prisoners in de-escalation rooms and solitary (safe) cells as ill-treatment

Despite the recommendations of the Public Defender over the years, in 2020 there are still prolonged as well as unjustified and punitive placement of prisoners in the de-escalation rooms and solitary (safe) confinements,⁵⁹ which the Public Defender assesses as equal to cruel, inhuman and degrading treatment.

Prolonged placement of prisoners in de-escalation rooms and solitary (safe) cells

The recommendation issued to Georgia by the European Committee for the Prevention of Torture in 2018 states that the maximum time for a person to be placed in a de-escalation room should not exceed 24 hours.⁶⁰ The Public Defender has for years demanded a reduction of placement of a prisoner in the de-escalation room to 24 hours. Nevertheless, according to the regulations of the penitentiary establishments, the deadline for the transfer of the accused/convict to the de-escalation room is still 72 hours. In addition, there is no limit to the number of times a prisoner can be placed for security reasons in a de-escalation room and solitary confinement.

Monitoring visits to the establishments N2, N3, N6 and N8 in 2020 show that in most cases, prisoners are transferred to a de-escalation room and solitary (safe) cells for a maximum period of time, with the same person being held virtually continuously for days, at intervals of minutes and hours. Thus, for example, in the facility N3 in one case a prisoner was transferred to the de-escalation room 27 times between February and June 2020, of which 4 times the inmate was placed in a de-escalation room at virtually uninterrupted intervals of 9, 7, 6 and 4 days. In addition, in some cases, the same hour and minute are indicated for the release from and entry of a prisoner to the de-escalation room, which raises a reasonable suspicion that

⁵⁶ 21st General Report of the European Committee for the Prevention of Torture, para. 55. CPT/Inf (2011) 28 <https://rm.coe.int/1680696a88> [last visited 31.01.2021]

⁵⁷ See the judgment of the European Court of Human Rights in the case of HARAKCHIEV AND TOLUMOV v. BULGARIA App. nos. 15018/11 and 61199/12, para. 204.

⁵⁸ National Prevention Mechanism 2018 Report, p. 55, available at the address: <https://www.ombudsman.ge/res/docs/2020011615511256803.pdf> [last visited 01.01.2021]

⁵⁹ According to the statutes of penitentiary establishments, for the purpose of preventing the accused/convict from harming himself/herself, others and property, for preventing crime and other violations in the institution, for disobeying the personnel, in order to repel the attack, group disobedience and/or prevent mass riots, the accused/convict may be placed in solitary confinement for no more than 24 hours by order of the director of the establishment.

⁶⁰ Report on the visit of the European Committee for the Prevention of Torture to Georgia on 10–21 September 2018 (CPT/Inf (2019) 16), para. 94, available in English at: <<https://rm.coe.int/1680945eca>> [last visited: 31.01.2021]

the prisoner is being formally returned to his cell.⁶¹ During the visit to the N6 facility it was found out that the prisoners were placed in the de-escalation room for a maximum of 14 days. Also, in the facility N6, there is a practice of handcuffing prisoners in the de-escalation room. The analysis of the documents reveal that handcuffing is done for prisoners for an average of 3-4 hours, although there are also cases of handcuffing for 6 hours or 9 hours (handcuffs were put on one of the prisoners at 12 o'clock at night and removed at 9 o'clock in the morning). During 2020 to December 17, handcuffs were used in 33 cases.

Monitoring at the facility N8 revealed that de-escalation rooms and solitary (safe) cells were being used even against juveniles. For example, in the period from January 1 to August 7, 2020, juvenile prisoners were placed in solitary (safe) cells in 10 cases, and in 1 of these cases, the juvenile was left there virtually uninterrupted for 6 days. According to the documents in the facility, he was taken out of the solitary (safe) cell after 24 hours and returned in a few minutes. The Public Defender considers that it is inadmissible to place a juvenile in a solitary (safe) cell and in the de-escalation room in inappropriate conditions and, moreover, for a long time. This practice directly contradicts the protection of the best interests of the juvenile, the objectives of the Juvenile Justice Code, the spirit of the Convention on the Rights of the Child and constitutes inhuman and degrading treatment.⁶²

Misuse of de-escalation rooms and solitary (safe) cells

Placing a prisoner in a de-escalation room / solitary (safe) cell still does not ensure the prevention of self-harm and calming down a prisoner. De-escalation rooms and solitary (safe) cells are not arranged in such a way as to minimize the risk of self-harm, and the conditions of detention in these cells often lead to a deterioration in the psycho-emotional state of prisoners. A multidisciplinary team does not work to prevent or eliminate a crisis before or in parallel with placement in a de-escalation room and in a solitary (safe) cell. The staff of the establishments are not trained in non-violent crisis management skills and de-escalation methods.

A monitoring of closed and high-risk penitentiary establishments in 2020 showed that due to the lack of psycho-social support services and other situation management, the administration places an inmate in a de-escalation room and solitary (safe) cell with mental health problems for a long time. The Public Defender and the Special Preventive Group consider that prolonged placement of prisoners with mental health problems in a de-escalation room and solitary confinement and failure to provide adequate psychiatric care violates the requirements of Article 15 of the Convention on the Rights of Persons with Disabilities and constitutes a cruel, inhuman and degrading treatment.⁶³ The placement of prisoners with mental health problems in de-escalation rooms and solitary (safe) cells should only be an extreme

⁶¹ For details, see the follow-up report of the Emergency Monitoring Visit of the National Preventive Mechanism to the Establishment N3 (July 12-13, 2020), p.5. Available at the following address: <https://www.ombudsman.ge/res/docs/2020122514202220362.pdf> [last visited: 31.01.2021]

⁶² For further details, see Chapter of the Report - Juveniles.

⁶³ In the case of Kucheruk v. Ukraine (no2570/04) the European Court of Human Rights considered a violation of Article 3 (prohibition of torture) of the European Convention the prolonged and repetitive solitary confinement and handcuffing of a prisoner with mental health problems because the facility did not have sufficient resources to manage inmate behavior and provide psychiatric care, para: 131.

measure, and before using this measure, facility staff should use other, less restrictive means, such as direct staff supervision and electronic surveillance. In case of insufficient means, transfer to the de-escalation room and solitary (safe) cell should be used as a momentary, urgent measure, which should not exceed 24 hours and at the same time the prison multidisciplinary team (psychologist, social worker, doctor and In the case of necessity - a psychiatrist) should provide adequate assistance to the prisoner. And if the work of the multidisciplinary team is insufficient to achieve the goal of protecting the safety of a prisoner with mental health problems, s/he should be transferred immediately to the psychiatric unit of the N18 Medical Establishment of Defendants and Convicts or to another psychiatric institution.

Use of de-escalation rooms and solitary (safe) cells as a punishment

During inspections in penitentiary establishments, according to the information received by a special preventive group, in some cases the placement of prisoners in a de-escalation room and solitary (safe) cells was actually carried out without a normative basis (risk of harm to the life or health). In particular, according to the prisoners, the real reason for being placed in the indicated cells was the prisoners protesting against the non-fulfillment of their duties, employees violating the regime requirements and verbal dispute with them. So for example, a prisoner in the facility N8 was placed in a de-escalation room. According to him, the real reason for placing him in the de-escalation room was the demand for his own telephone conversation. According to the prisoner, the staff of the establishment knew that he was going to call the journalists and talk about the facts of violation of his rights in the facility. He explained that he was not nervous and had not had any cases of self-harm.

It should be noted that in de-escalation rooms and solitary (safe) confinement cells, prisoners are provided with limited access to personal hygiene and dishwashing detergents. The clothes of the prisoners placed in these rooms are kept with the staff of the establishment and the prisoners have limited access to their own clothes. While in de-escalation rooms and solitary confinement cells, inmates are often not allowed to take a shower or take a walk. They have limited access to the store, telephone calls, personal correspondence and meetings. Due to the fact that prisoners are deprived of their legal rights, their living conditions are deteriorated, they are not provided with psycho-social assistance when they are placed in a de-escalation room and solitary confinement, the interviewed prisoners perceived being placed in a de-escalation room as measure of punishment. At the same time, the prisoners state that in addition to being placed in de-escalation rooms and solitary confinement cells, they are subject to disciplinary sanctions.

In a report following its visit to Georgia, the European Committee for the Prevention of Torture expressed serious concerns about the practice of using the de-escalation rooms. The committee described the practice of frequent use of de-escalation rooms for 72 hours as de facto punishment. In addition, the

Committee noted that for too many interviewed prisoners, placement in a de-escalation room was seen as a retaliatory punishment for their difficult behavior.⁶⁴

2.3.2.4. Practice of full body check of prisoners as ill-treatment

The full body check of prisoners is still a routine and is not based on a thorough assessment of the risks posed by the prisoner. The special preventive group received a lot of information about this from N8, N12 and N2 facilities. According to the information received from the inmates during the monitoring visit by the special preventive group, even in the case of screening by scanners in the facilities, there is a practice of complete stripping and bending of the prisoners. At the same time, it was found that during the full check, not parts but whole bodies of prisoners are being stripped, which contradicts the facilities' statutes and international standards⁶⁵ and, in the opinion of the Public Defender, constitutes degrading treatment of prisoners. This practice is particularly troubling with regards juveniles as it may be more harmful to the child.⁶⁶

According to the statutes of the facilities, the full examination of the person should be carried out in such a way that the complete stripping of the person being examined does not take place.⁶⁷ In addition, the regulations of the establishments do not provide for bendings to be done by prisoners.

In view of the above, the Public Defender calls on the Special Penitentiary Service of the Ministry of Justice to immediately eliminate the existing practice of complete stripping and bending. A full body check should be carried out only on the basis of a specific and substantiated suspicion, under conditions of respect for human dignity and respect, and in accordance with clearly established procedures. Also, a scanner should be installed in all penitentiary facilities and its use as an alternative to a full inspection should be ensured. In addition, other complementary methods of verification should not be used when using the scanner as an alternative method. This is provided for in the regulations of the establishments, according to which a person is given the opportunity to choose between a full body inspection and a scanner inspection. After checking with a scanner, full body check of the person is allowed only if the scan proves that the person owns a prohibited/unauthorized item.⁶⁸

2.3.3. Risk factors causing the ill-treatment

2.3.3.1. Overcrowding of penitentiary establishments

As in previous years, in 2020 the overcrowding of penitentiary establishments remained a problem. According to a study published by the Council of Europe, as of April 2020, there were 9471 prisoners in

⁶⁴ Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT/Inf (2019) 16), para: 101, visit of September 10-21, 2018, available in English at the following address :< <https://rm.coe.int/1680945eca> > [last visited: 02.02.2021].

⁶⁵ Nelson Mandela Rule 50.

⁶⁶ For details see the chapter on juveniles.

⁶⁷ E.g. Statute of N8 Penitentiary Establishment, Article. 64¹, para

⁶⁸ Ibid, Article 64¹

Georgia, which means that there were 242 prisoners per 100,000 population.⁶⁹ According to this data, as in previous years, Georgia still ranked 3rd in Europe.

During the reporting period, preventive visits to penitentiary establishments revealed that the imbalance caused by the large number of prisoners and the small number of staff⁷⁰ in the facilities could not ensure a safe, secure and orderly environment in the establishments. The problem of overcrowding exists in both semi-open and closed penitentiary facilities.

The Public Defender and the Special Preventive Group reiterate that the situation in large semi-open penitentiary establishments is generally unfavorable in terms of maintaining order and security. So, for example, in the semi-open facility N17, during the visit of a special preventive group,⁷¹ 1700 convicts were serving their sentences, 100 prisoners per 1 employee of the Legal Regime Department, which is a big challenge in terms of order and security.⁷² Also, for example, during the visit to the facility N12,⁷³ there were 250 inmates in the semi-open section and only 3 staff members were on duty.

Defendants and convicts are placed together in penitentiary establishments and detention facilities, which often leads to conflicts. International standards⁷⁴ and the requirement of the Imprisonment Code to separate defendants from convicts are been violated.⁷⁵

Due to the overcrowding in large closed facilities,⁷⁶ the administration focuses entirely on the placement of inmates who are in dispute with each other in different cells or wings. Because of this, other issues remain unnoticed during the allocation of prisoners, e.g. prisoner's personal characteristics, habits, behavior, risks. As a result, prisoners of different categories and worldviews have to live in the same cell, which often leads to disagreements between prisoners in confined spaces. The reason for the dispute is mainly household issues, unauthorized use of a prisoner's phone card by one prisoner, request/seizure of cigarettes and extortion of money. The cause of confrontation is sometimes the problem of religious beliefs, ethnicity, and language barriers to communication.

The Public Defender believes that, both in terms of security and order, as well as in terms of infection control, large penitentiary establishments should be transformed into institutions with small and balanced infrastructure, as envisaged by the Penitentiary and Crime Prevention Systems Development Strategy and

⁶⁹ Council of Europe Study on the Impact of the Covid-19 Pandemic on Prison populations - Interim Assessment p. 16-17. < <https://bit.ly/2MVB9Qr> > [last visited: 11.02.2021].

⁷⁰ Legal regime and security department staff

⁷¹ Monitoring visits to the facility N17 took place on 1 April and 7 May 2020.

⁷² Inside the facility, there were 50 employees on barracks regime. 34 of legal regimes and 7 of security department employees (including the heads of this department) as well as 9 managers of the central administration (director, deputy directors and heads of departments). Employees are on duty day and night. There were 17 employees of the Legal Regime Department on the shift.

⁷³ Monitoring visits to the facility N12 took place on 26-27 November 2020.

⁷⁴ According to the UN General Assembly Resolution 70/175 (Rules of Nelson Mandela), adopted by the UN Standard Minimum Rules for the Treatment of Prisoners, defendants and convicts must be placed separately. (Rule N11 (b)).

⁷⁵ Part 2 of Article 9 of the Imprisonment Code.

⁷⁶ As of December 3-4, 2020, there were approximately 2,400 inmates in Penitentiary Establishment N8; according to the data of the National Statistics Office, there were about 900 prisoners in December in the N2 penitentiary facility.

the 2019-2020 Action Plan.⁷⁷ At the same time, the Public Defender emphasizes that in order to reduce overloading, it is important to increase the number of staff in the penitentiary system, as well as to reduce the number of prisoners, including through the use of early release mechanisms, non-custodial sentences and preventive measures.

2.3.3.2. Informal ruling in Penitentiary Establishments

As in previous years, in 2020, informal ruling in penitentiary establishments remains a serious challenge in terms of protection of the prisoners from violence. Administrations of the establishments delegate power to informal leaders (so-called prison watchers) and through them informal ruling of penitentiary establishments is carried out, with the aim of silencing prisoners, banning them from talking about problems, and maintaining illusory order in the facilities. Informal ruling is characterized by physical and severe psychological violence among prisoners. Psychological violence is mainly manifested in extortion, humiliation, exclusion and other actions. As a result, a certain proportion of prisoners in a privileged position engage in informal ruling through repressive methods, which often leads to violence among prisoners and is manifested in the imposition of punitive measures on prisoners who do not obey the informal ruling.

It is noteworthy that in the report published in 2019 the European Committee for the Prevention of Torture also points out the fact of delegating authority to informal leaders. The European Committee for the Prevention of Torture calls on the Georgian authorities to instruct the staff and management of Penitentiary Institution N15 to monitor closely and take all necessary measures to prevent and combat violence and intimidation among prisoners. These measures should include ongoing monitoring of prisoners' behavior (including the identification of alleged perpetrators and victims), appropriate documentation and reporting of confirmed and reported cases of intimidation/violence among inmates, and the investigation of all cases.⁷⁸ As in 2019, during a monitoring in 2020, a special preventive team received information about physical and psychological abuse perpetrated by other inmates at the N8 penitentiary establishment. According to the information received, the facility had convicts close to the administration who have some influence over other inmates and, if necessary, the administration uses them to "resolve relations" with prisoners (in cases of hunger, appeals, other forms of dissatisfaction or conflict situations). Privileged inmates, unlike other inmates, move freely within the facility, control prisoners, enter cells, and physically assault disobeying inmates.

In the 2019 report, the Public Defender noted that in the situation of the lacking of proper management of penitentiary institutions, the scale of informal ruling was slowly increasing, which was a significant risk factor for violence against prisoners and required a timely response. The Public Defender called on the Ministry of Justice of Georgia to develop a plan for the elimination of informal ruling and to carry out appropriate measures. Besides, the measures should be taken in the conditions of protection of the rights

⁷⁷ Available at the following address: < <https://bit.ly/2T2d8qP> > [last visited 18.01.2021]

⁷⁸ Report on the visit of the European Committee for the Prevention of Torture to Georgia on 10-21 September 2018 (CPT/Inf (2019) 16), para. 53, available in English at: < <https://rm.coe.int/1680945eca> > [last visited: 28.01.2021].

and safety of prisoners, the use of violent and repressive methods should be avoided in order to avoid possible torture and other cruel, inhuman or degrading treatment or punishment.⁷⁹

Unfortunately, the Ministry of Justice of Georgia and the Special Penitentiary Service have not confirmed the existence of informal ruling practices in penitentiary establishments, and instead the Public Defender has been subjected to illegal actions by the Minister of Justice and the Penitentiary Service, which is alarming. In addition, in the recent months, a certain group of prisoners run by the administration of the facilities and the so-called "prison watchers" systematically carried out verbal attacks, threats and aggression against members of the Public Defender's Office in order to prevent a special preventive group from communicating with the prisoners and monitor the prison area. For example, on October 31, 2020, and again, on January 14, 2021, a specific group of prisoners in the N15 facility did not allow the Public Defender's staff to monitor the voting process first, and then to interview the doctor of the facility; on December 4, 2020 and January 13, 2021, the same prisoner in the N8 facility threatened the staff of the Public Defender's Office and demanded to stop the visit to the prison;⁸⁰ on January 13, 2021, a specific group of prisoners behaved aggressively with the representatives of the Public Defender in the Establishment N17, who also demanded that the Public Defender stop his visits because in prison "everything was fine".⁸¹

In the opinion of the Public Defender, the manifestation of such form and scale of aggression by privileged prisoners in penitentiary facilities towards the Public Defender's institution further highlights the repressive, violent methods of informal ruling and the risk factors of violence faced by other non-privileged prisoners. It also highlights the fact that they have the support of the administration

According to the rules of informal management, writing a complaint is unacceptable and the complainant will be punished accordingly. Due to the fear of repression, prisoners are forced to follow informal rules, in the absence of which, the prisoner is expelled from the community, any relationship with him becomes unacceptable to prisoners, leading to a loss of his dignity, status and respect. Due to these circumstances, instead of writing a complaint, they appeal to influential, privileged prisoners, and in case of controversy, do not provide the administration with information about the fact of the conflict.

In 2020, a special preventive group conducted a monitoring visit to the facility N17, during which inmates talked about the problems in the facility in a confidential environment, which was confirmed by a review of documentation by the group. Most of the prisoners had complaints about living conditions, the scheduling and availability of medical services, however, under the influence of the subculture, the prisoners refrained from sending letters and complaints to the Public Defender. During the visit, the members of the Special Preventive Group noticed the activity of a certain group of convicts, which was expressed in the interference of convicts in the communication process of the members of the Special

⁷⁹ National Preventive Mechanism 2019 Report. Pp.55-58. Available at: <https://www.ombudsman.ge/res/docs/2020033122424787329.pdf> [last visited: 02.02.2021]

⁸⁰ Establishment N8 is a closed facility and it is noteworthy that this prisoner always moved to a specific area of the facility when members of a special preventive group visited the facility.

⁸¹ See the Special Statement of the Public Defender of Georgia on January 20, 2021 regarding the situation in penitentiary institutions: < <https://bit.ly/2YBajzd> [last visited: 02.02.2021].

Preventive Group with the inmates and the diversion of convicts talking about problematic issues. This approach is not unfamiliar to the group and was also evident during the 2019 monitoring visits to N14 and N15 facilities.

The Public Defender believes that under the influence of informal methods of governing penitentiary institutions, the number of appeals and statements received from the mentioned institutions to the Public Defender decreases from year to year. While about half of inmates serve their sentences in semi-open facilities (N14, N15 and N17), out of 1384 applications received from inmates in 2020, only 57 were sent by inmates of the above three facilities. In addition, the information provided by the Ministry of Justice on the facts of alleged violence between prisoners in penitentiary institutions is noteworthy, according to which, in 2020, a total of 465 cases of inmate confrontation were reported, of which only 8 reports were received from the facility N17, 1 report was received from the facility N14, and none was received from the facility N15.

In view of all the above, the Public Defender considers it necessary for the Government of Georgia to take immediate measures to change the model of criminal subculture management in prisons and for the Parliament of Georgia, using parliamentary oversight mechanisms, to study the illegal management model of semi-open establishments so that all prisoners have the opportunity to address their concerns and violations of the rights to relevant institutions or organizations. At the same time, in order to avoid obstructing the activities of the Public Defender in the future, it is important for the Prosecutor's Office of Georgia to launch an investigation into the obstruction of the activities of and threats to the Public Defender.

2.3.3.3. Working and living conditions of penitentiary staff in the face of a pandemic

It is noteworthy that due to the pandemics in the world in 2020, with the introduction of special conditions in penitentiary establishments, the number of personnel in the establishments was further reduced. Most of the employees had to work in the facilities for weeks and months and live in difficult conditions without leaving the penitentiary institution, which had a negative impact on their psychological state and the quality of their duties. The work schedule and conditions of the employees of the institutions were significantly aggravated, which created additional challenges in terms of protecting the safety of prisoners.

On March 29, 2020, 780 employees were selected from the Special Penitentiary Service,⁸² who lived for two months in the area of penitentiary establishments in the specially designed living spaces for them (the so-called barracks regime).

The principle of gradual rotation of 780 employees in the barracks regime started on May 30, 2020. Initially, the shift model was based on the following principle - 7 days at home, 14 days quarantine, 1 month at work. The 14-day quarantine was carried out by the staff in a quarantine barracks set up at one

⁸² Officers of the Legal Regime and Security Department in direct contact with prisoners. See the Summary Report on the Activities of the Special Penitentiary Service 2020 Page 10.

of the penitentiary service preparation bases or in a special quarantine area arranged in a hotel rented with the support of the Ministry of Economy and Sustainable Development of Georgia and funded from the state budget. Later, the rotation model was changed and it was based on the following principle: 7 days free rest, 14 days self-isolation at home, PCR testing, 21 days at work. From November 28, 2020, the work schedule of the employees in the barracks regime was changed again and moved to the regime of not being able to leave the facility for one month⁸³.

During the visits to penitentiary establishments by the Special Preventive Group in 2020, common problems were identified regarding the employees of the barrack regime, in particular, the insufficient number of personnel and the fact that their contact with the outside world was somewhat limited.

Monitoring of the N17 penitentiary establishment⁸⁴ revealed that since March 29, 50 employees of the facility⁸⁵ had remained in the barracks regime, of which 34 were employees of the legal regime department and 7 employees of the security department (including department heads). The staff of the Legal Regime Department were deployed on the territory of the establishment at the checkpoints in 4 residential buildings.⁸⁶ There was one checkpoint in each of the four buildings and 4 staff members were on duty at each checkpoint. 1 employee was on duty at the medical point.

The Public Defender believes that in order to alleviate the stress created by the difficult working conditions of the employees in the barracks regime in the facility, it is recommended that they have the opportunity to communicate with family and relatives independently and during non-working hours, including unlimited video calls.

The Public Defender negatively assesses the living conditions in which the employees of the barracks regime have to live. For staff accommodation, there are mostly allocated long meeting rooms, although these rooms cannot accommodate all employees and some of them have to live in other non-residential spaces. Consequently, there is no private environment for employees, adequate hygiene conditions and employees constantly have a feeling that the working day is never over, which has a negative impact on their psychological state.

In terms of the risks of ill-treatment, it can be said that the current situation, which is related to the busy work schedule of employees during the pandemic, also affects their attitudes towards prisoners. During the monitoring⁸⁷ in the N8 penitentiary establishment, the members of the special preventive group witnessed the fact how the employee was arguing with the prisoner and both of them shouted at each other. An employee later mentioned with the members of the monitoring team that he was tired. In addition to the harsh treatment of prisoners, the aggressive and abusive attitude of the staff towards each other was evident. The Public Defender believes that the stress caused by the hard working conditions

⁸³ See the Summary Report on the activities of the Special Penitentiary Service 2020, pages 10 and 12.

⁸⁴ 30.04.2020, 01.05.2020 and 07.05.2020 visits.

⁸⁵ 9 managers of the central administration - including the director, deputies and heads of departments.

⁸⁶ The mentioned employees were on duty every other day.

⁸⁷ Monitoring of August 4-7, 2020.

significantly worsens the psychological conditions of the personnel of the establishment and creates a risk of violence against prisoners.

The Public Defender believes that there is a need to increase the number of employees on duty in the legal regime and security department, as long stays in stressful and isolated environment and busy work schedule can demotivate employees, which can negatively affect the quality of work performed and also lead to the outflow.

2.3.4. Deficiencies in detecting and documenting ill-treatment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obliges States to ensure a timely and impartial investigation of the allegations of torture and ill-treatment.⁸⁸ To this end, the country is obliged to introduce an effective mechanism for detecting cases of violence, so that the facts of serious human rights violations do not go unpunished.⁸⁹

An important role in detecting cases of violence in the penitentiary system should be played by the doctors of the establishments, who should make every effort to record injuries on the bodies of prisoners in accordance with the "Istanbul Protocol".⁹⁰ The mechanism for documenting cases of violence in penitentiary institutions is regulated by the Order N633 of the Minister of Justice of Georgia⁹¹, according to which if a prisoner tells a doctor about torture and other cruel, inhuman or degrading treatment or if the doctor himself suspects it should be recorded in a special form approved by the said order, photos of the injuries should be taken and a report should be sent to the State Inspector's Office.

According to information received from the Special Penitentiary Service, in 2020, doctors in penitentiary institutions registered only 10 cases in accordance with the above rule.⁹² It is noteworthy that, similar to 2019, in 2020 doctors in penitentiary establishments did not document any cases where the alleged abuser would be an employee of the institution. In all cases the documentation was carried out at the moment of a detainee being taken into the facility, when the detainee was indicating an employee of the Ministry of the Interior as the perpetrator of alleged torture and other cruel, inhuman or degrading treatment.⁹³ The Public Defender believes that even in the case of documenting the injuries of the

⁸⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 12.

⁸⁹ See the Judgment of the European Court of Human Rights on the case of Keenan v. United Kingdom Appl. No. 27229/95, para. 122. See also Velasquez-Rodriguez v. Honduras, Inter-American Court of Human Rights, para. 174. 09.07.2020. Available: https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf [last visited: 28.01.2021].

⁹⁰ Handbook on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Istanbul Protocol / UN, 2004. Available in Georgian: < <https://bit.ly/3apCg2K> >, [last visited: 31.01.2021].

⁹¹ Order N633 of the Minister of Justice of Georgia of November 30, 2020 on approving the rules for registration of injuries of accused/convicts as a result of possible torture and other cruel, inhuman or degrading treatment in penitentiary establishments. The mentioned order replaced the order N131 of October 26, 2016 of the Minister of Corrections and Probation of Georgia from December 1, 2020.

⁹² According to the letter N367169/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia dated December 9, 2019, from January 1, 2019 to October 31, 2019, in accordance with the rule approved by the Order N131 of the Minister of Corrections and Probation of October 26, 2016, in N8 and N2 penitentiary establishments injuries were documented for 15 accused. Even in this case documentation was done during the eviction of the accused.

⁹³ Letter N^o274047/01 of November 15, 2020 and letter N^o19222/01 of January 27, 2021 of the Head of the Medical Department of the Special Penitentiary Service of the Ministry of Justice of Georgia.

accused, the indicated mechanism of documentation is not properly used by the doctors of the establishments. This finding is based on the following data: In 2020, 37 defendants entering the penitentiary establishments indicated that they had received injuries after the arrest, while 40 defendants indicated that injuries had been received at the time of the arrest.⁹⁴ In the mentioned 77 cases, taken into account that the injuries had been received during a detainee being under the police control, regardless of whether or not the person reported ill-treatment, the doctor still had sufficient preconditions for suspicion. Despite this, out of the mentioned 77 cases only 10 cases were documented and 67 cases remained beyond proper attention.

In this regard the information provided by the State Inspector of Georgia on the facts of violence against prisoners is interesting. In particular, according to the information provided, in connection with the alleged fact of physical and/or psychological violence against prisoners by penitentiary staff in 2020, an investigation was launched into 30 criminal cases. The investigation of 25 of the 30 cases was based on information received from the application/complaint sent by the prisoner. This indicates that these detainees were allegedly subjected to violence in penitentiary establishments, although they did not contact the institution's doctors to establish the facts of the violence or the doctors did not/could not detect any cases of violence⁹⁵. Thus, for example, according to one of the convicts in the N6 penitentiary facility, after the physical violence against him by the employees of the facility, he was injured. Within minutes of the violence, staff arranged his meeting with facility's doctor, which they also attended themselves and told the doctor not to report any injuries. After this incident, the convict was in the de-escalation room for about 6 days and periodically requested a meeting with a doctor to describe his injuries, although the doctor did not come to him. Moreover, in one case, a prisoner in the N8 penitentiary facility explained that he had suffered injuries after being physically abused by the facility staff, although the facility's medical staff refused to document the injuries.

In the opinion of the Public Defender, the fact that the alleged violence in penitentiary institutions are not documented in accordance with the above-mentioned rule significantly hinders their investigation. In particular, in most cases, the reports to the State Inspector Office in the form of a statement/complaint is delayed, which makes it difficult to find evidence related to the case. For example: the State Inspector's Office could not receive video recordings of 6 criminal cases from the Special Penitentiary Service, as the time of keeping the video recordings had expired at the time of receiving the reports: in 4 cases it was one month and in 2 cases it was 5 days. In the 8 criminal cases, a medical examination could not be ordered because the alleged victims no longer had injuries and the injuries were not documented by the doctor.⁹⁶ In the above cases, due to the late receipt of the reports, the Inspector's Office was unable to obtain neutral evidence.

⁹⁴ Letter №287296/01 of December 3, 2020 and letter №19225/01 of January 27, 2021 of the Medical Department of the Special Penitentiary Service of the Ministry of Justice of Georgia.

⁹⁵ Accordingly, the prisoners provided information to the investigating authority without applying to the above mechanism.

⁹⁶ Letter of the State Inspector of December 8, 2020 SIS 2 20 00020027.

The Public Defender has been pointing out in the reports for years the circumstances that hinder the effectiveness of this mechanism.⁹⁷ In particular, the established practice of meeting a prisoner and a doctor in a non-confidential environment is problematic. In 2020, inmates were still mentioning during interviews that their meeting with the doctor was usually attended by a facility security guard. According to the Public Defender, in the absence of proper qualifications and information, doctors are unable to explain the importance and purpose of documenting injuries and gain the confidence of the prisoner.

2.4. Epidemiological conditions

Special measures have been introduced in the penitentiary establishments to prevent the spread of the new coronavirus.⁹⁸ Disinfectants were placed at the entrances of the establishments, disinfection barriers and disinfection corridors were arranged. Individuals entering the facility after thermo-screening are provided with personal protective equipment (coats, veils, gloves, face shields, caps and shoe covers).

During the visits, the staff of the penitentiary institutions were provided with personal protection equipment and disinfectants. In terms of training and instruction, only part of the medical staff was trained in COVID-19 diagnosis and treatment.⁹⁹ Other employees of the institutions did not receive any training related to COVID-19. It is important that both medical and non-medical staff are trained in infection control (with a particular focus on COVID-19) to ensure effective implementation of infection control measures. Study topics should include at least the following issues: pathogen, routes of transmission, symptoms, and clinical course of the disease; hand hygiene and respiratory etiquette; use of personal protective equipment and preventive measures related to the environment, including cleaning and disinfection.¹⁰⁰

It should be positively noted that the staff of the establishment underwent PCR test once in 2 weeks, and then once in 72 hours a rapid test for antigen.¹⁰¹ Rapid testing for prisoners during placement in the N2 and N8 facilities started in June 2020. As for the inmates already in the facilities, they were not screened (including thermoscreening) for the new coronavirus. According to the medical staff, this was not necessary because the prisoners had no contact with the outside world. According to them, as a rule, a convict with a fever goes to the medical staff and will be provided with medical assistance on the spot or if the temperature can not be managed on the spot, the convict will be taken to a civilian hospital.¹⁰² It should be noted positively that according to the Special Penitentiary Service from October 12, 2020 all

⁹⁷ See National Prevention Mechanism 2019 Report. P. 49-51. Available: < <https://www.ombudsman.ge/res/docs/2020033122424787329.pdf> > [last visited: 31.01.2021].

⁹⁸ Order N4109 of March 5, 2020 of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia on the Introduction of Special Conditions in Penitentiary Establishments.

⁹⁹ According to the information published by the Special Penitentiary Service, 70 medical personnel were trained. See the link <<https://bit.ly/3o1Z3q2>> [last visited: 31.01.2021].

¹⁰⁰ Preparedness, prevention and control of COVID-19 in prisons and other places of detention (Interim guidance), WHO, March 2020, p. 9.

¹⁰¹ From October 2020.

¹⁰² In case the convict develops other symptoms characteristic of a new coronavirus disease in addition to fever, the patient should be isolated and transferred to a civilian clinic as a matter of urgency.

defendants undergo a PCR test after completing the quarantine period,¹⁰³ before being admitted to a penitentiary establishment.¹⁰⁴ Besides, during visits by the National Preventive Mechanism in November 2020, it was found that it was already possible for a prisoner in the facility to undergo rapid testing for a new coronavirus antigen if incarcerated during that period, in the presence of fever and/or other symptoms. At the same time, the quarantine area on the territory of the N10 penitentiary establishment started functioning on June 19, 2020 where 82 prisoners can be accommodated. Prisoners placed in civilian medical facilities in eastern Georgia for more than 24 hours to receive medical care are placed in quarantine areas. Prisoners are placed in a quarantine area for 2 weeks. It should be noted that during the visit to the facility on June 26, 2020, most of the inmates placed in the quarantine area were postoperative patients who required constant supervision and observation.

It is noteworthy that no additional measures have been taken in relation to the new coronavirus for elderly convicts in the facility and patients with severe chronic diseases as a special risk group.¹⁰⁵ There was no emergency monitoring of the health status of these individuals. The Public Defender believes that special risk group convicts should be identified¹⁰⁶ and given special care.¹⁰⁷ Convicts' health screening should be intensified to detect suspicious symptoms.¹⁰⁸ Elderly prisoners who do not pose a real threat to public safety should be provided with the mechanisms provided by the Criminal Code and the Code of Criminal Procedure to ensure that the convict is released from serving a sentence due to old age;¹⁰⁹ If this is not possible, then from an epidemiological point of view, prisoners at special risk should be placed in safe conditions under special medical supervision.

In addition, medical staff did not have an action plan (guideline) for the prevention and management of COVID-19 in penitentiary facilities. The Public Defender believes that the Ministry should develop a document stating in detail to both medical and non-medical staff what their function is and how to act

¹⁰³ Medical quarantine spaces were arranged in N2, N5 and N8 institutions. In addition, from May 30, 2020, a penitentiary system triage center was established on the territory of the former N9 facility, and from the beginning of June 2020, a rapid test for newly received prisoners was launched in the N2, N5 and N8 facilities. If a rapid test is negative, a prisoner will be admitted to the penitentiary facility but will be placed in a medical quarantine zone for 21 days to undergo a daily medical examination. Only after the asymptomatic end of this period it is possible to admit a prisoner to the rest of the contingent in the facility, if the rapid test is positive, the prisoner will not be admitted to the penitentiary establishment and will be transferred for further medical observation/examination. After a 16-day period at the Penitentiary System Triage Center, the inmate undergoes a PCR test on the 17th day. If the test is negative, the prisoner is transferred to the so-called receiving penitentiary institution. See Special Summary Report of the Special Penitentiary Service 2020. The link is available at: <https://bit.ly/3iWSsMg>; [last visited: 29.01.2021].

¹⁰⁴ See the statement of the Special Penitentiary Service dated 13 October 2020: <<https://bit.ly/3oGhz7x>> [last visited: 03.02.2021].

¹⁰⁵ Recommendations of the UN Subcommittee on Prevention of Torture (SPT) on the Coronavirus Pandemic to States Parties and National Prevention Mechanisms (adopted March 25, 2020), paragraphs 9 (a) and (m). An unofficial translation is available at the link <<https://bit.ly/3p0womA>> [last visited: 31.01.2021].

¹⁰⁶ The elderly and convicts with severe, chronic diseases belong to a special risk group.

¹⁰⁷ Recommendations of the Subcommittee on Torture Prevention to the Coronavirus Pandemic for States Parties and National Prevention Mechanisms (adopted March 25, 2020), paragraphs 9 (a) and (m).

¹⁰⁸ Preparedness, prevention and control of COVID-19 in prisons and other places of detention (Interim guidance), WHO, March 2020, p. 9.

¹⁰⁹ Criminal Procedural Code of Georgia, Article 284, Part 3.

to prevent and manage COVID-19. Especially in the conditions where COVID-19 cases were reported in the establishments. According to the information provided by the Special Penitentiary Service, the planned PCR testing of the accused/convicts placed in the penitentiary institutions started on December 31, 2020.¹¹⁰ Initially, testing was conducted in N5 and N11 facilities, then tests were conducted in other facilities as well as with inmates in the civil sector hospital. Based on these tests, Covid-19 was identified in a number of inmates. It is important that the special penitentiary service continue the planned PCR testing of prisoners in the penitentiary institutions in order to detect cases of infection in a timely manner.

During the visits, personal protective equipment was used by those employees who entered the facility from outside.¹¹¹ While staff on a barracks regime did not use personal protective equipment as these individuals were quarantined before entering the facility, tested for Covid-19, and no longer posing a risk of spreading the virus.

Prisoners were provided with medical masks during their removal from the facility and/or during meetings with other persons in the facility. Prisoners were not provided with personal protective equipment while moving on the premises of the institutions. Besides, they do not have the opportunity to purchase disinfectants and personal protective equipment. As for informing about the measures to prevent the spread of Covid-19, unfortunately, the prisoners did not receive any information about it during their stay in the facilities. There were no information posters about Covid-19 in the living areas of the prisoners. They received such information on television. The Public Defender of Georgia considers it important that the administration of the establishments take steps to raise awareness on the issues of infection control of prisoners. The Subcommittee on Prevention of Torture also points out the need to provide and inform prisoners with individual means of protection.¹¹²

In order to meet the requirements of infection control, it is important to ensure a good sanitary-hygienic condition in the establishments. This issue is relevant not only in terms of the spread of the new coronavirus, but also for the prevention of any other contagious disease in general. According to the employees of the establishments, after the insertion of special conditions, special disinfection is carried out in the facilities. According to the staff of the establishments, if the prisoners refuse to let the staff carry out the relevant work in the cell, then the cell is not disinfected. The practice of general cleaning of cells and other spaces in penitentiary institutions has not changed. The cells are arranged by the prisoners themselves, and the common areas are cleaned convicts employed in the industrial sector.

From Epidemiological point of view it is challenging that large penitentiary establishments have multiple-persons cells¹¹³ and physical distancing as well as adequate sanitation is impossible. Most of the inmates

¹¹⁰ For the full information see the link <https://bit.ly/2XFw9Bd> [Last visited: 14.01.2021]

¹¹¹ For example, medical staff who were not permanently present in the facility.

¹¹² Recommendations of the Subcommittee on Prevention of Torture to the States Parties and National Prevention Mechanisms on Coronavirus Pandemic (adopted March 25, 2020), subparagraphs (a) and (m) of paragraph 9. An unofficial translation is available at: see the link <<https://bit.ly/3p0womA>> [last visited: 02.02.2021].

¹¹³ There are 10 persons cells in N2 and N8 facilities, and in N17 facility the number of convicts in the cells exceeds two dozen. In addition, the number of inmates in facilities N8 and N15 exceeded the facility limit, leading to overcrowding.

are not provided with 4 sq.m. living space.¹¹⁴ At the same time, during the visit of the National Preventive Mechanism in the Establishment N17, the number of inmates in a significant part of the cells exceeded 2 dozen, and in one of the cells there were 32 inmates. Given the sanitary-hygienic conditions in these cells, it is clear that such cells pose a major challenge in terms of the spread of infection.

Clearly, in order to prevent infection, it is necessary to facilitate the keeping the physical distance, and for this purpose the concentration of inmates in one space should be avoided as much as possible.¹¹⁵ In addition, the degree of observance of sanitary-hygienic norms should be increased in the establishments, for which all convicts should be provided with the necessary means of personal hygiene at the expense of the state.¹¹⁶ Furthermore, it is important that medical masks, in accordance with the relevant rules, are used by convicts who have symptoms of respiratory diseases.

The Public Defender pointed out already in May¹¹⁷ that in all penitentiary establishments a risk of infection transmission should be assessed and a well-considered plan for the prevention and control of COVID-19 should be prepared. In the preparation of this plan a questionnaire prepared by the World Health Organization to assess the readiness of COVID-19 prevention and control in penitentiary institutions and other places of detention should be used,¹¹⁸ Besides, consideration should also be given to the possibility of early release and non-custodial measures in order to reduce the number of prisoners.¹¹⁹ In the opinion of the Public Defender, the existence of a COVID-19 prevention and control plan in penitentiary institutions is vital as the COVID-19 pandemic cannot be eradicated in the nearest future and a repeated epidemiological wave is not ruled out (contingency planning)¹²⁰. In addition, once the vaccination against COVID-19 becomes possible in the country, it is important that vaccination of penitentiary staff and prisoners be carried out.

¹¹⁴ According to the Article 15 (2) of the Law on Imprisonment of Georgia, the living space for 1 convict in the medical institution of accused/convicts and in the penitentiary institutions should not be less than 4 sq.m. meter.

¹¹⁵ Preparedness, prevention and control of COVID-19 in prisons and other places of detention (Interim guidance), WHO, March 2020, p. 9.

¹¹⁶ Recommendations of the Subcommittee on Prevention of Torture to the State Parties and National Prevention Mechanisms on Coronavirus Pandemic (Adopted 25 March 2020), paragraph 9 (j).

¹¹⁷ The report is available on the link: <https://bit.ly/3oorYor> [Last visited: 26.01.2021].

¹¹⁸ The questionnaire is available at the following address: <<https://bit.ly/2XWHcWR>>. [Last visited: 26.01.2021].

¹¹⁹ Recommendations of the Subcommittee on Prevention of Torture to the State Parties and National Prevention Mechanisms on Coronavirus Pandemic (Adopted 25 March 2020), paragraph 9 (b).

¹²⁰ Preparedness, prevention and control of COVID-19 in prisons and other places of detention (Interim guidance), WHO, March 2020, p. 12.

2.5. Penitentiary Health Care

In 2020, the number and qualifications¹²¹ of medical staff still remain a problem.¹²² Procession of medical documentation, protection of medical confidentiality,¹²³ screening for non-transmittable diseases, timely execution of medical referral and the situation of preventive health care. Due to the epidemiological situation in the country in 2020, the visits of specialists and carrying out medical referrals in the the establishments were limited, which affected the timely delivery of medical services.

For timely medical care, it is important to ensure access to primary health care in the establishments. As in previous years, there is still a great demand for a meeting with a primary health care doctor, it is less difficult for convicts placed in the semi-open establishments to get to a primary health care doctor, because they go to the doctor themselves but often have to stand in line. In closed type institutions, together with the high demand, the prisoner is taken to the doctor by the employee of the establishment, which increases the waiting time.¹²⁴ During the visits the prisoners point out the problem of access to family doctors. According to the medical staff, they are overloaded.

After the reorganization carried out within the medical department in 2019-2020, 113 medical workers were fired from penitentiary establishments. According to the response¹²⁵ received from the Medical Department, 32 medical staff have been employed through open competition since November 2020.¹²⁶ At the end of 2020, the number of medical staff employed in penitentiary institutions was 253, and 109 positions were vacant. Such a drastic reduction in medical staff and the existence of open vacancies affect the delivery of timely and adequate medical care. In 2019, the Public Defender addressed the Minister of Justice of Georgia with a recommendation to double the number of nurses,¹²⁷ instead their number was reduced. It is important that vacancies are filled in a timely manner so as not to disrupt the delivery of medical services.

¹²¹ A report by the European Committee for the Prevention of Torture (CPT) on a 2007 visit to Greece states that there should be no more than 300 prisoners per doctor and 50 per nurse. The ratio of the number of prisoners to nurses in large penitentiaries is high and therefore it is necessary to add support medical staff.

¹²² Problems in the field of continuing medical education are still noted. For medical staff. According to the information received from the Medical Department, in 2020, phthisiologists were trained in "Latent Tuberculosis Infection (LTBI) Management News", other trainings directly on issues related to the specialization were not conducted. Computers in medical centers have access only to the website of the Ministry of Labor, Health and Social Affairs of Georgia. Due to the limitations of the Internet, medical staff is deprived of access to complete, operative information on modern methods of diagnosis and treatment, guidelines, protocols and medications. This, in turn, affects the quality of medical services.

¹²³ During the visits, the inmates again pointed out the problem of the non-medical staff attending the meeting with the doctor.

¹²⁴ The lack of staff in the facilities and the busy work schedule affect the timely delivery of the patient to the doctor. In addition to taking inmates to the doctor, they take prisoners for a walk, to the bathroom, to the distribution of food, and so on.

¹²⁵ Letter of Medical Department N287297/01 December 03, 2020.

¹²⁶ On the positive side, in February 2020, the remuneration of medical staff in all institutions increased. See the link <https://bit.ly/39yfTc6> [Last visited: 29.01.2021].

¹²⁷ Annual Report of the National Preventive Mechanism 2019, see the link: <https://bit.ly/3bzHWJz> [Last visited: 14.01.2021].

In addition to the abovementioned, as a result of the reorganization, the Tuberculosis Treatment and Rehabilitation Institution N19 was liquidated and merged with the Medical Institution for Accused and Convicts N18. At the same time, the surgical and resuscitation and anesthesiology departments in the N18 facility were abolished, and the long-term care department was merged with the therapeutic department. The staffing problems in the facility N18 are noteworthy, in particular the lack of medical and support staff.¹²⁸ Especially the psychiatric department, where three out of five positions of doctors are vacant.¹²⁹ This situation leads to professional burnout of psychiatrists and adversely affects the quality of medical care for patients. Due to the epidemiological situation in the country, the ban on the employment of medical staff in the civil sector also contributed to the aggravation of the situation, after which part of the medical staff chose to work in civilian clinics.

Timely referral to relevant specialists is important for receiving timely and adequate medical care. Due to the epidemiological situation in the country, visits to specialists in the penitentiary institutions were limited. Medical referrals are performed only in emergencies and for scheduled dialysis, chemotherapy, or repeated consultations/medical manipulations due to the postoperative period. In other cases, registration is made for a planned referral, although the referral is suspended at the moment.¹³⁰ In December 2019 the project was started, which is aimed at the service of the medical queue, i.e. medical service waiters, and the annulment of this queue, however, a study of the unified electronic database revealed that there are still patients waiting for a medical referral from 2018 and 2019.¹³¹

In 2020, the procession of medical documentation in a complete manner remained a problem,¹³² which is important in terms of continuity of medical services. The inconsistency of medical records and the lack of information on treatment outcomes make it difficult to assess the adequacy of treatment. No summary epicrisis are made by medical staff,¹³³ which briefly reflects the dynamics of the prisoner's health during the past year, the consultations conducted, the consultations carried out, the referrals carried out, the examinations, the diagnoses made, the treatment carried out and its results. Based on the study of medical cards, it can be said that in some cases the patient's condition and test results are neglected by

¹²⁸ According to the response received from the Medical Department, as of November 13, 2020, there were a total of 36 vacancies in the Medical Institution for Accused and Convicts N18, including 4 doctors, 3 heads of departments, 14 support staff, 3 house-care, 3 nurses, 2 endoscopists, 1 doctor-narcologist 3 radiologists, 1 dentist, 2 pharmacists.

¹²⁹ During the visit of the special prevention group, 50 patients were placed in the psychiatric ward.

¹³⁰ It should be noted that the members of the special preventive group were not allowed to study the unified electronic database in N6, N10 and N18 institutions. The most important component of the mandate and methodology of the Special Preventive Group is the processing of voluminous information obtained from various documents in accordance with the principle of confidentiality. It is unfortunate that this is not the first time that members of a special preventive group have encountered obstacles in terms of accessing a particular category of personal data.

¹³¹ For example, one of the patients was registered on October 16, 2018 for a neurosurgeon consultation, post-discectomy period, itching and burning. One of the patients was registered on August 31, 2018, with Stable Angina pectoris, Shunting Ltd. for holteromonitoring; also one of the patients was registered for venous ultrasonography on April 5, 2019.

¹³² Deficiencies were found in the procession of the medical cards, there are no courses (medical records) in the cards, and where there are records, there are no indications for appointments, diagnoses and treatment results.

¹³³ A doctor's report, a comprehensive written explanation of the origin, development, course, nature and outcome of the disease.

the medical staff.¹³⁴ Due to the deficiencies in the outpatient medical records, it is difficult to objectively assess how the inmate's health status has changed over the years. In addition, in the report "Impact of Detention Conditions on Prisoners' Health", the Public Defender focuses on the introduction of an electronic information system for medical staff and the entire penitentiary system, which will eliminate problems with medical documentation and enables collection, timely exchange and accessibility of reliable information for medical examination, treatment and further analysis.

It should be noted that inpatient and outpatient medical facilities in the civil sector are required to provide health information of all identified patients to the Electronic Health Records (EHR) system.¹³⁵ As patients in outpatient facilities receive outpatient medical care, it is important that their health information be entered into an electronic health record (EHR) system, which will help systematize this information.

Managing mental health problems remains a significant challenge for the penitentiary health care system. In order for a patient to receive adequate psychiatric care it is important to refer him in a timely manner to a psychiatrist. Mental health screening is carried out during initial placement in facilities N2 and N8 with the screening tool that was integrated in the medical card. Mental health screening is no longer conducted in other institutions because this part of the medical card has already been completed. One-time filling of the above-mentioned questionnaire is not enough. Deprivation of liberty for a person is in itself a massive psychotrauma that may contribute to the detection or decompensation of mental health problems. Early diagnosis and preventive approach, which is relevant in disease management and prevention, are of particular importance in the mental health care of prisoners in the penitentiary system. The burden of mental and behavioral disorders is much heavier in penitentiaries and the number of such patients far exceeds the number of patients in the civil sector.¹³⁶

During the stay in the penitentiary facility, the prisoner is referred to a psychiatrist by a family doctor, a doctor on duty and in rare cases by a psychologist. Family doctors do not have the tools to objectively assess the mental health status of prisoners. The 2019 report of the National Preventive Mechanism emphasizes the importance of introducing an instrument for family doctors to objectively assess the mental health status of prisoners.¹³⁷

¹³⁴ For example, there are changes in the blood test of one of the patients, expressed leukocytopenia (decrease in the number of leukocytes), thrombocytopenia (lack of platelets), anemia (decrease in hemoglobin in the erythrocytes and the number of erythrocytes in the blood). Despite these data, no consultation with a therapist or infectious disease specialist was performed. Also, one of the patients underwent a blood test for markers of transmittable diseases during the placement in the establishment, which revealed the presence of markers of syphilis and viral hepatitis C. The increase of the "AST" rate is noteworthy. After a consultation with a venereologist, an unspecified atrial fibrillation was diagnosed and bicillinotherapy was prescribed. Hepatitis C was not consulted and no treatment was prescribed.

¹³⁵ Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of January 3, 2019 "On Determining the Functioning and Procedure of the Electronic Health Record System (EHR)".

¹³⁶ Study on persons with mental health issues in penitentiary institutions, Torrey EF, Kennard AD, Eslinger D, Lamb R, Pavle J. More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States Treatment Advocacy Center. 2010. Available at: <https://bit.ly/3j9pKrM> [last visited: 02.02.2021].

¹³⁷ National Preventive Mechanism 2019 Annual Report, p. 75, see the link: <<https://bit.ly/3bzHWJz>> [last visited: 14.01.2021].

Psychiatric care in the establishments is limited to one-time or repeated consultations with a psychiatrist and treatment with medications, which is not in line with the principles of modern bio-psycho-social approach and evidence-based health care. There is no multidisciplinary work with patients in penitentiary institutions, including the psychiatric ward of the N18 Accused and Convicts Medical Institution. It is important the psychologist and social worker to be involved in the psychiatric assessment process and management, for this, communication between the psychiatrist and the institution's social service should be increased. It is important to regulate the basics of psychiatric care at the normative level, where the functions and responsibilities of each member of the multidisciplinary team will be described in detail. It is noteworthy that due to the epidemiological situation in the country, the restriction on access to penitentiary establishments also affected psychiatrists. It should be noted that among the staff of penitentiary institutions psychiatrists are only in N8 and N18 facilities, while in other establishments the psychiatrist is an invited doctor. Psychiatrists from N8 and N18 institutions also consult prisoners in other facilities. However, due to the fact that psychiatrists in N8 and N18 institutions have a large workload, carrying out consultations in other establishments further increases their workload, which may also affect the quality of service.

According to the response received from the Medical Department, three mobile groups staffed with civil sector specialists,¹³⁸ which started operating in a pilot mode from November 2019, were carrying out the work in the facility N8 to March 2020. The mentioned group provided multidisciplinary care to prisoners with mental health problems and provided appropriate services to up to 150 beneficiaries. It is important that this program continues. The Public Defender indicates in numerous reports that through inter-agency coordination, certain services that are introduced in the community may become available in penitentiary institutions as well.¹³⁹ In order to provide prisoners with mental health problems with access to appropriate psychosocial rehabilitation programs in the penitentiary establishments, along with mobilizing the necessary staff,¹⁴⁰ it is advisable to attract service providers and encourage civic intervention.

2.6. Contact with the outside world

Measures taken to prevent the spread of the coronavirus have had the greatest impact on the realization of prisoners' right to contact with the outside world. During this period, the need to implement the recommendations issued by the Public Defender to the relevant agencies for years became clear. Even the pre-pandemic normative framework and established practice did not ensure adequate contact of prisoners with the outside world. In particular, the living area of their families was often neglected during the placement of prisoners in the facility, resulting in inmates being denied the right to short and long meetings. However, the Code on Imprisonment does not allow the possibility of replacing long meetings with telephone calls or video meetings. Prisoners in special risk penitentiaries were also deprived of the

¹³⁸ Based on the model in the civil sector, mobile groups are staffed by a psychiatrist, psychologist and nurse who work with inmates with mental health problems.

¹³⁹ Report "Impact of Detention Conditions on Prisoners' Health, p. 81.

¹⁴⁰ Psychiatrist, psychologist, social worker.

opportunity to have video appointments. Insufficient number of telephones and inability to speak in a confidential environment were reported in a number of penitentiaries.

Against the above problems, the imposition of additional restrictions posed an even greater challenge in terms of contact with the outside world. From March 5, 2020, introducing special conditions restricted the accused and convicts' rights to family, long and short meetings defined by the Code of Imprisonment, leaving the penitentiary institution for a short period of time, as well as temporarily leaving the penitentiary institution due to special personal circumstances.¹⁴¹ This restriction has been partially eased since May 25, 2020, and prisoners have been given the opportunity to enjoy short visits beyond their glass-breaking threshold.¹⁴² The right to use short visits was restored until November 28, 2020,¹⁴³ however, with the complication of the epidemiological situation, the prisoners' right to short visits as well as the right to receive parcels were suspended until January 1, 2021.¹⁴⁴ As of today, prisoners right to a short visit has been restored since February 1, 2021. Therefore, prisoners' right to long and family visits have been suspended for more than 10 months,¹⁴⁵ during these 10 months, the right to use a short visit was allowed for 6 months. Although short visits are currently being restored, it is unpredictable how long they will be allowed. In addition, there are restrictions outside the penitentiary system, which make it difficult for prisoners' family members to move around and exercise their right to a short visit.

Clearly, the introduction of special conditions and the restriction of physical contact are in line with the purpose of protecting the lives and health of prisoners, but it is also important to offer alternative means of contact with the outside world as a counterweight to the restrictions.¹⁴⁶ It should be noted with regret that in 2020 the measures taken to compensate for the restrictions were very few. From March 16, 2020, in order to compensate for the restrictions on visits, prisoners were given 15 minutes of free telephone talk time, to which another 20 minutes of talk time was added in April with the financial support of the Georgian delegation to the International Committee of the Red Cross (ICRC).¹⁴⁷ It is noteworthy that the Public Defender has not yet received the requested information from the Special Penitentiary Service on the detailed measures of compensation. Information posted on the social networks and website of the Special Penitentiary service reads as if 15 minutes of free telephone conversation time was to be given to

¹⁴¹ Order N4109 of March 5, 2020 of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia. Article 2

¹⁴² Order N7281 of May 25, 2020 of the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia, which amended Order N4109 by adding Article 21.

¹⁴³ Order N17994 of November 28, 2020 of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia.

¹⁴⁴ The right to receive parcels has been restored to prisoners since December 28, 2020, and they still enjoy this right today. Information is available on the Special Penitentiary Service website: <https://bit.ly/36CtGfU> [Last visited: 16.01.2021].

¹⁴⁵ According to the Article 17³ of the Imprisonment Code, family visit is the right of a female convict to meet with family members for 3 hours in a specially designated room.

¹⁴⁶ Recommendations of the UN Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms on the Coronavirus Pandemic (adopted March 25, 2020), paragraph 9(k). See the link <https://undocs.org/CAT/OP/10> [Last visited: 17.01.2021].

¹⁴⁷ Summary Report on the Activities of the Special Penitentiary Service 2020, p.9 and p.11. Available at: <https://bit.ly/3oFB4xg> [Last visited: 17.01.2021].

the prisoners every month during special conditions, although during monitoring visits in summer and fall of 2020, inmates noted that free telephone conversation time was only allocated in spring.

The Public Defender considers that the addition of 15 minutes of free telephone conversation time is not adequate compensation of restrictions on visits. The Penitentiary Service should share the practice of European countries¹⁴⁸ and in addition to increasing the time of telephone conversation, should take care to maintain visual contact with family members of prisoners. Thus, it is important to make it possible at the legislative level to exchange long visits into telephone calls. Also switching short and long visits into video dates. It is important that prisoners at special risk facilities are also given the opportunity to make a video appointment.

Besides the special risk penitentiary facilities, the video meetings infrastructure is not available in N2, N10, N12 and N18 facilities. In the institutions where video call is possible, the use of video calling during the pandemic does not increase, but decreases.¹⁴⁹ The fact that the right to video meeting is not properly exercised is largely related to the need for a prisoner's family member to pay a visit to Crime Prevention and Probation Agency's territorial unit.¹⁵⁰ Thus, it is important to revise the rules of video meetings in order to ensure more active and frequent use of video calls by adapting to the existing challenges. In addition, it is important for the Ministry of Justice to start working on creating a secure application that will facilitate the implementation of video calling.¹⁵¹ The Public Defender pointed out the importance of introducing a secure application as soon as special conditions were introduced, but no steps were taken in this regard throughout the year.¹⁵²

The practice of restricting means of contact with the outside world in the form of disciplinary sanctions remains a challenge in the penitentiary system. Even in a pandemic, when telephone conversations were practically the only means of contact with the outside world, this right was being restricted. For example, in March, April and May, when even short visits were suspended, the restriction of the right to telephone

¹⁴⁸ Extra free phone conversation time is much longer in different countries. So for example: in France an additional free package of 40 Euros was allocated for each prisoner, which corresponds to an additional 11 hours of talking to local and 5 hours of talking to mobile operators. A voice messaging service has also been introduced for family members. Telephone time in Italian penitentiaries has increased and become free for prisoners, for which 3,600 telephones have been purchased. In Portugal, the number of telephone limits was tripled for each prisoner. In Catalonia, 10 authorized phone calls per week have been increased to 20 and are free for economically disadvantaged prisoners. Smartphones were also purchased for inmates in some facilities on a pilot basis. European countries are taking care of activating video calls, for which they are using the existing infrastructure and also adding new equipment. Information on compensatory measures taken in penitentiary institutions by state is available at: <https://www.euopris.org/covid-19-prevention-measures-in-european-prisons/> [last visited: 17.01.2021].

¹⁴⁹ According to the National Statistics Office of Georgia, a total of 456 video calls were made in penitentiary institutions in January 2020, and only 373 in November 2020. Only 101 video calls were made in April 2020, when the strictest restrictions were in force.

¹⁵⁰ Part 3 of Article 17¹ of the Code of Imprisonment and Order N55 of the Minister of Corrections and Legal Assistance of Georgia of April 5, 2011 "On Approval of the Rules for the Use of Video Calls with Convicts".

¹⁵¹ For example, making safe video calls from penitentiaries. Example of the United Kingdom. Available at: <https://www.digitalmarketplace.service.gov.uk/g-cloud/services/323059409385538> [last visited: 18.01.2021].

¹⁵² See the follow-up report of the special monitoring visit to the Public Defender to the N17 Penitentiary Establishment on April 30, 2020, May 1 and May 7, 2020. P. 21.

Available at: <https://www.ombudsman.ge/res/docs/2020061009033574571.pdf> [Last visited: 20.01.2021].

conversations as a disciplinary sanction was used 124 times, from January to November 2020 - totally 467 times.¹⁵³ The Public Defender reiterates that it is inadmissible to restrict the right of contact with the outside world in the form of a disciplinary sanction,¹⁵⁴ which is also indicated in the report of the European Committee for the Prevention of Torture following its visit to Georgia in 2018.¹⁵⁵ During a pandemic, it is especially important for a prisoner to have telephone communication with family members, especially since there may be a number of inaccurate reports in the media about the spread of viral infection in penitentiaries, causing anxiety and stress among prisoners' family members. On the other hand, the health of family members may be a cause of concern for prisoners.

The opportunity of contact with the outside world and the most important guarantee of protection against ill-treatment is the possibility of confidential filing of a complaint, both inside and outside the penitentiary system.¹⁵⁶ Complaint boxes were placed in all penitentiary facilities visited in 2020,¹⁵⁷ however, it still falls into the area of video surveillance, which allows the author of a confidential complaint to be identified. In order to exercise the right to appeal, it is important to provide prisoners with paper, confidential complaint envelopes and pens. Interviews with inmates at the facilities N8 and N6 show that the administration does not provide them with the necessary materials and prevents them from sending complaints. In case prisoners are able to write a complaint and put it in a box or hand it over to an employee of the establishment to send them,¹⁵⁸ Prisoners often do not know whether their correspondence has reached the addressee. Prisoners suspect that their letters/complaints are blocked as unwanted content. Prisoners note that correspondence sent to the Public Defender is also being blocked.¹⁵⁹ The Public Defender calls on the relevant services of the Ministry of Justice to investigate the above-mentioned problems and to respond to the complaints of the prisoners ensure confidential and unhindered sending.

¹⁵³ Criminal Statistics Reports of the National Statistics Office of Georgia by months. Available at: <https://bit.ly/39CVbb4>, [Last listed: 18.01.2021].

¹⁵⁴ United Nations Office on Drugs and Crime (UNODC), dynamic Safety Guide, New York, 2015, p. 22, available at the following address: <https://bit.ly/3bVGGR6> [Last visited: 20.01.2021].

¹⁵⁵ Report of the European Committee for the Prevention of Torture on the visit to Georgia (CPT/Inf (2019) 16), para. 100, September 10-21, 2018, available in English at: <https://rm.coe.int/1680945eca> [Last visited: 20.01.21].

¹⁵⁶ European Committee for the Prevention of Torture, Standards, para. 54. Available at the following address: <https://rm.coe.int/16806ce96b> [Last visited: 18.01.2021].

¹⁵⁷ A visit to the N10 Penitentiary on June 26, 2020 revealed that after March 16, the establishment's complaint boxes had not been opened by the administration.

¹⁵⁸ After the introduction of extraordinary conditions, prisoners hand over letters and complaints to the security or regime staff of the institution instead of the social worker.

¹⁵⁹ In the period July-August 2020, the Public Defender's hotline received 7 notifications from the Establishment N6 about the blocking of letters sent by prisoners to the Public Defender's Office and other agencies. The Public Defender's Office found after verification that the prisoners' complaints were not received by the Public Defender's Office.

2.7. Conditions of Imprisonment

2.7.1. Physical environment

Taking into account the worldwide pandemic, improving living conditions in penitentiaries is becoming even more important, however in 2020 just like in previous years, living conditions in penitentiary facilities have not changed significantly.

In 2020, the problem of overcrowding was still present in both semi-open and closed type large penitentiaries such as N15,¹⁶⁰ N8¹⁶¹ and N2¹⁶². It is unfortunate that in the penitentiary establishment N17 has not yet been abolished the so-called "barrack" type dormitories, where it is impossible to observe sanitary-hygienic conditions, and most of the convicts are not provided with 4 sq.m. personal living space, which of course is a challenge from an epidemiological¹⁶³ point of view.

In the reporting period, the sanitary-hygienic conditions¹⁶⁴ in the cells, ventilation,¹⁶⁵ lighting¹⁶⁶ and the 4 sq.m. minimum living space¹⁶⁷ were still problematic. Also, the proposal provided for in several reports of the Public Defender regarding the definition of 4 sq.m. as the minimum living space of the accused is still unfulfilled.

¹⁶⁰ The limit of accommodation of prisoners in the penitentiary establishment N15 is 1 388; The number of convicts exceeded the established limit for 12 months during 2020: January - 39.8%, February - 40.9%, March - 39.2%, April - 36.7%, May - 33.4%, June - 31.7%, July - 34.9%, August - 35.1%, September - 34.3%, October - 34.5%, November - 37.5%, December - 34.8%; information is available at the following address: <https://bit.ly/3pYqAup> [Last visited: 02.02.21].

¹⁶¹ The limit for placement of prisoners in the N8 penitentiary establishments is 2 426; the number of prisoners exceeded the established limit for 5 months: August - 10.6%, September - 13.6%, October - 13.3%, November - 4.6%, December - 5.2%; Information is available at the following address: <https://bit.ly/3pLizJ9> [Last visited: 02.02.21].

¹⁶² The limit for placement of prisoners in the N2 penitentiary facility is 1,068; the number of prisoners exceeded the established limit in 2 months: February - 2.2% and March - 1.1% Information is available at the following address: <https://bit.ly/2NYniJb> [Last visited: 02.02.21].

¹⁶³ Due to the large number of convicts and the inability to properly ventilate, the air is saturated with tobacco smoke; In such conditions it is difficult to maintain sanitary-hygienic conditions and the risk of spreading infectious diseases is high.

¹⁶⁴ The sanitary-hygienic condition is not satisfactory in N8, N17 and N18 establishments, where cockroaches are spread. The cells of the internal classification of the N8 facility are partially under ground and humidity is observed in the cells. Humidity is observed due to water supply malfunctions in the so-called safe and solitary cells and in the corridor of N8 establishment.

¹⁶⁵ In the living area of the N6 facility, and in the living and so-called safe cells of the N8 facility there is not enough artificial ventilation provided, artificial ventilation in solitary cells of the same facility and internal classification cells, as well as in residential cells of facility N17 is not provided at all. Artificial ventilation is also insufficient in the N2 facility living, indoor classification, solitary confinement cells and showers. There are no windows in the de-escalation rooms of N2, N3, N6, N8 facilities, therefore natural ventilation is not available for prisoners.

¹⁶⁶ In the residential cells of the N3 facility as well as in the internal classification cells of N2 and N8 establishments and in the so-called safe cells and solitary cells natural light is not enough.

¹⁶⁷ Facilities N2, N8, N14, N15 and N17.

Reconstruction and rehabilitation works of the penitentiary establishment in Laituri, Ozurgeti district started in July 2020, which is planned to be completed in the summer of 2022.¹⁶⁸ According to the summary report of the Special Penitentiary Service of 2020, Laituri Mixed Risk Penitentiary Establishment will be the first prison in Georgia, which with its infrastructural capabilities will fully serve the purpose of re-socialization-rehabilitation of prisoners. According to the same report, the implementation of infrastructural projects is planned in the future, in particular, it is planned to build several new, small (600-700 convicts) closed type penitentiary establishments in accordance with modern European standards, which will create appropriate conditions for achieving the goal of re-socialization and rehabilitation and building of which is already being finalized.

We believe that all measures should be taken to establish penitentiary establishments with small and balanced infrastructure based on the principle of normalization,¹⁶⁹ where the necessary environment for the rehabilitation and re-socialization of prisoners will be provided. At the same time, it is important that the Public Defender be given the opportunity to get acquainted with the concept of small institutions prepared by the Ministry and to present the opinions on it.

2.7.2. Daily schedule and rehabilitation activities

During years in the penitentiary system¹⁷⁰ rehabilitation-resocialisation of prisoners has been a challenge. In 2020, compared to the previous year, re-socialization-rehabilitation activities in penitentiary institutions were severely limited and the existing situation worsened.¹⁷¹

In 2020, the poor situation in terms of rehabilitation was caused by the introduction of extraordinary conditions in penitentiary institutions due to the pandemic,¹⁷² within the framework of which, on March 30 of the same year, social workers and psychologists were taken out to the outer perimeter of the facilities and they are still working from there, meeting the convicts beyond the glass barrier and consulting them through the internal telephone of the facility.¹⁷³ In the same period, rehabilitation activities in penitentiary establishments were suspended. During visits to penitentiary facilities throughout the year, inmates interviewed noted that meetings and consultations with social workers and psychologists were extremely limited.

¹⁶⁸ Summary Report on the Activities of the Special Penitentiary Service 2020 Page 5 <https://bit.ly/3bKxLjR> [Last visited: 03.02.21].

¹⁶⁹In accordance with the principle of normalization, life in prison should be as close as possible to the positive aspects of life in society, European Prison Rules, Part One, Principle 5.

¹⁷⁰See the 2019 report of the National Preventive Mechanism, which is available at the following address: <https://bit.ly/2NG6jvz>, pp. 61-64, [last visited: 20.01.2021].

¹⁷¹See the follow-up report of the emergency monitoring visit to the Establishment N3, which is available at the following address: <https://bit.ly/3pVAVQn>, p. 14-15. Also, a report on the follow-up emergency visit to the N17 penitentiary establishment. Available at the following address: <https://bit.ly/2ZUYTXY>, p. 18, [Last visited: 20.01.2021].

¹⁷² By the order N4109 of March 5, 2020 of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia, it was approved to introduce extraordinary conditions in penitentiary institutions.

¹⁷³ Special Penitentiary Service response №300956/01 of December 21, 2020.

In terms of rehabilitation-resocialization, the situation in special risk establishment has worsened.¹⁷⁴ In this situation the prisoners in closed and special-risk prisons are not allowed to walk for more than an hour a day, as in previous years. Walking as per the schedule¹⁷⁵ is still problematic.¹⁷⁶ Spending 23 hours in a cell without interesting and diverting activities in closed and special risk facilities strengthens the feeling of protest, injustice and hopelessness among the inmates, which poses additional problems in terms of maintaining order and security. In terms of rehabilitation-resocialization, the situation was not much better in semi-open facilities, where although prisoners move freely during the day in within the facility, but they were mostly not engaged in any activity.¹⁷⁷

According to the information received from the Ministry, the Center for Vocational Training and Retraining of Convicts offers distance learning courses in N2, N5, N11 and N16 penitentiary establishments. Additionally, work is underway on other remote activities that are in the process of being developed.¹⁷⁸ The Public Defender welcomes the step taken by the Center to offer such an alternative to rehabilitation activities for convicts and hopes that remote rehabilitation activities will cover all penitentiary institutions.

According to the experience of other countries, in the face of pandemic constraints, for the purpose of conflict prevention and skills development every opportunity should be taken to adapt to the challenges of existing courses and programs and, if possible, to make them remote/online.¹⁷⁹ Activities may be carried out live with keeping the distance (where possible) or online either on a live mode or through video recordings prepared in advance and provided to prisoners. TVs, radios, and computer resources existing in the facilities may be used for educational purposes as a means of disseminating information to involve prisoners in the learning process. Internal cell activities such as sketching, literature competitions, and music activities should also be encouraged.¹⁸⁰

According to the received information¹⁸¹ in 2020, only 85 individual sentence plans in penitentiary facilities were drawn. Such a small number of plans is not due to a pandemic situation, since in 2019, for example,

¹⁷⁴According to the statistical data available on the website of the National Statistics Office of Georgia, from January 1 to October 2020, only 1 rehabilitation activity was carried out in N3 and N7 institutions: in N3 institution - recreational program with 4 prisoners, and in N7 institution art therapy with 1 prisoner. No activities were carried out in facility N6. During the same period, 2 prisoners participated in industrial employment in facility N3 and 7 - in facility N6. Statistical data are available at: <https://bit.ly/3regzJv>, [last visited: 19.01.2021].

¹⁷⁵ Prisoners in facilities N2 and N8 often refuse to go for a walk because they are offered to go for a walk early in the morning, at 7-8 am, which is not the walking time according to the schedule.

¹⁷⁶There are problems in the facilities with the arrangement of walking yards and the lack of sports equipment.

¹⁷⁷ For example, according to the statistical data available on the website of the National Statistics Office of Georgia, from January 1 to October 2020, only 2 programs were held in N14 facility (group interventions and art therapy), in N15 facility - 3 (group interventions, art therapy, recreational program) and in facility N17 - 1 recreational program.

¹⁷⁸ Special Penitentiary Service response N9300956/01 of December 21, 2020.

¹⁷⁹ See Covid-19 Response Guide for Decision Makers (World Practice and Recommendations). P. 30-33, document available at: <https://bit.ly/3r2rOES> [Last visited: 20.01.2021].

¹⁸⁰ Information is available in English on the website of the Rehabilitation Organization in the United Kingdom: <https://bit.ly/3qWolmy>, [last visited: 20.01.2021].

¹⁸¹ According to the response N300956/01 of the Special Penitentiary Service of December 21, 2020, in 2019, a total of 84 individual sentence plans were made in penitentiary institutions (in N5 facility -25, in N11 facility -39, in N16 facility -10, and in N17 facility -10). In 2020, individual plan for serving 85 sentences was drawn up (15 in N5, 29 in N11, 28 in N16, and 13 in N17).

although there was no pandemic in the country, total of 84 individual sentence plans were elaborated. Furthermore, the Public Defender in number of reports¹⁸² highlighted significant shortcomings in the development and implementation of an individual sentence plan for convicts, which is the most important component of the rehabilitation-resocialization process and is still a major challenge. It should also be noted that the order N502 of 12 March, 2020 of the Minister of Justice of Georgia approved the rule of risk assessment and needs for resocialization and rehabilitation of adult convicts and ex-prisoners, as well as the preparation, implementation and monitoring of an individual plan (case management rule). The Public Defender hopes that at least in 2021 the maximum number of cases will be covered in all penitentiary institutions in accordance with the new rule.

In view of all the abovementioned, since it is unknown how long the special conditions will last, the Public Defender considers that, first of all, it is important to immediately develop alternative opportunities for rehabilitation activities in penitentiary establishments. In order to strengthen the rehabilitation-resocialization process, to implement diverse and systematic rehabilitation activities, it is important to increase the number of social workers and psychologists in penitentiary institutions in 2021.¹⁸³ Work with prisoners should also become more active through incentives to motivate them to engage in various activities.¹⁸⁴

Although early conditional release or replacement of the unserved part of the sentence with a lighter sentence is not a basic constitutional right of the convict, it is an important legal opportunity for the convict to be motivated in the post-conviction period, to be fully focused on the re-socialization process and be hopeful of this process.¹⁸⁵

2.8. Vulnerable categories of persons

2.8.1. Juveniles

A juvenile defendant against whom detention has been used as a measure of restraint is placed in the juvenile unit of the detention facility (N2, N8), and a juvenile convicted person sentenced to imprisonment is placed in a juvenile (N11) rehabilitation facility. The Juvenile Justice Code also provides for the possibility of temporarily transferring of an imprisoned juvenile to another facility (N2, N8) for security reasons.¹⁸⁶

¹⁸²See the 2018 report of the National Preventive Mechanism. The report is available at the following address: <https://bit.ly/3aU7394>, p. 41, [Last visited: 20.01.2021].

¹⁸³ For years, the Public Defender in the reports has been talking about the lack of adequate and qualified staff (social workers and psychologists). This time as well, in the reporting period, on April 30, 2020, during the visit to the facility N17, 1,702 convicts were present and 2 psychologists and 8 social workers employed. That is, there were about 212 convicts per social worker and 851 convicts per psychologist.

¹⁸⁴ Although early conditional release or commutation of a sentence may not be a basic constitutional right of a convict, it is an important legal opportunity for the convict to be motivated in the post-convict period, to be fully focused on the process of re-socialization and to hopeful of the effectiveness of this process. <https://ombudsman.ge/res/docs/2020033122424787329.pdf>, p. 64, [last visited: 20.01.2021].

¹⁸⁵ See National Preventive Mechanism 2019 Report. The report is available at the following address: <https://ombudsman.ge/res/docs/2020033122424787329.pdf> p. 64, [Last visited: 20.01.2021].

¹⁸⁶Juvenile Justice Code, Part 1 of Article 89.

2.8.1.1. Imprisonment conditions

Extraordinary conditions have been put in place in all penitentiary establishments since 5 March 2020 to prevent the possible spread of the new coronavirus.¹⁸⁷ Opportunities for prisoners to have contact with the outside world were restricted¹⁸⁸ and rehabilitation activities were extremely limited.¹⁸⁹ On March 30, 2020 social workers and psychologists¹⁹⁰ were taken out to the outer perimeter of the penitentiary establishments and they still carry out activities from the outside perimeter, meet convicts beyond the glass barrier and provide them with internal telephone consultations.¹⁹¹

Although there was a high probability of introducing extraordinary conditions for a long time, the process of finding alternative ways to carry out rehabilitation activities was delayed. During the monitoring visit carried out by the special preventive group, distance learning (lesson process) had already started in the N11 facility.

As a result of the introduction of extraordinary conditions, juveniles were restricted in contact with the outside world as much as adult prisoners.¹⁹² To compensate for the restriction, like adult prisoners, a free 15 minutes per month was added to the phone limit for 3 months¹⁹³ In addition, the International Committee of the Red Cross (ICRC) provided a one-time 20-minute talk time for each prisoner. No other additional compensatory measures were carried out in this regard. According to the Public Defender, the measures taken to compensate for the restrictions were not appropriate, even for adult prisoners and especially for juveniles who need special support in terms of contact with the outside world.¹⁹⁴

It is true that the absence of targeted activities is harmful to any inmate, but especially to juveniles who desperately need physical activity and mental stimulation. During the day they should be offered a full program of education, sports activities, vocational training, recreational activities and other targeted

¹⁸⁷By the order N4109 of March 5, 2020 of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia, extraordinary conditions in penitentiary institutions were approved.

¹⁸⁸Prisoners were deprived of the right to long-term and short-term family visits as defined by the Imprisonment Code, to leave prison for a short period of time, as well as to leave the penitentiary institution temporarily due to special, personal circumstances. At the same time, the right of the convicts placed in the penitentiary institution of preparation for release to leave the establishment for the purpose of study and/or work and on the holidays established by the legislation of Georgia was suspended.

¹⁸⁹According to the statistical data available on the website of the National Statistics Office of Georgia, from January 1 to October 2020, juveniles in the facility N2 were involved in art therapy, psycho-social therapy and cultural events. And juveniles in the N8 facility - in the study of the educational program and art therapy. The teaching process was suspended and the teaching materials were delivered to the juveniles in the cells. Statistical data is available at: < <https://bit.ly/3r03CDr> > [last visited: 20.01.2021].

¹⁹⁰A psychologist at the juvenile unit of Establishment N8 resumed visits to the facility in early August and met with inmates face to face.

¹⁹¹Response N9300956/01 of 21 December, 2020 of the Special Penitentiary Service.

¹⁹² See in the same report in Chapter: Contact with the Outside World.

¹⁹³ In addition, the International Committee of the Red Cross (ICRC) has provided a one-time 20-minute talk time for each prisoner.

¹⁹⁴ The staff of the institution should facilitate the child's frequent contact with the general public. This includes communicating with family, friends, and representatives of reputable organizations. See UNHCR General Comment # 10 Rule 89 on the Rights of the Child.

activities outside the cell.¹⁹⁵ Restrictions imposed to prevent the possible spread of the coronavirus have had a negative impact on the physical and mental health of juveniles. The juveniles in the N11 facility were disrupted by the lack of rehabilitation activities during the day, which is why, according to the medical staff of the same facility, the juveniles complain of insomnia and headaches. The situation is much worse in N2 and N8 facilities, where the teaching process was stopped along with the rehabilitation activities.¹⁹⁶ In view of all the above, first of all, in a situation caused by a pandemic, it is important to urgently find alternative opportunities for rehabilitation activities, to actively meet remotely with a social worker, a psychologist and to plan activities tailored to different individual needs.¹⁹⁷ In order to prevent the aggravation of the psycho-emotional state of juveniles, it is important to facilitate their communication with the outside world by all safe means.

The juvenile defendant/convict should have improved living and eating conditions compared to the other defendants/convicts.¹⁹⁸ Living in a juvenile facility should be as close as possible to the positive aspects of living in the community.¹⁹⁹

Juvenile cells in the facilities N2 and N8 are virtually indistinguishable from the living conditions in adult cells. The cells have a depressing environment and do not suit the best interests of the child. There is insufficient natural and artificial ventilation in the living cells of the juvenile department of the N8 facility, the sanitary-hygienic condition in the cells is unsatisfactory, bugs and cockroaches are widespread. Like adult prisoners, juvenile prisoners are allowed to shower only twice a week.²⁰⁰ During the visit, the accused and the convicts were placed in the same cell in the facility N8, which is a violation of the requirements of the Imprisonment Code.²⁰¹

A commentary on the Beijing Rules states that when placing a juvenile in custody, preference should be given to an open-type facility over a closed-type one. Besides, each institution should be of a remedial or educational nature and not of a prison type.²⁰² The Public Defender noted in the numerous reports

¹⁹⁵ See the Standards of the Committee against Torture, "Juveniles Deprived of their Liberty under Criminal Legislation." Excerpt from the Report No24 [CPT/Inf (2015) 1], published in 2015. Rule 107, available at: <https://rm.coe.int/16809534f0> [last visited: 27.01.2021].

¹⁹⁶ During the visit to the N8 facility on August 4-7, 2020, the teaching process was suspended and the teaching materials were provided to the juveniles in the cell. At the same time, the library of the juvenile department was equipped with the appropriate technical equipment to conduct the lesson online, but the administration did not know when they would start conducting lessons online.

¹⁹⁷ Unlike the N8 facility, where individual sentence plans for juveniles have not been developed, the N11 facility has individual sentence plans for all juveniles. However, at the planning stage of the individual assessment and planning the sentence, juveniles are offered existing services and in this case do not concentrate on the needs of the beneficiary.

¹⁹⁸ Juvenile Justice Code, Article 83, Paragraph 1.

¹⁹⁹ The Committee of Ministers of the Council of Europe (2008) Recommendation No11 to the countries on European rules for juvenile offenders subject to sanctions or measures. (Adopted by the Committee of Ministers at its 1040th meeting of Deputy Ministers on 5 November 2008). Rule 53.3.

²⁰⁰ Ibid. Rule 65.2: Minors should have unrestricted access to bathrooms and toilets that are hygienic and allow for isolation.

²⁰¹ The Imprisonment Code, Article 9 (2).

²⁰² UN Standard Minimum Rules for the Administration of Juvenile Justice, Rule 19.

that due to the precarious²⁰³ situation in the Establishments N2 and N8, it was important that juvenile detainees be placed in a juvenile specialized facility. The placement of juveniles in the establishments N2 and N8 significantly hinders the rehabilitation process and contradicts to the best interests of juvenile offenders.

According to the Penitentiary and Crime Prevention Systems Development Strategy and Action Plan for 2019-2020 adopted by the Minister of Justice, a segregation plan should have been prepared by September 2019, aimed at transferring juveniles from N8 establishment and to arrange separate infrastructure for juveniles in the facilities N2 and N11.²⁰⁴ It should be noted that the commitments under the plan were not performed. During its visit to Georgia, the European Committee for the Prevention of Torture received a promise that a section of juvenile offenders would be built at the N11 Juvenile Rehabilitation Facility, which was to open in 2021.²⁰⁵ Unfortunately, no steps have been taken in this direction in 2020.

Three meals are provided to juveniles in all three facilities. The juvenile's diet is virtually indistinguishable from the adult inmates' diet. The menu does not include fresh vegetables, while fruits²⁰⁶ is provided to them only in the form of compote. Since a juvenile is an adolescent and needs a complete diet, four meals are essential for the health and full development of a juvenile.²⁰⁷

2.8.1.2. Legal Safeguards

A juvenile accused/convict placed in a detention facility/penitentiary establishment shall be immediately given the opportunity to obtain written information about his/her rights (including the right to appeal) and his/her duties and the rules of appeal established by law.²⁰⁸ The juvenile accused/convict should be provided with information in a form which is understandable to him/her.²⁰⁹ Most of the juveniles interviewed in the facility N8 were not informed about their rights and the complaint mechanism. It should also be noted that the written list of juvenile rights is virtually indistinguishable from the written list for juvenile prisoners.

In the opinion of the Public Defender, it is important to provide the juvenile with written information on the rights-responsibilities and the mechanism of the complaint in a structured, understandable (simple) language when entering the institution. It is important to increase the role of the social worker in order

²⁰³See the 2016 report of the National Preventive Mechanism. Available at the following address: <https://ombudsman.ge/res/docs/2019040513214458561.pdf>, p.195 -199, [Last visited: 20.01.2021].

²⁰⁴ Order №385 of the Minister of Justice of Georgia of February 22, 2019, approving the Strategy for the Development of Penitentiary and Crime Prevention Systems and the Action Plan for 2019-2020, is available at the following address: <https://www.matsne.gov.ge/ka/document/view/4490017> [Last visited: 31.01.21].

²⁰⁵ Report of the European Committee for the Prevention of Torture on the visit to Georgia on 10-21 September 2018 (CPT/Inf (2019) 16), para. 66, available in English at the following address: <https://rm.coe.int/1680945eca> [Last visited: 31.01.2021].

²⁰⁶The fruit is mainly received from relatives through parcels.

²⁰⁷See National Preventive Mechanism 2019 Report. Available at the following address: <https://ombudsman.ge/res/docs/2020033122424787329.pdf> p. 71-72, [Last visited: 20.01.2021].

²⁰⁸ Juvenile Justice Code, Article 94, Paragraph 1.

²⁰⁹ See Ibid., Article 94, paragraph 3.

for the social worker to explain in detail to the juvenile his/her rights and responsibilities, the request/complaint submission and review procedures. Also, to work with prisoners individually or in groups periodically on the topic of their rights and responsibilities, the request/complaint submission and review procedure; among them, the above information should be provided to the juvenile in the form of a brochure in a language understandable (simple) to a juvenile and posted in places accessible to the prisoner.

2.8.1.3. Security measures

During the visits carried out in 2020²¹⁰ it was established that juvenile search procedures are problematic in N8 and N11 facilities. In addition, in the facility N8 safe cells are used as informal punishment for juveniles.

The European Committee for the Prevention of Torture emphasizes that a full search should be carried out only on the basis of a specific and well-founded doubt, in an appropriate environment and in conditions of respect for dignity.²¹¹ During the full inspection, different parts of the body should not be exposed at the same time.²¹² A full search of juveniles in the facilities N8 and N11 is not based on an individual assessment of the immediate safety risk. In addition, during the placement of juveniles in the establishments N8 and N11, a full personal search is carried out with full nudity and bending, which is contrary to international standards and may amount to ill-treatment.

In the necessity of a full search, the inmate should be offered a scan as an alternative to a full personal search. The N11 facility does not have a scanner installed and the facility regulations do not provide for the use of a scanner.²¹³ Even though in the facility N8 operates a scanner unit, it is used in conjunction with a full body inspection and not as an alternative to a full search, which is unacceptable.

The Public Defender calls on the Special Penitentiary Service of the Ministry of Justice to immediately eliminate the existing practice of complete nudity and bending. A full body search should be carried out only on the basis of a specific and substantiated doubt, under conditions of respect for human dignity and respect and in accordance with clearly established procedures. The use of a scanner as an alternative to a full scan should be provided²¹⁴ further, other additional methods of search should not be used if the scanner is used as an alternative method.

²¹⁰ The visit to the facility N11 took place on October 26 and to the facility N8 on August 4-7, 2020.

²¹¹ Council of Europe: Committee for the Prevention of Torture, report to the Government of Bulgaria on the visit to Bulgaria by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CMT) from 24 March to 3 April 2014, published on 29 January 2015, available in English to the following address: <http://hudoc.cpt.coe.int/eng?i=p-bgr-20140324-en-23> [last visited: 30.01.2021].

²¹² Council of Europe: Committee for the Prevention of Torture, report to the Czech Government on the visit to the Czech Republic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 1 April 2014, para. 85, published on 31 March, 2015, available in English at the following address: <http://hudoc.cpt.coe.int/eng?i=p-cze-20140401-en-30> [last visited: 30.01.2021].

²¹³ The order N118 of the Minister of Corrections and Probation of Georgia of 27 August 2015 on the approval of the Statute of the Penitentiary Institution N11 of the Ministry of Corrections and Probation of Georgia.

²¹⁴ See in the same report 2.3.2.4. Subsection, The practice of full search of prisoners as ill-treatment.

The European Committee for the Prevention of Torture states that any form of isolation of juveniles endangers their physical and/or mental health and should therefore only be used as the last resort lasting no more than a few hours.²¹⁵

In the facility N8, the practice of placement of juveniles in the de-escalating room and in a safe cell, which serves as an informal punishment, is still a problem. In particular, from January 1 to August 7, 2020, 10 cases of juvenile placement in a safe cell were registered in the facility N8. In 1 of these 10 cases, the juvenile was taken out of the safe cell after every 24 hours during six days, and in most cases, returned only after a few minutes. During the same period, one juvenile who had attempted suicide was placed in the de-escalation room for 3 days.

According to the administration of the juvenile department of the same institution, there are no disciplinary proceedings against juveniles, as disciplinary proceedings against juveniles are relatively complicated and the law stipulates certain requirements, the fulfillment of which is associated with practical difficulties.²¹⁶ To avoid these difficulties, disciplinary sanctions are not applied to juvenile prisoners.²¹⁷ In case of disciplinary misconduct, they try to solve the problem by talking to the juvenile. And if the juvenile fails to calm down, then they may be placed in a safe cell.

It should be noted that the safe cells are partially in a ground, humidity, unsatisfactory natural and artificial lighting and ventilation is observed in the safe cells and de-escalation rooms. In addition, during their stay in such cells, juveniles are not provided with personal hygiene items and the possibility to change the clothes as well as the right to use such things as: shop, phone call, personal correspondence and visits.²¹⁸ The abovementioned contradicts the principle of protection of the best interests of a juvenile, the objectives of the Juvenile Justice Code and the spirit of the Convention on the Rights of the Child. The Public Defender considers that it is inadmissible to place a juvenile in a safe cell and in a de-escalation room and this may amount to inhuman and degrading treatment. The Public Defender believes that instead of safe cells there should be a specially arranged soothing room, which should be used only as the last resort and its duration should not exceed a few hours. During this time, juveniles should be provided with appropriate human communication and multidisciplinary work should be done to plan future activities necessary to calm them, to assess their risks and needs, and to correct their behavior.

²¹⁵ Excerpt from the 18th Unified Report of the European Committee for the Prevention of Torture (CPT/Inf (2008) 25) paragraph: 26. Available at: <https://rm.coe.int/1680696a85> [Last visited: 22.01.2021].

²¹⁶ According to Article 93 (3) of the Juvenile Justice Code, a juvenile defendant/convict has the right to have a lawyer during the disciplinary proceedings. Prior to the oral hearing, the juvenile defendant/convict shall be explained the right to summon a lawyer, which shall be exercised within 6 hours of the explanation with the appropriate consent. If the lawyer does not appear within the established time, the juvenile accused/convict will be appointed a public lawyer.

²¹⁷ From January 1 to August 7, 2020, no juvenile has been subject to the disciplinary sanctions.

²¹⁸ During the visit to the facility N8, the juvenile in the safe cell did not have personal hygiene items and clothes to change.

2.8.2. Foreign nationals and persons without citizenship

As of December 1, 2020, 584 foreign nationals and stateless prisoners were in penitentiary establishments,²¹⁹ which accounted for 6.3% of the total number of prisoners.²²⁰ Unfortunately, the monitoring results show that no positive measures have been taken to ensure that they serve sentences in a dignified, equal conditions.²²¹ The stay of foreign prisoners in penitentiary establishments is extremely difficult and differs significantly from the conditions of imprisonment of Georgian citizens.

Upon admission to a penitentiary facility, foreign prisoners find themselves in a particularly vulnerable position. Placing a person in a foreign penitentiary institution in itself increases the fear for his/her physical safety, especially since the influences of informal ruling and the tense environment are easily noticeable in penitentiary establishments. Those who are in a precarious situation due to the language barrier do not have information about their rights and responsibilities and do not know who to turn to if they need help. They may not even be able to connect with family members for days and weeks, leaving them without any financial or emotional support. They can not afford to buy the necessary items and may not even have changing or warm clothing. Those placed in the cell can not talk to their roommates, do not see a psychologist, can not receive information on television, which further aggravates their emotional state.

In order to alleviate the difficult conditions of foreign prisoners, it is important to take into account their linguistic and cultural peculiarities as much as possible when they are placed in cells. During the interview, a number of prisoners expressed a desire to be placed in cells with citizens of their own country. In addition to the language barrier, placement with Georgians and third-country nationals in closed-type establishments, where prisoners are held in a cell for 23 hours, becomes also a provocative cause of conflict.²²² The prisoners, who were already in the cell with the citizens of their country, said that they had to fight hard for that. Some of them even went on a hunger strike to be moved to another cell by the administration. There are cases in the N8 facility when Georgian prisoners make foreign prisoners to make noise to be transferred to another cell by the administration. The reason for this is that foreign prisoners who do not have the financial means can not buy the necessary items, sweets or cigarettes in the store of the institution and Georgian prisoners have to share those with them. Foreign prisoners in the facility N8 claimed to have changed a number of cells. Frequent cell changes may even amount to ill-treatment, given that prisoners are placed in internally classified cells before being transferred from cell

²¹⁹ At the beginning of 2020, there were 728 foreign prisoners in penitentiary establishments, however, from March 1 to August 20, 2020, 125 foreign convicts left the Georgian penitentiary system and continued their sentences in the country of origin. Summary report on the activities of the Special Penitentiary Service 2020. P.16 <https://bit.ly/3oBGnNX> [Last visited: 02.02.2021].

²²⁰ Annex to the November 2020 Unified Report on Criminal Statistics of the National Statistics Office of Georgia. P. 116 available at: <https://bit.ly/3oHUBwK> [Last visited: 15.01.2021].

²²¹ European Prison Rules 37.1.

²²² Prisoners in the same cell with Georgian prisoners in the N8 penitentiary establishment indicate the use of telephone and debit cards against their will, the mandatory daily regime established by Georgian prisoners, the so-called obligation to participate in "communal" and also the fact that Georgian prisoners would not allow them to watch foreign language TV channels.

to cell.²²³ In new cells, foreign prisoners have to deal with new stresses and problems that are not related to the inevitable suffering of imprisonment, and in combination with other factors of imprisonment conditions, equate to ill-treatment.²²⁴

The difficult life of foreign prisoners is complicated by the problems caused by the language barrier. Employees of penitentiary institutions, except for few, do not speak international languages. Prisoners do not have the opportunity to master the Georgian language. The situation has been complicated by the measures taken to prevent coronavirus, as a result of which language courses have been suspended and the inmates are not able to receive assistance from social worker in communicating with various agencies. Due to their lack of language skills and lack of translators in the facility, foreign prisoners are unable to contact psychologists and communication with medical staff is also difficult. The language barrier also has a negative impact on the relationship with the staff of the institution.²²⁵ Prisoners believe that the majority of staff and the administration of the establishments do not consider them as equal to the Georgian prisoners and treat them in a discriminatory manner. In some cases, inmates also reported the use of hate speech by the personnel. Discriminatory treatment also takes place while receiving medical care. According to foreign prisoners, Georgian prisoners are able to meet with a doctor faster. There is also a discriminatory approach in terms of nutrition, which does not take into account the cultural and religious nutritional characteristics of prisoners, while the diet of penitentiary institutions is completely adjusted to a calendar different from their religions.

The biggest problem for foreign is keeping contact with outside world²²⁶ and their families. In addition to the fact that prisoners practically can not exercise their right to be visited because of family members living abroad, even telephone communication is associated with a number of obstacles. In the penitentiary establishment N8, the practice is still in force that if the day of the phone call does not coincide with the day of the international call, the prisoners will not be able to call abroad.²²⁷ Added to this the lack of telephones, this may result in the day of the prisoner's cell queue end without the prisoner being able to make a call.²²⁸ During the interview, the prisoners mentioned that a month could pass without them being able to call their family members. In addition, making calls abroad is associated with financial costs

²²³ According to the regulations of the establishments, the purpose of the internal classification cells is to observe and study the newly admitted prisoner in the institution in order to place him/her in the appropriate special cell. Conditions in cells of internal classification are a source of discomfort for prisoners, as living and hygienic conditions are much worse than in residential cells.

²²⁴ *mutatis mutandis*, Judgment of the European Court of Human Rights *Khider v. France* app no. 56054/12, para.111. In that decision, the court took into account the circumstances that the frequent change of environment caused fear in the prisoner and forced him to adapt, which caused him additional stress.

²²⁵ It should also be noted that the foreign detainees in the facility N8 positively described one of the security guards who speaks English and assists the detainees.

²²⁶ 2 English-language TV channels were added during the monitoring visit to the facility N8 on 3-4 December 2020, which is welcome, although interviews with inmates revealed that the facility library had a very limited supply of foreign language books.

²²⁷ For international calls, three days a week are designated in the facility N8.

²²⁸ "Monitoring Report of the N8 Penitentiary Establishment" prepared by the Human Rights Center and International Prison Reform in accordance with the Rules of Cooperation with Non-Governmental Organizations of the Public Defender's Office, p.58. See the link <https://ombudsman.ge/res/docs/2021021915043953128.pdf> [Last visited: 25.02.2021].

for prisoners, especially since some prisoners do not receive assistance from family members. Due to the geographical distance and high postal rates, foreign prisoners very rarely send/receive letters and are deprived of the opportunity to receive parcels. In view of all the abovementioned, the Public Defender reiterates the need to regulate video meetings in the legislation in such a way that making a video call will no longer require a member of a prisoner's family to visit to any territorial unit of the National Agency for Non-custodial Sentence and Probation.²²⁹

Living in isolation from the outside world as well as from other inmates of the establishment for years, the problems caused by the language barrier and the generally depressing environment in penitentiary facilities cause extremely severe stress and helplessness in foreign prisoners. Their emotional state of mind is so severe that many of them tremble and cry while talking to members of a special preventive group. When interviewed by members of a special preventive group, foreign prisoners often mention that they miss talking to people and that it is a rare occasion for them to be able to talk to another person normally and share emotions. Therefore, it is important that effective measures are taken in the penitentiary system to alleviate the difficult living conditions of foreign prisoners.

Living in isolation from the outside world as well as from other inmates of the establishment for years, the problems caused by the language barrier and the generally depressing environment in penitentiary institutions cause extremely severe stress and helplessness in foreign prisoners. Foreign prisoners do not feel safe, say they feel oppressed by Georgian prisoners, do not feel supported by the administration, and feel that they have to serve their sentences in discriminatory conditions. For safety reasons, they often have to change the cell as well, which taken together may qualify as ill-treatment.

2.8.3. Convicts sentenced to life imprisonment

Deprivation of liberty without the hope of regaining it again is incompatible with human dignity and is contrary to Article 3 of the European Convention on Human Rights²³⁰. Life imprisonment is a sentence of indefinite duration imposed by a court directly for the commission of a crime and requires imprisonment of the offender until the end of his or her natural life or release, depending on the mechanisms of release and the rules on reduction of punishment in the country.²³¹ Georgian legislation provides for the revision,²³² amnesty²³³ and pardon²³⁴ by the President of persons sentenced to life imprisonment.

The minimum period that a convict must spend in a facility prior to the conditional release varies from country to country. In Austria, Belgium, Germany and Switzerland, life prisoners can be granted early

²²⁹ Imprisonment Code, Article 17¹ (3).

²³⁰ *Vinter and others v. the United Kingdom*, available at the following address: <https://hudoc.echr.coe.int/fre?i=001-122664> [Last visited: 10.01.21].

²³¹ *Ibid.*

²³² Criminal Code, Article 72¹ and Article 73 (7).

²³³ *Ibid.* Article 77.

²³⁴ *Ibid.* Article 78.

conditional release after 15 years of serving their sentence, which is considered a good practice.²³⁵ In Georgia, a person sentenced to life imprisonment can apply to the court for an early conditional release after s/he has actually served 20 years, and after 15 years for a replacement of life imprisonment with the house arrest or the community service. The Public Defender proposes to the Parliament of Georgia to reduce the term of appeal to a court for an early conditional release for a convicted person sentenced to life imprisonment through a legislative change.

For those sentenced to life imprisonment, with the hope of returning to society, it is extremely important to develop a release plan, which should be determined as soon as the verdict is issued and reviewed regularly. An individual plan helps the prisoner to set a goal, which motivates him/her to succeed. Along with creating the prospect of release, it is extremely important to establish a regime tailored to the individual needs of those sentenced to life imprisonment.²³⁶

Against the background of the pandemic, rehabilitation activities in penitentiary institutions were extremely limited. The poor situation in terms of rehabilitation also affected the establishments where convicts sentenced to life imprisonment are placed. Even though on March 12, 2020 the order of the Minister of Justice approved the rules for risk and needs assessment and individual plan development (case management),²³⁷ the introduction of which was envisaged in the cases of persons sentenced to life imprisonment, however, its implementation was suspended due to the extraordinary conditions introduced in the penitentiary establishments. Under the pandemic, social workers and psychologists were restricted from entering the facility and individual plans were not drawn up remotely and implemented. In the absence of individual sentence plans for life prisoners, they do not have the practical capacity to work on the challenges they face.

A regime tailored to individual needs is also not introduced for persons subject to life imprisonment. Under Georgian legislation persons sentenced to life imprisonment are considered as of increased risk and are placed in a closed-type facility, where their opportunities to communicate and socialize with the outside world are severely limited.²³⁸ The legislation also prohibits them from interacting with other convicts (except for the inmates of the same cell).²³⁹ Prolonged placement in the closed-type establishment, less interaction with family and friends, and unpreparedness for release significantly impair the ability of persons imprisoned for life to reintegrate into society. It is important that life prisoners are allowed to more short-term and longer-term visits to help maintain a strong bond with family members

²³⁵ Council of Europe European Committee against Torture and Inhuman or Degrading Treatment or Punishment (CPT), Status of Imprisoned Persons, excerpt from the 25th Unified Report [CPT/Inf (2016) 10], April 2016, available at the following address: <https://rm.coe.int/16809534f2> [Last visited: 11.01.21].

²³⁶ Ibid. Para: 70.

²³⁷ Rule on Risk Assessment and Needs for Resocialization and Rehabilitation of Adult Convicts and Former Prisoners, as well as Preparation, Implementation and Monitoring of an Individual Plan (Case Management Rule) approved by the Order N502 of the Minister of Justice of Georgia on March 12, 2020.

²³⁸ Imprisonment Code, Article 64.

²³⁹ According to the Imprisonment Code, Article 64(1) *შესაბამისად*, a person sentenced to life imprisonment usually serves his sentence in a closed-type facility, where, in accordance with Article 12 of the Imprisonment Code, convicts are placed in special cells.

and to rehabilitate.²⁴⁰ The Public Defender has been issuing a recommendation for years on the increase of the number of short and long visits for life prisoners.

It is noteworthy that by 2020, several persons sentenced to life imprisonment were transferred from closed-type detention facilities to semi-open-type facilities. This innovation is very important for the realization of the principles of inadmissibility of segregation and for realization of progression principle²⁴¹. However, it should be noted that the criteria and procedures for transfer to a relatively low-risk facility were unknown to most of interviewed life prisoners. It is also noteworthy that some of them refrain from moving to a semi-open facility due to the impending conflict with members of the criminal subculture.

The ombudsman considers it important that the penitentiary system has a unified and transparent system of risk and needs assessment and individual sentence planning, the implementation of which should enable the progression and improvement of the legal conditions. In addition, it is important that the successful Implementation of an individual plan be integrated with the possibilities of sentence revision and release. It is unfortunate that the penitentiary system has not for years introduced a unified system for assessing the risks of convicts and the system of sentencing, which would report on the progress of convicts and be submitted to the court to assist the court in making decisions. At the same time, the convicts were not aware of the criteria that actually determined the possibility of release.

The Public Defender welcomes the amendments of January 11, 2021 to the Criminal Code and the Criminal Procedure Code,²⁴² which determined the successful completion of the program of preparation for release by life prisoners adopted by the Minister of Justice of Georgia as one of the necessary conditions for the court decision on the early release of a convicted person subject to life imprisonment on change of the sentence. The ombudsman hopes that these changes will help establish a unified system for assessing risks and needs and individual sentence planning.

Amnesty is a one-time, temporary and special measure of revision of the sentence, on the basis of which persons accused and convicted of committing certain crimes under the Criminal Code of Georgia are released from criminal liability and punishment, also, the imposed sentence is reduced or changed to a less strict sentence for persons convicted of certain crimes.²⁴³ It is unfortunate that the large-scale amnesty act issued in 2012 did not apply to persons sentenced to life imprisonment because their term of imprisonment was not specified.

On January 11, 2020 the Parliament of Georgia adopted an amnesty act, which mainly covered less serious crimes. The Amnesty Act is an act of humanity and is also important for unloading the penitentiary system.

²⁴⁰ Visit of the European Committee for the Prevention of Torture in Georgia, (2015) Available at: <http://https://www.coe.int/en/web/cpt/home> [last visited: 12.01.2021].

²⁴¹Council of Europe European Committee against Torture and Inhuman or Degrading Treatment or Punishment (CPT), Status of Imprisoned Persons, excerpt from the 25th Unified Report [CPT/Inf (2016) 10], April 2016, available at: <https://rm.coe.int/16809534f2> [Last visited: 11.01.21].

²⁴² Criminal Code of Georgia, Article 721 (1); Article 73 (7).

²⁴³Law on Amnesty of 11 January 2021.

The amnesty act also applied to those sentenced to life imprisonment who have been convicted for drug offenses. The amnesty replaced their life sentence with 20 years in prison, which is welcome.

One of the mechanisms for release, reducing the sentence or changing the sentence to a less strict sentence is pardon, which is the exclusive power granted to the President of Georgia by the Constitution of Georgia.²⁴⁴ Pardon is usually used as an exception. The exercise of pardon by the President of Georgia is based on the principle of humanism, as well as the state interest. On November 26, 2019 the President of Georgia approved a new rule of pardon by Decree N556, which increased the term of serving a sentence by a convicted person sentenced to life imprisonment from 15 to 20 years, which further increased the minimum period that a life prisoner must spend in a prison before exercising his or her right to be pardoned by the President for the first time. It should be noted that the existing criminal policy in the country is not aimed at the use of non-custodial measures, and the system of parole works with shortcomings. Accordingly, in these circumstances, the Public Defender considers it important that the term of pardon of persons deprived of liberty for life be set again at 15 years and that additional opportunities for the release of prisoners be created.

Recommendations:

Violence

To the Minister of Justice of Georgia

- In 2021, all establishments should gradually train security and legal regime staff on issues such as conflict prevention, mediation, and the principles of ethics for penitentiary staff.
- All measures need to be taken to protect prisoners who are victims of violence, including by transferring them to other facilities or avoiding contact with inmates of criminal subcultures.

Placing prisoners in de-escalation wards and solitary (safe) cells as ill-treatment

To the Minister of Justice of Georgia

- Amend the penitentiary regulations to determine that placement of a prisoner in a de-escalation room and solitary confinement cell can be considered only as a last resort and that the use of this measure be substantiated to justify placement in a de-escalation room and solitary confinement cell. Also, the regulations should determine that before using the de-escalation room and the solitary (safe) cell, the staff of the institution should use other, relatively less restrictive means, such as direct supervision by the staff and electronic surveillance.
- When placing a prisoner in the de-escalation room and solitary confinement, ensure joint, multidisciplinary work of psychologist, psychiatrist, social worker, doctor and other staff of the facility for risk reduction/elimination
- Create a safe environment in de-escalation rooms and solitary (safe) cells, including soft walls and floors

²⁴⁴ Constitution of Georgia, Article 52, Paragraph 1, Subparagraph "f".

- 24 hours should be determined as the maximum period of placement in the de-escalation room and if after 24 hours the grounds for placement in the de-escalation room or solitary (safe) cell are not eliminated, the prisoner should be immediately transferred to the psychiatric ward of N18 medical institution or other civil psychiatric establishment for adequate psychiatric treatment
- The Monitoring Department of the Special Penitentiary Service through a systematic inspection should:
 - In order to prevent ill-treatment of prisoners ensure the study and respond to the practice of long-term placement of detainees with mental health problems in de-escalation rooms and solitary confinement cells, use of handcuffs and non-delivery of psychiatric care
 - Ensure the study of the practice of transferring prisoners to the de-escalation rooms and solitary confinement cells in penitentiary institutions without a legal basis, and follow-up response, in order to prevent ill-treatment of prisoners

Prolonged isolation of prisoners as ill-treatment

To the Minister of Justice of Georgia

- In 2021, by amending the regulations of penitentiary institutions, determine the maximum term of isolation of prisoners, as well as the obligation to revise the measure of isolation 14 days after the application of this measure and thereafter, at the same interval.

Practice of full body search of prisoners as ill-treatment

To the Minister of Justice of Georgia

- The obligation to observe the principles of individual risk assessment and compliance with the principles of proportionality during the full Body search shall be determined by the issuance of a new normative act or by amendment to the regulations of penitentiary institutions; the obligation to offer alternative methods (scanners) for full body search of the prisoner should be determined; the requirement to expose different parts of a person's body at the same time in complete nudity should be prohibited.

Overcrowding of penitentiary institutions

To the Minister of Justice of Georgia

- Include in the plan on the dealing with the problem of overcrowding in penitentiary institutions a commitment to increase the number of regime staff working in the wings of inmates' housing units so that at least one staff member responsible for maintaining order and security comes to 15 inmates
- In 2021, ensure the separation of defendants from convicts in the Establishments N2 and N8, at least in separate cells

- Linguistic, religious and cultural peculiarities should be taken into account when placing prisoners in cells; the needs of the representatives of different religious denominations should be taken into account when preparing food

Ruling of penitentiary institutions with informal methods

To the Minister of Justice of Georgia

- In order to tackle the criminal subculture and informal ruling in penitentiary institutions, ensure the development of a strategy against criminal subculture and submit a prepared document to the Office of the Public Defender of Georgia to present its views.

Working and living conditions of penitentiary staff against the background of the pandemic

To the Minister of Justice of Georgia

- Conduct professional training for all employees of penitentiary institutions
- Remunerate overtime work to all employees of penitentiary institutions
- Let all employees of the penitentiary institution to make full use of the leave
- Provide appropriate technical capabilities for independent and smooth communication with family members and relatives of barracks based staff

Identifying and documenting ill-treatment

To the Government of Georgia

The Government of Georgia should develop a plan aiming at the implementation of the guidelines of the forensic medical examination established by the Istanbul Protocol and ensure its timely implementation.

To the Minister of Justice of Georgia

- Conduct injury documentation and photo-taking training in 2021 for all the doctors of the penitentiary *institutions* who document the injuries according to the rules on recording injuries of alleged victims of torture and other inhuman or degrading treatment in the penitentiary institutions approved by the order N633 of the Minister of Justice of Georgia.
- For effective detection and quality documentation of facts of torture and ill-treatment, develop guidelines outlining the criteria for selecting suspicious injuries when documenting in accordance with the Injury Record rule.

Epidemiological conditions

To the Minister of Justice of Georgia

- Ensure in cooperation with the National Center for Disease Control and Public Health that the risk of infection spreading within the facilities and the needs for elimination these risks are assessed; Also develop a COVID-19 prevention and control plan in penitentiary establishments
- Apply the mechanisms provided by the Criminal Code and the Code of Criminal Procedure for persons with chronic diseases and the elderly who do not pose a real threat to public safety, to ensure the release from serving a sentence of a convicted person due to old age; In case this is not possible, from an epidemiological point of view, prisoners of special risk should be placed in safe conditions under special medical supervision.
- Conduct training of both medical and non-medical staff of the establishments on infection control (with a special focus on COVID-19), including the use of personal protective equipment
- Provide the necessary personal hygiene items at the expense of the state for all prisoners and effectively monitor their use
- Ensure in the facilities that the detainees with symptoms of respiratory disease used the face masks in the establishments
- Provide prisoners with access to information on preventive measures against the spread of the coronavirus, such as posting information posters, handing out information leaflets to prisoners and showing videos
- Provide periodic testing of prisoners on Covid-19
- Provide vaccination of penitentiary staff and prisoners to COVID-19

Health care

To the Minister of Justice of Georgia

- Amend the regulations of penitentiary facilities and stipulate that the meeting of medical staff with prisoners is confidential, and in case of the presence of a third party, the reason for the presence should be reasoned in writing
- Fill the vacancies in the medical unit as soon as possible
- Ensure that the number of nurses in the establishments is at least doubled
- Given the epidemiological situation in the country, observing all measures of infection control, ensure the resumption of visits of medical specialists in the establishments
- Ensure the updating of the planned medical referral, taking into account the current epidemiological situation in the country, observing all measures of infection control
- Provide professional training and study events for the medical staff of the establishments within the framework of continuous medical education
- Introduce an electronic information system for medical staff and the whole penitentiary system to eliminate deficiencies related to the production of medical documentation.
- Develop a strategy for attracting mental health service providers
- Introduce periodic mental health screening of prisoners in penitentiary establishments

- Due to the peculiarities of penitentiary institutions, the composition of the psychiatric multidisciplinary team, the functions of each team member and the procedure of organizing and delivering psychiatric care should be regulated at the normative level.
- The multidisciplinary team should assess the needs of patients with mental health problems who do not need inpatient treatment, develop an individual plan of bio-psycho-social assistance based on the identified needs and provide appropriate assistance.

Contact with the outside world

Proposal to the Parliament of Georgia

- Amend Article 17 paragraph 11 and 12 of the Imprisonment Code to make it possible to replace a short visits with a video appointment
 - Amend Article 172 paragraph 9 of the Imprisonment Code to make it possible to replace long visits with telephone calls and video Appointments
 - Amend Article 173 of the Imprisonment Code to make it possible to replace family visits with telephone calls and video appointments.
 - Amend the Imprisonment Code and increase the number of visits and telephone calls for inmates in special risk and closed-type establishments.
 - Amend the Imprisonment Code and allow prisoners placed in special risk facilities to use video calls
- Amend the Imprisonment Code and remove the restriction of outside world contact form disciplinary sanctions and security measures, unless such contact is linked to a crime.

To the Minister of Justice of Georgia

- Revise the current rules of video calling to adapt it to the existing challenges to ensure more active and frequent use of video calling, and start working on creation of a secure application that simplifies video calling
- In 2021, N2, N3, N6, N10, N12 and N18 penitentiary institutions should be equipped with the necessary infrastructure for video meeting
- In 2021, during the period of extraordinary conditions related to the pandemic, take additional measures to compensate for the restriction of the rights of prisoners to contact with the outside world
- Take appropriate measures to ensure that complaints in the penitentiary institutions can be sent confidentially, including placing confidential complaint envelopes in such a way that the receipt of the envelope does not dependent on the staff of the establishment and the recipient of the envelope is not identified. In addition, all prisoners should have free access to material and technical means (paper, pen, and envelope) and be allowed to have a certain number of envelopes in their cell.

- The General Inspectorate of the Ministry of Justice should detect and investigate cases of violation of the rule of sending complaints confidentially, repressive acts carried out against prisoners for sending complaints in penitentiary institutions N2, N3, N6 and N8 through systematic inspection and appropriate response and ensure punishment of the responsible individuals

Physical environment

Proposal to the Parliament of Georgia:

- In 2021, the obligation to provide the accused with a minimum living space of 4 sq.m. should be stipulated in the Imprisonment Code

Recommendations to the Minister of Justice:

- The Office of the Public Defender be given the opportunity to get acquainted with the concept of small institutions prepared by the Ministry and to present their opinions
- Abolish the so-called "Barak" type living spaces in N17 establishment
- 4 sq.m. living space be provided for each prisoner in penitentiary institutions
- Ensure that the deficiencies connected with the physical environment identified in the monitoring reports of the National Prevention Mechanism on the penitentiary institutions are monitored and respond accordingly

Daily Schedule and Rehabilitation

To the Minister of Justice:

- Immediately ensure provision of alternative opportunities for rehabilitation activities in extraordinary conditions in all penitentiary institutions.
- Allow presence of social workers and psychologists in penitentiary institutions in accordance with the rules of infection control, in order to ensure the introduction of new and diverse rehabilitation activities in all penitentiary institutions with the assistance/support of the relevant services of the establishment. Increase the opportunities for convicts to be involved in rehabilitation activities
- Inmates in closed-type and special risk facilities be allowed to spend more than 1 hour in the fresh air in 2021
- Allow prisoners in the establishments N2 and N8 to exercise their right to walk at the time specified in the Schedule
- Balance the number of social workers and psychologists in penitentiary establishments with the number of prisoners in 2021 by increasing the number of social workers and psychologists
- Provide training during 2021 for social workers who do not have a bachelor's, master's / equal to master's, or doctoral degree in social work

To motivate prisoners to engage in various rehabilitation activities, start working in 2021 on the introduction of a mechanism that will have a direct impact on reducing the remaining sentence or changing the type of sentence.

Juveniles

To the Minister of Justice of Georgia:

- Ensure implementation of the rehabilitation activities tailored to the individual needs of juveniles
- Construct a separate part for juvenile defendants in N11 juvenile rehabilitation facility
- Amendment Article 4 paragraph 4 of the Joint Order of the Minister of Justice of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia (N388 – N01-18/N), according to which juveniles will be provided with four healthy meals, of which one should be a three-component lunch, as well as provide fresh vegetables and fruits to the juveniles' food menu
- Provide juveniles with understandable (simple) language information about their rights and responsibilities and the complaint mechanism; increase the role of the social worker, so that after being admitted to the institution, the social worker explains in detail to the juvenile their rights and responsibilities, the request/complaint submission and review procedures; further, work individually or in groups with prisoners on a regular basis on the subject of their rights and responsibilities, the request/complaint submission and review procedure; among them, the above-mentioned information should be provided to the juvenile in the form of a brochure in a language understandable (simple) for the juvenile and posted in places accessible to the them.
- The Investigative Body of the Special Penitentiary Service should study the practice of placement of juveniles in the de-escalation room and in a safe cell in the N8 facility and full body check of juveniles in N8 and N11 penitentiary institutions, and inform the Public Defender of the results.
- Take all measures to create specially designed soothing rooms instead of safe cells, which should be used only as a last measure and its duration should not exceed a few hours, during which time juveniles should be provided with proper human communication and multidisciplinary work should be carried out to calm them down in order to plan activities necessary for the risk and needs assessment and for correction of behavior

Foreigners

Proposal to the Parliament of Georgia

- Amend the Imprisonment Code and allow foreign convicts whose families do not have access to short and long visits due to living abroad to have video Meetings

To the Minister of Justice of Georgia:

- Study the reasons why prisoners' linguistic, religious and cultural characteristics cannot be taken into account when they are placed in cells, and develop a plan to address this problem.

- All foreign language prisoners should be provided with the services of an interpreter, if necessary; In particular, provide information about services and regulations in the establishments in a language they understand
- The Monitoring Service should study the practice of obstructing the exercise of the right of foreign prisoners to call abroad in Establishment N8 and take measures to ensure that foreign prisoners enjoy the right to telephone conversations in accordance with the rules established by law.
- Take all measures to enable foreign prisoners, as well as Georgian prisoners whose families live outside the country, to make international calls at a reduced and more affordable price.
- Take all measures to ensure that foreign prisoners, as well as Georgian citizens whose families live abroad, are provided with free international calls during the pandemic period.
- During the period of extraordinary conditions related to the pandemic, ensure the introduction of distance learning courses of Georgian language for foreign prisoners as well as for those citizens of Georgia who do not speak the state language.

Convicts sentenced to life imprisonment

Proposal to the Parliament of Georgia:

- Amend the Code of Imprisonment to increase the number of short and long visits for convicts serving life sentences.
- Amend the Criminal Code and the Code of Criminal Procedure to reduce the time cap set for appealing to a court on conditional early release for a convict sentenced to life imprisonment.

To the President of Georgia

- Amend the Decree of the President of Georgia №556 of November 26, 2019 on the Approval of the Rule of Pardon and set the term of the right of application of pardon at 15 years for persons sentenced to the life imprisonment

3. Ministry of Internal Affairs

3.1. Monitoring methodology

This is a 2020 report on the monitoring of temporary placement isolators, police facilities and the Center for Temporary Placement of the Migration Department of the Ministry of Internal Affairs. Against the background of the epidemic caused by the new coronavirus in Georgia, in 2020 the National Preventive Mechanism had to conduct monitoring visits under extraordinary conditions. Prior to the monitoring visits, the Special Preventive Group adapted the working methodology to the existing challenges. The rules for conducting a safe monitoring visit in a pandemic were defined and members were instructed accordingly. Personal protective equipment was purchased and members were explained the rules of their use. The purpose of these measures is to minimize the risk of new coronavirus spreading during the monitoring visit, and to protect staff and other persons present in the establishments.²⁴⁵

The assessments presented in this report are based on an analysis of the relevant national legislation and international legal acts as well as voluminous information obtained by the special preventive group. The working methodology of the special preventive group assumes obtaining information from different sources: interviews with detainees,²⁴⁶ isolator staff²⁴⁷, doctors²⁴⁸ and lawyers²⁴⁹; analysis of information extracted through a pre-designed questionnaire using a statistical program (SPSS);²⁵⁰ statistical information provided by the Administration and Temporary Detention Isolator of the Ministry of Internal Affairs of Georgia and written and verbal communication with the Public Defender's Office; online questionnaire completed by lawyers;²⁵¹ information provided by non-governmental organizations; data available in the Office of the Public Defender; information officially published by the Ministry of Internal Affairs; documents produced in the facilities, including medical information. The monitoring also included monitoring of the situation and the working process in the police facilities and temporary detention isolators.

During 2020, the Special Preventive Group conducted monitoring visits to 62 police units and departments, as well as to 27 temporary detention isolators. The monitoring visit was carried out in 9 regions, namely Kakheti; Imereti, Racha-Lechkhumi and Kvemo Svaneti; Kvemo Kartli; Shida Kartli;

²⁴⁵In the wake of the aggravation of the epidemiological situation in the country, the Public Defender took additional measures to minimize the risk and members of the special preventive group underwent PCR testing before entering the facilities.

²⁴⁶ Interviews were conducted with 58 detainees.

²⁴⁷ Interviews were conducted with 26 staff members of the Temporary Detention Isolator.

²⁴⁸ Interviews were conducted with 16 doctors employed in the temporary placement isolator

²⁴⁹ Interviews were conducted with 5 focus groups of lawyers (Kakheti, Kvemo Kartli, Samegrelo, Guria and Adjara).

²⁵⁰ 463 questionnaires were processed.

²⁵¹ The Office of the Public Defender had fruitful communication with the Georgian Bar Association. In particular, with the technical assistance of the Georgian Bar Association, a special online survey questionnaire was sent to the Bar Association members to complete. The Public Defender of Georgia thanks the Georgian Bar Association for its cooperation.

Mtskheta-Mtianeti; Samtskhe-Javakheti; Samegrelo and Guria regions as well as in the Autonomous Republic of Adjara.

The facts and circumstances stated in the report are presented in full compliance with the principle of confidentiality. The documents obtained within the monitoring, as well as the reports of the members of the monitoring group are kept in the Office of the Public Defender of Georgia.

3.2. The Status of recommendation implementation

The purpose of this subchapter is to review the recommendations issued in the 2019 report of the National Preventive Mechanism for the system of the Ministry of Internal Affairs (hereinafter - the Ministry) and the state of their implementation.²⁵² Additional information on these issues is provided in the relevant thematic subchapters. The status of implementation of the recommendations issued as a result of the emergency monitoring carried out at the Temporary Accommodation Center of the Migration Department of the Ministry of Internal Affairs is separately discussed in the subchapter.²⁵³

The Public Defender positively assesses the cooperation with the Ministry of Internal Affairs. Of particular note is the dialogue with the Migration Department's Temporary Accommodation Center and the Temporary Accommodation Department and the positive level of implementation of the recommendations. The Public Defender issued 11 recommendations to the Minister of Internal Affairs of Georgia in the special report on the monitoring carried out at the Temporary Accommodation Center, out of which 6 recommendations were implemented, 2 recommendations were partly implemented, and 3 recommendations were not implemented.

During the reporting period a working meeting was held at the initiative of the Director of the Migration Department, where the recommendations issued to the Temporary Accommodation Center were discussed in a constructive dialogue mode. At the meeting, the representatives of the Migration Department informed the representatives of the National Preventive Mechanism about the implemented recommendations as well as the activities planned for the implementation of the recommendations in the near future, which is a positive example and it is important to extend it to other areas of the Ministry.

Creating a human rights-based police system is unimaginable without proper consideration of the international standards. Despite the positive steps taken by the Ministry in various directions, citizens under police control are not provided with sufficient guarantees of protection from torture and ill-treatment. It is unfortunate that most of the systemic recommendations issued to the Ministry of Internal Affairs over the years are still unfulfilled. The Public Defender expresses readiness, through close cooperation and communication with the Ministry, to enable substantial changes in the system of the Ministry of Internal Affairs to raise human rights standards.

²⁵² The 2019 report of the National Preventive Mechanism is available at the following address: <https://www.ombudsman.ge/res/docs/2020033122424787329.pdf> [Last visited: 06.01.21].

²⁵³ Report of the Public Defender on the emergency monitoring carried out in the temporary accommodation center, the emergency monitoring visit was carried out on May 7, 2020, available at the following address: <https://www.ombudsman.ge/res/docs/2020071300060012151.pdf> [Last visited: 06.01.21].

In the 2019 report of the National Preventive Mechanism, the Public Defender of Georgia issued 12 recommendations and 1 proposal for the prevention of ill-treatment in police institutions and temporary detention facilities of the Ministry of Internal Affairs. One proposal to the Parliament of Georgia was not implemented. Out of 12 recommendations issued to the Ministry of Internal Affairs of Georgia, 3 recommendations have been partly implemented, and 9 recommendations have not been implemented.

In the 2019 report of the National Preventive Mechanism, the Public Defender prepared a single proposal addressed to the Parliament of Georgia in order to strengthen the guarantees of protection against torture and ill-treatment of the persons under administrative proceedings. The Public Defender demanded that, like the Code of Criminal Procedure, the Code of Administrative Offenses clearly define the role of a judge in preventing torture and ill-treatment, which has not been done. It should be noted that the law does not clearly define the authority of a judge to respond if a person is brought before a judge in an administrative offense case who shows signs of ill-treatment. Unfortunately, cases reviewed by the National Preventive Mechanism show that occasions of alleged ill-treatment of persons arrested for administrative offenses are still frequent.²⁵⁴ Five recommendations to the Ministry of Internal Affairs concerned the production of audio-video recordings as one of the guarantees of protection from ill-treatment.²⁵⁵ The Public Defender considers that audio-video recordings are an effective means of detecting cases of ill-treatment, obtaining neutral evidence and monitoring the realization of the rights of persons under police control in general, as well as protecting police officers from false accusations.

The Committee of Ministers of the Council of Europe, in its decision on the Tsintsabadze Group's case, called on the Georgian Government to strengthen guarantees for the prevention of torture, in particular to consider the use of audio-video recordings of detainees being in communication with law enforcement officials. Including their interview and interrogation process.²⁵⁶

The Office of the State Inspector cites among the main challenges in the 2019 report the circumstance that the Investigative Department of the Service fails to obtain significant neutral evidence, such as recordings of police cameras, video recorders of their vehicles, and video cameras placed in law enforcement offices.²⁵⁷

It is unfortunate that despite the importance of the recommendations made by the Public Defender over the years regarding the production of audio-video recordings, the Ministry refuses to implement these recommendations due to various reasons and with new positions changed from year to year. Below are the answers provided by the Ministry to the recommendations of the Public Defender.²⁵⁸

²⁵⁴Of the 2,207 cases of administratively arrested persons studied by the Special Preventive Group, 16% (355 cases) were considered suspicious (there is a suspicion of violence) and 3.4% (3,108 cases) out of 3,196 criminal cases.

²⁵⁵ For additional information see the Chapter: Audio and Video Recordings / Documentation.

²⁵⁶ Decision of the Committee of Ministers of the Council of Europe on the case of the Tsintsabadze Group, paragraph 13, available at the following address: <https://bit.ly/3a5Q0jT> [Last visited: 08.01.21].

²⁵⁷ The 2019 report of the State Inspector's Office, available at the following address: <https://cutt.ly/pkEYfSL> [Last visited: 06.01.21].

²⁵⁸ Letter MIA 8 20 02811658 received by the Public Defender's Office on 3 December, 2020 in response of the letter №03-3/11207 sent on November 11, 2020.

One of the important recommendations issued by the Public Defender concerned the installation of surveillance cameras in police stations in all places where detainees and persons invited for voluntary interview are taken to.²⁵⁹ Visits of special preventive group show that in 2020, a number of police stations still had the problem of adequately equipping indoor and outdoor perimeters with video cameras. At the same time, there was still an active use of the offices of police chiefs and their deputies for interviews with detainees or persons with different statuses in the facility, where no audio-video surveillance was carried out, which significantly increased the risk of ill-treatment.²⁶⁰

The Ministry, in a reply sent to the Public Defender's Office, notes that the scarcity of the working space infrastructure and the interrogation rooms in the institutions often do not allow for an interview with a detainee and/or a voluntarily invited person in a confidential environment. The answer states that taking into account the circumstances of the case, the work cabinets of specific individuals are used in such cases, however, it is also stated that they consider it unacceptable to conduct video surveillance in the above rooms because Georgian law does not allow permanent video surveillance of specific employees.

The Public Defender considers that the placement of video cameras in police stations, in places where a detainee, a witness or a person voluntarily invited for an interview is present including in work rooms does not violate Georgian legislation and cannot be considered as a violation of police officers' right to privacy. In particular, according to the third paragraph of Article 12 of the Law of Georgia on Personal Data Protection: "A video surveillance system may be installed in the workplace only in exceptional cases if it is necessary for the purposes of personal security and protection, protection of property, protection of confidential information and for examination/testing unless these objectives can be achieved by other means." Clearly, the safety of a detainee - protection from torture and ill-treatment - is a legitimate purpose to justify the installation of a video surveillance system in such places.

The Public Defender notes that the purpose of issuing the above-mentioned recommendation is to not allow the detainee / person invited to an interview on a voluntary basis being moved and kept in a space that is not covered by video surveillance systems. According to the available data, the staff rooms are the areas where the detainees are present despite the lack of video surveillance, which is not denied by the Ministry. Accordingly, the Public Defender proposes to the Ministry to eliminate the practice of conducting interviews in the staff rooms and instead set up separate rooms in police stations equipped with video surveillance systems, where it will be possible to interview detainees and/or volunteers. If the use of work rooms for conducting interviews continues, they should be equipped with a video surveillance system.

One of the important recommendations of the Public Defender was to gradually equip the staff of the territorial bodies with police body cameras of better capabilities, to make it mandatory and to set deadlines for keeping records. It should be noted that the Public Defender has been addressing the Ministry with the above-mentioned recommendation for years. In the information provided to us by the Ministry of Internal Affairs in 2018, it is clear that the Ministry agreed with the content of the

²⁵⁹ For more information see Chapter: Audio and Video Recordings.

²⁶⁰ For more information see Chapter: ill-treatment.

recommendation issued by the Public Defender in previous years. In particular, we were informed from the Ministry that the district inspectors-investigators and the chief district inspectors-investigators were using police body cameras while on duty, however, according to the letter, the Kakheti Police Department units did not use cameras while on duty due to the technical issues.²⁶¹ Accordingly, the Public Defender considered the above-mentioned recommendation implemented in 2018 and called on the Ministry to continue the process of gradually equipping the staff of the territorial bodies with police body cameras of improved capacities, including determining its mandatory use and deadlines for keeping records. In a letter sent in response of the 2019 report, the Ministry again acknowledged the content of the recommendation and said that work was underway to improve the technological capabilities of the territorial bodies of the Ministry of Internal Affairs, including equipping police with police body cameras, which was welcomed by the Public Defender.²⁶²

In view of all the above, the Public Defender does not understand the response sent by the Ministry in 2020, where it is stated that the Ministry considers it inappropriate to impose an obligation to carry police body cameras for the employees of the territorial bodies. Part of the reasoning of the Ministry is that the employees of the territorial bodies are constantly engaged in investigative actions, covert investigative actions and operative activities, in which the use of body cameras may harm the interests of the investigation, because there is a certain risk for both law enforcement and the public. In particular, in such a case, the record may contain information about the identities of the persons involved in the operation, details of the operation/security, methods/tactics of the operation, etc.

The Public Defender clarifies that the use of improved technical capabilities with body cameras and the obligation to videotape the communication with citizens should be imposed on the employees of territorial bodies in such cases as: interviewing persons; identification of persons; search and check; special search and check, restriction of movement of a person or vehicle or of actual possession of an item²⁶³ (Including the entire process of arresting and transporting a person).

The Public Defender requested with its recommended that a sub-law should have defined the obligation of video recording of patrol inspectors' communication with citizens and the procedure and terms of storage of video footage. The Ministry has not been agreeing with this recommendation for years. The response sent by the Ministry in 2019 stated that the Patrol Police Inspector carries out video surveillance with a body video camera in a standard situation, and due to specific circumstances there may be a need for immediate response and delay may prevent the Patrol Inspector from acting against an offence, which is why they did not consider it reasonable to define obligation of video recording by legislation.

The Public Defender explained to the Ministry that in determining the obligation of patrol inspectors to videotape communication with citizens, it is possible to indicate exceptional cases, such as an immediate

²⁶¹ Letter MIA 8 18 02975975 of December 10, 2018. According to the letter, the units of the Kakheti Police Department of the Ministry of Internal Affairs cannot use the დოკუმენტალური cameras during their official duties due to technical defects.

²⁶² In the 2019 report of the National Preventive Mechanism, p. 92, available at the following address: <https://www.ombudsman.ge/res/docs/2020033122424787329.pdf> [Last visited: 05.01.21].

²⁶³ The Law on the Police, Article 18, subparagraphs "a", "b", "d", "e", "h".

response to a crime/offense by a patrol inspector, provided that the patrol inspector has an obligation to substantiate that s/he did not have an opportunity to carry out video recording. In a response sent in 2020, the ministry presented a new reasoning. In particular, the response received from the Ministry states that the continuous video recording and the display of sensitive information on the record may lead to interference in the protected rights of persons. The response also notes that there is no uniform practice with the police on the obligation to videotape their communication with citizens, and that no law of any country stipulates the obligation to record every time the police communicates with a citizen, which depends on a number of circumstances.

The Public Defender clarifies that the recommendation does not imply the constant activation of body cameras in all cases, however, it is important to impose an obligation to record video in such cases as: interviewing a person; person identification; search and inspection; special search and inspection, restriction of movement of a person or vehicle or of actual possession of an item²⁶⁴ (Including during the entire process of arresting and transporting a person). As for the reflection of sensitive information as a result of video surveillance and interference in the field of human rights, the problems in this regard are not connected to the obligation to use body cameras logistically well-set and regulated by clear procedures, but the vicious practice of video recordings by the police with their private mobile phones. Therefore, it is important for the Ministry to examine the correctness of such practices in the context of personal data protection. In its own response, the Ministry, in the context of one of the recommendations, itself speaks about the US Department of Justice's explanation that body cameras are typically used in the context of community-oriented policing and traffic regulation. For years, the priority of the Ministry of Internal Affairs has been to create a community-oriented police that will be accountable to the citizens. Consequently, the introduction of the use of body cameras plays an important role in this process.

Important in the context of imposing the obligation of video surveillance on police officers is the decision of the Constitutional Court of Georgia, which stated that from July 2021 the investigative bodies will be obliged to conduct continuous video recording during the search for an illegal item to exclude illegal action by the police.²⁶⁵

According to the information received from the interviews with lawyers by the special preventive group, against the background of the fact that there is no legal obligation for patrol inspectors to use body cameras, there are cases when small partial recordings of police communication with citizens (which do not show the whole picture but only the part in favor of police officers) is attached to the case as evidence. In order to establish the objective truth of the case, it is important to make a complete record and submit it to the investigating agencies and the court as neutral evidence.

The Public Defender made a recommendation to provide a continuous audio-video recording of the interrogation of a detainee in several police stations on a pilot basis. The Ministry has not been agreeing with this recommendation for years. The response sent by the Ministry in 2019 stated that the

²⁶⁴ The law on the Police, Article 18, subparagraphs "a", "b", "d", "h".

²⁶⁵ Decision of the Constitutional Court of Georgia, *Giorgi Keburia v. Parliament of Georgia*, Case N2/2/1276, 25 December 2020.

recommendation could be implemented only through an amendment to the criminal procedural legislation, which was beyond the authority of the Ministry. The Public Defender explained to the Ministry that the criminal procedure legislation allows the use of audio and/or video recording equipment during the Interviews and that there was no impediment to the implementation of this recommendation on the pilot basis.²⁶⁶

In a response sent in 2020, the Ministry presented a new reason to justify non-compliance with the recommendation. In particular, the Ministry's response states that the Ministry does not agree with the introduction in the legislation of the obligation to record the Interviews electronically and notes that there is no international act that would oblige any country to do so. In addition, the response states that there is no common approach to recording, not only at the international level, but also within countries, and that the definition of a recording obligation often depends on the type of crime and the perpetrator.

Treaty based instruments created under international conventions, such as the Committee against Torture (CAT), the Subcommittee on Prevention of Torture (SPT) and the Council of Europe Committee for the Prevention of Torture (CPT), have a clear position on this issue. The European Committee for the Prevention of Torture recommends that Member States conduct continuous electronic (audio and/or video) interrogation of detainees at police stations, which is an important additional guarantee of protection against torture and ill-treatment.²⁶⁷ The Committee against Torture also recommended video recordings of all interrogations in its reports issued for the various countries.²⁶⁸ The annual report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was submitted to the General Assembly, also addresses this issue.²⁶⁹ As for the existence of a heterogeneous approach to the issue at national and international level, naturally there are countries where there is no obligation to record audio-video, however, the fact that the production of audio-video recordings is not introduced in some countries does not mean that the country is an example of good practice. As mentioned above, audio/video recording of the detention process is a standard recognized by the UN and Council of Europe treaties, and the obligation to provide safeguards derives from Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee of Ministers of the Council of Europe in its decision on the Tsintsabadze Group case has called on the Government of Georgia to use audio-video recordings when law enforcement officials communicate with detainees and persons deprived of liberty.²⁷⁰

²⁶⁶ Criminal Procedure Code of Georgia, Article 113, Part 9.

²⁶⁷ Report for the Government of Cyprus, European Committee for the Prevention of Torture, CPT/Inf (2018) 16, 26.04.2018, para.16, Report for the Government of Serbia, European Committee for the Prevention of Torture, CPT/Inf (2018) 21.06.18, para.41, information available on the following website: <https://rm.coe.int/16808b5ee7> [Last visited 04.02.2021];

²⁶⁸ The final report for the Russian Federation by the Committee against Torture, CAT/C/RUS/CO/6, 28.08.2018, available on the webpage: <https://goo.gl/JYvzY2> [last visited 05.01.2021]; Final Report for Spain, Committee against Torture, CAT/C/ESP/CO/6, 29 May 2015, available at the webpage: <https://goo.gl/gCjR69> [Last visited 04.01.2021];

²⁶⁹ Annual Report of the Special Rapporteur on UN Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment before the General Assembly, E/CN.4/2003/68, 17 December 2002, para. 26 (g).

²⁷⁰ Decision of the Committee of Ministers of the Council of Europe on the case of the Tsintsabadze Group, paragraph 13, available at the following address: <https://bit.ly/3a5Q0jT> [Last visited: 08.01.21].

One of the recommendations of the Public Defender requested the Ministry to carry out recording by technical means (audio-video recordings) in a pilot mode in several police stations of the process of providing information on the rights to a person detained by police officers. This recommendation has not been implemented. The response received from the Ministry states that the detention protocol currently provides part of the definition of the right to the detainee, which is further confirmed by the signature of the detainee on the detention protocol. Accordingly, the Ministry notes that this confirms the fact that the detainees became aware of their rights. In addition, the response states that in the relevant structural subdivisions and territorial bodies of the Ministry, during the current year, information posters reflecting the list of rights of administrative/criminal detainees were placed in a prominent place in the common area of police stations.²⁷¹

The European Committee for the Prevention of Torture emphasizes that the detainee should be informed of his or her rights verbally and in writing as soon as possible at the time of arrest.²⁷² The definition of rights is also guaranteed by criminal procedural law,²⁷³ however, interviews conducted by a special preventive group show that, as in previous years, the practice of informing about the rights of a person detained by the police is still problematic. In particular, in most cases, neither during the arrest nor before the interview, are the detainees explained their rights or are only provided with partial information.²⁷⁴ Therefore, in order to facilitate the exercise in practice of the fundamental right granted to the detainee under Georgian law and to monitor this process, it is important to record the process of explaining the rights of the detainee through audio-video recordings. It should also be noted that the production of audio-video recordings should also be in the interests of the Ministry of Interior, as they can be used to protect police officers from false allegations and to assess and further enhance the professional skills of police officers. As for the placement of posters about the rights in police stations, the Public Defender positively assesses this.

The Ministry of Internal Affairs does not agree with the ombudsman's recommendation to ensure the immediate transfer of detainees to a temporary detention facility as a guarantee of protection against torture and ill-treatment. According to the information received from the Ministry, the Ministry of Internal Affairs of Georgia does not agree with the mentioned recommendation, as it is related to many logistical, infrastructural, procedural problems. The Public Defender explains that the purpose of the recommendation was to reduce the length of stay of detainees under police control, as in such cases there is a high risk of physical violence and psychological pressure by police officers.²⁷⁵ In addition, this recommendation is particularly relevant in situations where the Public Defender's key recommendations regarding safeguards against torture and ill-treatment are unfulfilled. It should be noted that in addition to the minimum protection guarantees for detainees under Georgian law, guarantees of protection from

²⁷¹ Letter MIA 8 21 00308117 from the Ministry of Internal Affairs received by the Public Defender's Office on February 9, 2021.

²⁷² 28th Annual Report of the European Committee for the Prevention of Torture, 2019, paragraph: 66, available in English at: <<https://rm.coe.int/16809420e3>>, [last visited: 08.02.2021].

²⁷³ Criminal Procedure Code of Georgia, Article: 38 (2) and Article 174 (1).

²⁷⁴ For more information see Chapter: Guarantees of protection against torture and ill-treatment.

²⁷⁵ For more information see Chapter: ill-treatment.

ill-treatment include the obligation to register all detainees transferred to police stations, to produce audio and video recordings, including the interrogation of detainees, and more.

One of the ombudsman's recommendations concerned the registration of all persons through the maintenance of registers in police departments, divisions and units, indicating their status, time of entry and exit from the building. The Public Defender also recommended the introduction of systematic, standardized and unified databases in police institutions, which would replace the journals produced in the institution.

In the response of the Ministry to both of the above recommendations, it is written that the creation of the mentioned registers and the replacement of the journals produced in the institution require significant software and significant changes in the infrastructural design of the building in the system of the Ministry, besides, additional spaces (FRONT OFFICE) are needed to provide services to citizens, which is associated with significant financial costs and additional human resources, which is impossible to implement at this stage.

UN Subcommittee on Prevention of Torture speaks of need to produce standardized file documents/records of detainees.²⁷⁶ Such a mechanism would enable the monitoring authorities to obtain reliable information on the status of the person, the time of entry and exit from the police station, and would provide a significant additional guarantee of protection against ill-treatment.

One recommendation to the Ministry of Internal Affairs of Georgia was to improve the documentation of administrative detention. In particular, the Special Preventive Group requested changes and the following information to be added to the administrative detention columns: time of drawing up the protocol; a description of the injuries on the body of the detainee; circumstances under which the arrest took place; whether there was resistance; whether the coercive measure was used and in what form. The presented recommendation has not been implemented. The response received from the Ministry states that there was no need for change. It should be noted that during the entire period of the detainee's stay under the control of the police, the police officer has an obligation to prove that his treatment of the detainee complied with the requirements of the law. Accordingly, documenting actions taken by Police towards a detainee under the law, especially in the case of the use of force or special measures, will help the police to take more responsibility and oversee the fulfillment of statutory obligations.

One of the recommendations of the Public Defender was to increase the number of isolators in which medical facilities operate in 2020, and in isolators where there are no plans to open medical facilities due to the small number of detainees, we demanded employment of doctors based on a contract. The recommendation is partly implemented. According to the response received from the Ministry, in 2020, a medical point was opened in 5 temporary detention isolators - Senaki, Chiatura, Ozurgeti, Signaghi isolators, also, in Tbilisi, a facility for administrative detainees has been opened (Tbilisi N2 Temporary Detention Isolator). The response states that the Ministry plans to open medical facilities in all isolators.

²⁷⁶Visit of January 25-29, 2016 of the UN Subcommittee on Torture Post-Visit Report to Cyprus, CAT/OP/CYP/1, para: 21. Available in English at the following address: <https://bit.ly/3dkjeyd> [Last visited: 03.01. 2021].

As for the employment of medical staff in the remaining 7 isolators, the response indicates that the Ministry has twice announced a competition for vacancies of doctors in the isolators of Baghdati, Dusheti, Kobuleti, Akhalkalaki, Mestia, Lanchkhuti and Ambrolauri, but the qualified medical staff could not be found.

With one of the recommendations the Public Defender also requested to carry out training for doctors employed in temporary placement isolators on the instructions for photographing the injuries on the bodies of persons placed in the isolator and the rules for storing the photographs taken. The recommendation was partly implemented. According to the statement issued by the Ministry, a training course on photographing injuries on the bodies of detainees and storing the photographs has been started for medical staff working in temporary detention facilities of the Ministry of Internal Affairs. Two groups of doctors were trained on the mentioned issues in the Academy of the Ministry of Internal Affairs. The published statement also says that the Ministry will train the rest of the medical staff in the near future.²⁷⁷

With one of the recommendations the Public Defender requested to eliminate the deficiencies in terms of living conditions in temporary detention facilities in 2020. The Public Defender welcomes the opening of a new temporary detention isolator and a facility for administrative detainees in 2020. The construction of new isolators in Bakuriani and Gurjaani is also positive development. Repairs to the isolators in 2020 are welcome, although a number of infrastructural problems remain that need to be addressed.²⁷⁸ Accordingly, the above recommendation was partly implemented.

3.3. Ill-treatment

During monitoring visits to temporary detention facilities and penitentiary institutions, the Special Preventive Group received a number of reports of disproportionate, apparently excessive use of force by police during detention and alleged ill-treatment after detention.²⁷⁹ For instance:

- According to the detainee, the officers of the Khoni District Division of the Ministry of Internal Affairs put the person after the detention in a police car and took him to the vicinity of the motor station. While in the car, the detainee told police that the handcuffs were too tight and asked for help, prompting police officers to verbally abuse him. According to the detainee, he was irritated and responded to the police with a verbal abuse. The detainee said that after the verbal abuse in the car, he was beaten by three police officers until he lost consciousness. According to the documentation compiled by the doctor of the temporary placement isolator, the detainee had redness on both wrists when he was placed in the isolator, which he received as a result of handcuffing after the arrest. There were bruises on his forehead, nose and left cheek, which he received as a result of being punched in the car by police officers after his arrest. According to

²⁷⁷ The statement of the Ministry of Internal Affairs is available at the following address: <https://www.facebook.com/182742568494417/posts/3372279489540693/?d=n> [Last visited: 26.03.21].

²⁷⁸ For more information, see Chapter: Conditions in Temporary Detention Isolators, Physical Environment.

²⁷⁹ As a result of the inspection, a special preventive group received 15 reports from 58 respondents about allegations of torture and other ill-treatment by the police.

the detainee, he was met by an investigator of the State Inspector's Office and an investigation was launched.

- According to the detainee, during the arrest in Bakuriani, two patrol police officers punched him in the face, threw him to the ground and hit the ski boots on the head. As a result of the beating, the said person lost consciousness and received injuries in the area of the left cheek, eyeball and lip, which were recorded by the doctor during his placement in the temporary placement isolator. Due to the received injuries, the person needed medical assistance, which is why the police first called an ambulance and then, with the doctor's instructions, took him to a medical facility. In connection with the mentioned fact, the Office of the Public Defender of Georgia has been informed that the Investigation Department of the State Inspector's Office has launched an investigation into a criminal case on the fact of violence with the abuse of official power by the employees of the Ministry of Internal Affairs of Georgia.²⁸⁰
- According to the detainee, the employees of the Batumi City Division used obviously excessive, disproportionate force against him. In particular, the policemen knocked him down and dragged him on the asphalt, beating him with his hands and feet and hitting him on the head with a service weapon. The detainee says he was then put in a police car where he was beaten for about 10 minutes. According to the detainee, he received bodily injuries as a result of the violence and lost consciousness, which made it necessary to call an ambulance. The detainee received injuries to the face, chest and limbs. Injuries to the detainee were described by the doctor during the placement in the temporary detention isolator. The detainee states that in connection with the mentioned fact, he was met by an investigator of the State Inspector's Office and an investigation was launched.
- According to the detainee, the employees of Ninotsminda District Division came to him in the village and without explaining the reason, told him that he should go with them to the police, but he refused. He was then hit with the handcuffs to the forehead and forcibly detained. The detainee stated that he was injured in the forehead during his placement in the temporary detention center and later in the penitentiary institution, however, he explained that the real reason for the injury was hidden from the doctor because he was afraid of retaliation from the police.²⁸¹
- According to the detainee, after his arrest, the officers of Gurjaani District Division hit him in the face and hit his head to the car. He was also handcuffed tightly, causing pain. The mentioned person was taken to the building of Gurjaani District Division, where he was verbally abused. While being placed in a temporary detention isolator, the detainee had excoriations on the right hand and right forearm, as well as hyperemia on the right forearm and bruising on the head. To seek medical help, he was taken to a medical facility where, in addition, a concussion was diagnosed. According to the detainee, he was met by an investigator of the State Inspector's Office and an investigation was launched.

²⁸⁰ Letter SIS 2 20 00003378 of February 28, 2020 from the State Inspector of Georgia.

²⁸¹ During the verification of the documents in the temporary detention isolator and the penitentiary institution, it was established that the detainee had a facial injury that he had received before his arrest and had no complaints against the police.

In addition to the alleged cases of ill-treatment described above, there are significant ongoing cases of ill-treatment of detainees by the Ministry of Interior staff in the Criminal Justice Department of the Public Defender's Office in 2020, where applicants were verbally and physically assaulted by police. For instance:

- In one case, officers of the Poti City Division detained a person on an administrative basis, during which, according to the detainee, they physically and verbally abused him. The abuse continued during transportation and at the police station as well. The detainee was taken to a temporary detention facility, where the State Inspector's Office was notified of the alleged violence after an examination revealed bodily injuries and an investigation was launched. According to the applicant, after the start of the investigation, the applicant was contacted by a person unknown to him, who demanded a complaint against the police to be withdrawn in exchange for 10,000 GEL. And later, while walking, the vehicle crossed the road, the person sitting on the backseat verbally abused him and demanded that he withdraw a complaint, otherwise he threatened with physical liquidation. A few days later, the applicant was physically assaulted by two unknown individuals near his home, during which he was also told that "this was a warning". The applicant needed medical assistance as a result of the attack. According to the information provided by the State Inspector's Office, an investigation is ongoing into a criminal case on the fact of abuse of power by the employees of the Ministry of Internal Affairs of Georgia.²⁸²
- According to one of the applicants, he was driving with his friends on the Tkibuli-Kutaisi road, when the police stopped him, dragged him out of the car by force, and verbally and physically assaulted him. After the physical violence, the detainees were taken to the Tkibuli Police Department of the Ministry of Internal Affairs, where they continued to threaten, physically and verbally abuse in the room of the head of the department in order to confess to a crime. Detainees were not allowed to call family members and a lawyer. According to the information provided by the State Inspector's Office, an investigation is underway.
- In one case, a juvenile contacted the Public Defender's Office and stated that in the evening he did not obey the request of the patrol police and continued driving from Tbilisi to Kakheti. Patrol police caught up with him near the village of Chailuri in Sagarejo Municipality and blocked the road. According to the applicant, the patrol police officers arrested him and took him to the patrol police building in the village of Chalaubani, Gurjaani Municipality. The applicant explained that during and after his arrest he was physically and verbally abused, in particular by being hit in the head, lying on the ground and beaten with the legs, handcuffed in such a way that his hands were stiff. The applicant later referred to a medical facility where he was diagnosed with a concussion. According to the information provided by the State Inspector's Office, an investigation is underway.

During monitoring in temporary detention facilities, members of the Special Preventive Group inspect the personal files of all detainees taken in prior to the visit, taking into account the circumstances of detention,

²⁸² Letter SIS 2 20 0001107 of the State Inspector of Georgia of 2 July 2020.

the location, number and nature of the injury, which in some cases raise the suspicion on alleged ill-treatment.

With this method, in 2020, a special preventive group detected 463 suspicious cases.²⁸³ These cases include both administrative and criminal detentions/arrests. According to the data, in 159 (34.3%) of the 463 mentioned cases, the administratively detained persons received injuries during and/or after the arrest. As for the dynamics by years, in 2016 administrative detainees received bodily injuries during arrest and/or after arrest in 12.8% of suspicious cases studied by a special preventive group, in 2017 the same rate - 26.4%, in 2018 - 26.8% and in 2019 - 31.8%, while in 2020 the statistical figure did not change significantly compared to the previous year (34.4%). According to the assessment of the special preventive group, since 2017, the trend of deteriorating treatment of persons detained under administrative rules has been maintained.

It should be noted that the official statistics of the Ministry of Internal Affairs for 2020 on the injuries on the bodies of persons placed in temporary detention isolators have not changed significantly compared to previous years.²⁸⁴ In 2020, 11891 persons were placed in temporary detention isolators, of which a total of 8761 persons were injured. Of these, 150 persons had received injuries after arrest, accounting for 1.7% of the total number of injured persons detained. As for the previous years, in 2019 the figure was 1.5%²⁸⁵ and in 2018 it was 1.4%²⁸⁶.

In 2020, 521 persons placed in temporary detention facilities received injuries during and/or after detention, accounting for 5.9% of those taken in with injuries. In 2019, these statistics were 6.3% (656 cases), and in 2018 - 5.6% (467 cases).

In addition, by 2020, 341 persons placed in temporary detention facilities had complaints against the police, including 290 persons for physical abuse, accounting for 2.8% and 2.4% of the total number of persons placed in isolators, respectively. In 2019, this figure was 2.8% (429 cases) and 2.3% (343 cases), while in 2018 it was 2.3% (303 cases) and 2% (256 cases).

As part of the inspection, the Special Preventive Group also analyzed data on persons with injuries taken in penitentiary institutions. According to the information provided by the Special Penitentiary Service, in 2020, a total of 557 persons were admitted to penitentiary institutions with injuries, of which 40 persons (7.2%) were injured during the arrest and 37 persons (6.6%) after the arrest. It is noteworthy that

²⁸³ The inspection was carried out in the territorial police bodies and temporary placement isolators in Kakheti, Imereti, Racha-Lechkhumi and Kvemo Svaneti, Guria, Adjara, Shida Kartli, Kvemo Kartli, Samtskhe-Javakheti, Mtskheta-Mtianeti and Samegrelo regions.

²⁸⁴ Information is available at the following address: <https://info.police.ge/page?id=233> [Last visited on 08.02.2021].

²⁸⁵ In 2019, a total of 15,191 persons were placed in temporary placement isolators, of which 10,348 persons were injured. 155 people were injured after their arrest.

²⁸⁶ In 2018, a total of 12,995 people were placed in temporary detention facilities, of which 8,320 were injured. Of these, 116 persons had received injuries after the arrest.

compared to 2019, in 2020 the share of those who received injuries after arrest decreased slightly and did not change the share of those who received injuries during arrest.²⁸⁷

As in previous years, the trend is maintained that in about one third of the cases studied and processed by the special preventive group (2020 - 26.3%, 2019 - 30.7%, 2018 - 27.6%, 2017 - 30.1%, 2016 - 31.3 %), the detention record does not indicate the injury described in the medical records in the isolators. Out of the 463 cases processed in 2020, in 122 arrest protocols there were not described injuries detected in the isolator. Clearly, there is a strong presumption in these cases that the detainee may have been subjected to physical violence under the police control.²⁸⁸

In addition, in 360 (77%) of the cases studied during the monitoring visits, the detention reports indicate that there had been disobedience/resistance to the police officer and that in such cases the police would likely have used force/coercion, however only in 120 (25.9%) cases do the protocols mention the use of force/coercion by the police.²⁸⁹ Accordingly, in these cases the police officers allegedly used force, although this was not indicated in the arrest protocol. However, out of the cases (120 cases in total) where it was indicated that the force was used, the method of the used force was indicated in 12 cases, of which only in 1 case was it fully described and in 11 cases - partially. It should be noted that in 2019, out of 64 cases, 12 cases described the method of using force, in 1 case - in full and in 11 cases - partially. These circumstances further confirm that the protocols are not being filled in properly.

It is fair to note that the discrepancy between the records may be caused in part to the existing general practice of checking injuries. In particular, checking for injuries by police officers is superficial and does not involve a full examination of the body as is done in isolators. Further, in the case of administrative detention, the discrepancy between the records may be due in part to shortcomings in the description of bodily injuries by police officers, in particular, the administrative detention report does not contain a column at all where the police officer should indicate the injuries of the detainee's body, which contributes to the inconsistent practice - some police officers describe the injuries in the administrative detention protocol in the note column, and some do not.

It is noteworthy that out of the 122 cases mentioned above (when the injuries described in the isolator were not indicated in the detention protocol), 101 persons (82.8%) were detained administratively, while the remaining 21 (17.2%) were detained on a criminal basis.²⁹⁰ It is noteworthy that there is a special box in the form of the arrest protocol of the accused, which should indicate the physical condition of the detainee (bodily injuries) at the time of arrest. Although in the above 21 cases the injuries of the person

²⁸⁷ In 2019, 6.5% of persons taken in with injuries received injuries at the time of arrest, and 8.3% after arrest.

²⁸⁸ In the case of *Salman v. Turkey*, the European Court of Human Rights has clarified that when disputed cases, in whole or in part, are the exclusive informative prerogative of the relevant authorities, as is the case with persons deprived of their liberty, strong suspicions arise and the burden of proof falls on the relevant authorities to provide a convincing explanation for this. Decision of the European Court of Human Rights of 27 June 2000 in *Salman v. Turkey* (*Salman v. Turkey*, N21986/93), para. 100.

²⁸⁹ It should be noted that compared to 2019, in 2020 the number of records on the use of force in the detention protocol has increased. In 2019, only 14% of cases reported the use of force in the detention protocol.

²⁹⁰ In 2019, out of 138 such cases, 125 (90.5%) persons were arrested under administrative and 13 (9.5%) under criminal law.

were detected while being placed in the isolator, the relevant column of their detention protocols indicated that no injury was reported. Accordingly, in the 21 cases indicated, it is unlikely that the author of the protocol missed the visible injuries and there is a more firm presumption that a person would have been subject to the ill-treatment after the arrest before being placed in solitary confinement.

The special preventive group pays special attention to the cases when the detainee brought to the temporary detention isolator has injuries on the face. In 2020, 15 out of 463 suspicious cases the injuries were detected on the detainee's face, while the arrest protocol indicated that the detainee was not injured.²⁹¹ In addition, in 35 cases where the detainee also had facial injuries, there was no record of injury in the detention report.²⁹² Clearly, if a detainee had facial injuries during arrest, police officers should have noticed this and describe it in the arrest protocol.

As for the methods of physical violence perpetrated by police officers against detainees, as in 2019, the methods of physical violence perpetrated by police officers in 2020 mainly include tight handcuffing and beating with hands and legs. However, in 2 cases the detainee indicated that the police was pressing fingers hard on his eyes in order to inflict pain.

In view of all the above, the Public Defender and the Special Preventive Group believe that the situation in terms of police treatment of detainees has not changed significantly in 2020 compared to previous years, and since 2017 the trend of deteriorating the treatment of administratively detained persons. In addition, data processed by a special preventive group and the results of a interviews of detainees show that police abusing of force during detention, physical and psychological violence after arrest, as well as incomplete documentation of bodily injuries and use of force remain a challenge. Thus, the Public Defender and the Special Preventive Group believe that it is especially important to establish strict control over the activities of police officers and increase their accountability. It is essential that police officers receive a clear message from senior officials that human rights violations will not go unpunished.

3.4. Guarantees of protection from torture and ill-treatment

This chapter provides information on the guarantees of protection against torture and ill-treatment in the system of the Ministry of Internal Affairs as of 2020.

3.4.1. Definition of rights

It is important to inform the detainee about their rights verbally at the moment of arrest, and in writing as soon as possible.²⁹³ According to the criminal procedural legislation,²⁹⁴ The detaining officer must explain to the detainee in a comprehensible manner his procedural rights and the grounds for his detention. Interviews with detainees conducted by a special preventive group again show that in most

²⁹¹ In 11 of these 15 cases, the person was detained under administrative, and in 4 cases - under criminal law.

²⁹² In these 35 cases the person was administratively detained.

²⁹³ 28th General Report of the European Committee for the Prevention of Torture, 2019, paragraph: 66, available in English: <https://rm.coe.int/16809420e3> [last visited: 08.02.2021].

²⁹⁴ Criminal Procedure Code of Georgia, Article: 38 (2) and Article 174 (1).

cases, detainees are either not given any or are provided only with partial information on their rights during the detention or pre-interview period. In an interview with a special preventive group lawyers also focus on this issue, noting that the detainee first received information about his or her rights from a lawyer.

The Public Defender welcomes the placement of posters in police stations in order to raise the level of awareness about the rights of detainees. In the vast majority of police facilities and temporary detention facilities visited by the Special Preventive Group in 2020, large posters containing information on procedural rights were placed at the entrances. However, in addition to informing through posters, which the detainee may not even be able to read, it is important to provide timely information to the detainee in an understandable language. It should also be noted that a list of procedural rights is available in temporary detention facilities in different languages.²⁹⁵

3.4.2. Access to a lawyer and informing the family

Access to a lawyer

Timely access to a lawyer is the most important guarantee for the prevention of ill-treatment of a detainee by the police, as the person is in the most vulnerable position during the first hours of detention.²⁹⁶ According to the data processed using a statistical program by the special preventive group, in 2020, the rate of involvement of a lawyer in the case within the first 24 hours has significantly improved. In particular, in 2020, in criminal cases (430 cases in total), a lawyer was involved in 45% of cases in the first 24 hours, and in 29% in 48 hours.²⁹⁷ In 2020, a very small number of detainees interviewed by a special preventive group met a lawyer at a police station.²⁹⁸ In focus groups conducted in 2020, lawyers noted that it is rare for a detainee to meet a lawyer at a police station. The same trend is confirmed by the results of an online survey of lawyers.²⁹⁹ It should also be noted that the time of request or contact with a lawyer by the detainee is still not recorded.³⁰⁰

In 2020, lawyers participating in the focus group noted that in some cases, their meeting with the detainee was artificially delayed after they arrived at the police station. In these cases, police officers told them they did not know if the detainee was in the building or if they really wanted to meet with a lawyer.³⁰¹ In 2020, more than half of the lawyers in the focus group and online survey said that if they had difficulty locating

²⁹⁵ In Georgian, Russian, English, Azerbaijani, Armenian, German, French, Arabic and Turkish.

²⁹⁶ According to the data processed by the SPSS program, the average length of time under police control is 4.5 hours, and in rare cases, it has been longer. Namely: 8 hours (4 cases), 9 hours (8 cases), 10 hours (6 cases), 11 hours (1 case), 12 hours (1 case), 13 hours (2 cases), 14 hours (2 cases), 15 hours (1 case), 16 hours (1 case), 17 hours (1 case) and 19 hours (1 case).

²⁹⁷ Statistics on the involvement of a lawyer during the first 24 hours by years: 2017 -15%, 2018 -11.9%; 2019 - 24.6%.

²⁹⁸ Out of the 58 respondents, 5 inmates reported that the lawyer met at the police station.

²⁹⁹ Results of an online survey of lawyers: 28% stated that they mostly meet at a police station; 62% percent say they mostly meet the detainee in the isolator, 10% elsewhere.

³⁰⁰ See Chapter on Implementing the Recommendations.

³⁰¹ 21% of lawyers surveyed online stated that they could not determine the whereabouts of the detainee often or very often in 2020, 13% said that in 2020 there were at least 1 case where the location of the detainee could not be determined. The same trend is confirmed by more than half of the lawyers participating in the focus group.

a detainee, they would rather use information through personal professional associations than call the General Inspection, as they thought the General Inspection would not respond adequately.

As for securing a meeting with a detainee in police custody and temporary detention facilities in a confidential environment, lawyers positively described the possibility of meeting in separate (investigative) rooms in temporary detention facilities. Lawyers say there is no proper environment for a confidential meeting with a detainee at a police station.

Informing the families

According to data processed by the Special Preventive Group, in 2020, family contact occurred within 3 hours as set by the law³⁰² in 84% of cases processed. Compared to the previous year, the situation in this regard has slightly deteriorated, although overall it is still stable.³⁰³ In addition, the General Inspection of the Ministry of Internal Affairs should investigate all cases where no notification was made to the family and determine the reason for non-notification. Since in case of administrative detention, it depends on the will of the detainee whether they will inform the relative about the fact of detention³⁰⁴ and since the fact of requesting notification is not recorded anywhere, it is difficult to determine to what extent this right is secured in the case of administratively detained persons. In addition to being a guarantee of protection from ill-treatment the notification to a family member is directly related to the detainee's access to a lawyer. In an interview with a special preventive group, detainees and lawyers stated that the lawyer was mainly contacted by a family member/relative and not by a police officer.

3.4.3. Medical examination

Monitoring results show that detainees received timely medical care during their time under police control, except in one case where a detainee received multiple injuries and lost consciousness while resisting arrest and the use of force by police.³⁰⁵ Police officers took him to the police station in the same condition and only called an ambulance when the detainee regained consciousness.

On the positive side, the number of isolators where the medical room operates is increasing year by year,³⁰⁶ which, in addition to providing timely medical care, is an important mechanism for detecting and documenting cases of ill-treatment. As for the meeting of the detainee and the doctor in a confidential environment, even in 2020, a number of detainees indicated that the meeting with the doctor was attended by the staff of the temporary placement isolator. A similar case was witnessed by members of a special preventive group directly at the Ozurgeti Temporary Detention Center. Doctors note that for a greater sense of security, they sometimes ask for an employee to be present or leave the door open. It should be noted with regret that conducting a medical examination in a non-confidential environment

³⁰² Part 1 of Article 177 of the Criminal Procedure Code of Georgia.

³⁰³ The dynamics by years are as follows: -71% in 2017, -86.8% in 2018. In 2019 - 94.4%

³⁰⁴ Code of Administrative Offenses, Article 245, Part 1, Subparagraph „c“.

³⁰⁵ According to Article 31, Paragraph 5 of the Law of Georgia on the Police, "a police officer is obliged to provide first aid to a person injured using coercive measures."

³⁰⁶ 2018 -15; 2019 - 19; 2020 – 23.

pushes the detainee, out of fear, to hide the real origin of the injury. This has a negative impact on the thorough documentation of possible injuries and timely notification to the investigative body.

In order to detect the fact of ill-treatment, it is important for the doctor to establish a connection between the injuries on the detainee's body and the methods of inflicting the injuries indicated by the detainee.³⁰⁷ Doctors should make an effort to obtain detailed, credible information in order to determine more accurately the circumstances indicated by the detainee, whether it could have caused injury to the person's body.

Doctors at the temporary placement isolators continue to document the injuries on the detainee's body with deficiencies.³⁰⁸ Even though compared to 2019, the share of cases where the circumstances of the injury are incompletely and/or not described at all has decreased, such cases are still more than half of the cases documented in the protocols drawn up according to the Istanbul Protocol. Out of 377 cases documented in the protocol drawn up in accordance with the Istanbul Protocol in 2020, 157 (42%) cases were fully described, 220 (58%) cases were incompletely and/or not described at all.³⁰⁹ Of particular concern to the preventive group is the fact that the doctors determine the relation between the existing injury and the circumstances of its occurrence, while the circumstances of receiving the injury are incomplete or not described at all.³¹⁰ In contrast, the doctors have not established a connection in cases where the circumstances of the injury are fully described.³¹¹ Therefore, the Public Defender believes that doctors do not pay proper attention to the issue of documenting injuries and ignore the requirements of the Istanbul Protocol.

Out of 377 cases processed by the Special Preventive Group and documented according to the Istanbul Protocol, photos were taken in 67 (17.7%) cases. The group saw 50 photos, 4 of which were taken satisfactorily, while in 46 cases the quality was unsatisfactory, namely, the problem was focused photos, insufficient and inadequate lighting. Further, there is still no uniform rule for storing photos taken in accordance with the Istanbul Protocol in temporary detention facilities.³¹²

As in previous years, there are still cases when the detainee suffered injuries and did not notify the State Inspector's Office. Out of the 463 cases processed in 2020, in 43 (9.3%) cases they did not notify the State Inspector, including cases where the detainee suffered facial and eye injuries and the degree and color of the injuries indicated that they were newly received injuries. It should be noted that this figure is lower

³⁰⁷ Guide to Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"), para. 104.

³⁰⁸ Out of 463 cases reviewed in 2020, 377 (84.1%) were documented with injuries recorded under the Istanbul Protocol.

³⁰⁹ In 275 (78%) of the 351 cases documented under the Istanbul Protocol in 2019, the circumstances were not fully described.

³¹⁰ Out of 216 cases where the circumstances of the injuries are incompletely described, in 85 cases (39%) the doctors had established connection.

³¹¹ Out of 157 cases where the injuries were fully described, the doctor had not established the connection in 19 cases.

³¹² Photos are mostly stored in a folder in the folder placed on computer desktop. Often the photo documents do not have a name, surname and date. There were cases when doctors could not find the photos.

than in 2019. In 2019, out of 449 cases handled by the Special Preventive Group, 98 (21.8%) cases were not notified.

As for the medical examination of the detainee by the ambulance doctors, it should be noted with regret that the ambulance papers filled in by the ambulance doctors describe superficially the injuries on the detainee's body and generally do not indicate the source of the injury at all. Preventive visits in 2020 also revealed deficiencies in the descriptions made by ambulance doctors. For example, in the Akhalkalaki temporary detention center, where there is no medical center, ambulance doctors indicated in most of the medical records that the detainee was not injured and had a "clean face". A special preventive group checked the photos of the detainees taken by the isolator staff during the placement in the temporary detention center, which were described by the ambulance doctors as having a "clean face" and found that many detainees had scratches and bruises on their faces. Clearly, this does not indicate that these injuries were necessarily inflicted on detainees during or after their arrest, although the reliability of the records in the medical documentations has been questioned. The monitoring again revealed that the records made by the ambulance doctors are attached to the detainee's personal file even in the institutions where there is a medical point. In order to protect the confidentiality of medical records of detainees, it is important that in the facilities where the medical unit operates, the protocols drawn up by the ambulance doctors are kept with the doctors of the temporary placement isolator.

3.4.4. Audio and video recordings

Electronic recording of communication with the police is both a guarantee of the prevention of ill-treatment and a significant advantage for the police themselves. Records should be protected, kept at a reasonable time and made available to the detainee, his lawyer and domestic/international monitoring mechanisms, as well as to investigative bodies.³¹³

The issue of video recording as a guarantee of protection against ill-treatment can be divided into three components. 1. Use of body cameras during arrests or during communication with citizens; 2. Video recording in police vehicles and 3. Video recording in police stations.

Use of police body cameras

For years, the Public Defender has been recommending the Ministry of Internal Affairs to define by law the obligation of police officers (patrol inspectors/employees of the Central Criminal Police Department and territorial bodies) to videotape their communication with citizens. In this regard, the situation has not changed in 2020 and for none of the above cases is there set an obligation of video recording. As for the

³¹³ 28th General Report of the European Committee for the Prevention of Torture, 2019, paragraph: 81, available in English: <<https://rm.coe.int/16809420e3>>, [last visited: 08.02.2021]. Report of the UN Subcommittee on Prevention of Torture to the Government of Poland, CAT/OP/POL/ROSP/1, 09.01.2020. Para. 47, available at the following address in English: <<https://bit.ly/2xXKrn7>> [Last visited: 08.02.2021].

storage period of the recorded video material, its only determined for the materials recorded by the body camera of the patrol inspectors.³¹⁴

The results of the monitoring carried out by the special preventive group show that in practice, body cameras are rarely used. The interviewed detainees stated that the patrol inspectors did not turn on the body camera during their arrest.³¹⁵ The same is confirmed by the results of interviews with lawyers and online surveys. Lawyers note that when requesting recordings, it usually turns out that either the camera was not turned on or the record was accidentally deleted.

Police vehicles

A number of detainees interviewed in 2020 reported being ill-treated by police officers in a police car (parked or driving) including beatings. According to the 2019 report of the State Inspector, the place of committing 30% of the alleged crimes is a police vehicle, the inner perimeter of which is not equipped with a video surveillance system.³¹⁶

Therefore, the Public Defender considers it important that after placing the detainee in the police vehicle, the police officer continues to use the body camera until the end of the person's stay in the vehicle and/or install a video camera on the outside and inside perimeter of the vehicle, which will be turned on uninterrupted while a detainee stays in the car.

Audio/video recordings at police institutions

The European Committee for the Prevention of Torture emphasizes the importance of proper audio and video recording of any interviews with police officers (including the start and end times of conversations and the names of all persons involved in the recording).³¹⁷ Interviews with detainees and lawyers in 2020 show that audio/video recording of detainees' interviews is still not happening at police stations.³¹⁸

In addition, video surveillance in police stations does not cover all the areas where a detainee may be present. The UN Committee against Torture considers that all internal and external perimeters of police facilities where detainees may be present should be equipped with video surveillance systems. Exceptions to this rule are cases when the detainee's right to privacy or the privacy of a meeting with a lawyer and a doctor may be violated.³¹⁹

³¹⁴ Order N1310 of the Minister of Internal Affairs of December 15, 2005 on the approval of the instruction on the rules of patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia, Article 12¹.

³¹⁵ Out of 58 detainees, 3 detainees stated that the detention process was being recorded, 4 detainees did not remember exactly whether the body camera was recording, 4 detainees were not informed, in the remaining 47 cases detainees reported that no video was being recorded.

³¹⁶ State Inspector Service Activity Report 2019 p. 140. Available at: <https://bit.ly/2O2O8Qr> [Last visited: 06.02.2021].

³¹⁷ 28th General Report of the European Committee for the Prevention of Torture, 2019, paragraph: 81, available in English: <https://rm.coe.int/16809420e3>, [last visited: 09.02.2021].

³¹⁸ In accordance with Article 287 of the Criminal Procedure Code of Georgia, video and audio recording is allowed during the investigative actions.

³¹⁹ The final report of the Committee against Torture to the Russian Federation, CAT/C/RUS/CO/6, 28.08.2018, is available at the webpage: <https://goo.gl/JYvzY2> [last visited on 08.02.2021].

In terms of coverage of the video surveillance system, the situation is relatively better in Kobuleti, Chokhatauri, Ozurgeti, Ambrolauri and Kvareli district divisions, as well as in the Imereti, Racha-Lechkhumi and Kvemo Svaneti police departments. Most of the buildings in these police facilities are equipped with a video surveillance system. The situation is radically different in Khoni, Tkibuli and Terjola, Baghdati and Vani district divisions, where there is only one video camera on the inner perimeter³²⁰ and it only covers the front door. The table below shows how the various areas in the police facilities are covered by the video surveillance systems.

	Fully equipped	Partly equipped	Not equipped
Halls	27	2	5
Stairs	28	7	13
Working areas*	46	7	8
Interrogation rooms	7	0	4

* Common work spaces of detective-investigators and/or precinct inspectors-investigators; individual work rooms

The table below compares the data provided³²¹ by the Ministry of Internal Affairs in 2019 and 2020 on the number of video cameras on the inner and outer perimeters in specific divisions/police departments.³²²

N	Police Departments and divisions departments	Video cameras on the <u>inner</u> perimeter		Video cameras on the <u>outer</u> perimeter	
		2019	2020	2019	2020
Adjara-Guria					
1	Adjara Aut. Republic Police Department	19	19	5	5
2	Kobuleti District Division	9	9	5	5
3	Guria Police Department and Ozurgeti District Division of the Ministry of Internal Affairs	15	15	9	9
4	Lanchkhuti District Division	7	7	7	7
5	Chokhatauri District Division	6	6	4	4
Imereti, Racha-Lechkhumi and Kvemo Svaneti					
6	Imereti, Racha-Lechkhumi and Kvemo Svaneti Police Department of the Ministry of Internal Affairs	12	12	4	4
7	Kutaisi City Division	10	10	4	4
8	Tskaltubo District Division	10	10	5	4
9	Zestaponi District Division	8	8	8	8
10	Samtredia District Division	7	7	7	5

³²⁰ According to the information received by the letter MIA 3 20 02883195 of December 12, 2020, in addition to the listed divisions, 12 other divisions/units have only 1 video camera on the inner facade. These are: Kutaisi City Division Police Unit 6, Kutaisi City Division Police Unit 7, Tskaltubo District Division Partskhanakanebi Police Unit, Tskaltubo District Division Opurchkhethi Police Unit, Zestaponi District Division Sviri Police Unit, Samtredia District Division Jikhaishi Police Unit, Tkibuli District Division Gelati Police Unit, Kharagauli District Division Boriti Police Unit, Terjola District Division Nakhshirghele Police Unit, Khoni District Division Gelaveri Police Unit, Lentekhi District Division, Kurta District Division Checkpoint (Shakshaketi).

³²¹ Data were obtained by letters MIA 3 19 03 03979730 dated 12 December 2019 and MIA 3 20 02883195 dated 12 December 2020.

³²² The monitoring visits to the divisions/police departments given in the table were carried out in both 2019 and 2020.

11	Baghdati District Division	1	1	3	3
12	Vani District Division	1	1	4	4
13	Sachkhere District Division	9	9	7	7
14	Tkibuli District Division	1	1	4	5
15	Kharagauli District Division	10	10	8	8
16	Terjola District Division	1	1	4	4
17	Ambrolauri District Division	8	8	2	3
18	Oni District Division	6	6	4	4
19	Chiatura District Division	10	10	6	6
Kakheti					
20	Kakheti Police Department	9	8	4	4
21	Telavi District Division	9	11	4	4
22	Akhmeta District Division	5	5	3	3
23	Kvareli District Division	7	7	6	6
24	Lagodekhi District Division	6	6	4	4
25	Gurjaani District Division	6	3	4	4
26	Dedoplistskaro District Division	4	4	3	4
27	Sighnaghi District Division	3	3	3	3
28	Sagarejo District Division	5	4	5	5

Comparing the data, it is clear that the number of video cameras on the inner and outer perimeter in the given divisions/police departments does not change from year to year.

It is also noteworthy that according to the information³²³ received from the Ministry, out of 220 facilities of the Ministry of Internal Affairs, 9 administrative buildings³²⁴ do not have video cameras on the inner perimeter at all, and 5 buildings - on the outer perimeter³²⁵. Neither the inner nor the outer perimeter of the building has a video camera - 3 buildings.³²⁶

In the 61 police facilities visited by the Special Preventive Group, none of the offices of the Head and Deputy Head of the Department/Division were equipped with audio-video surveillance, while these offices were actively used to interview detainees or persons in the facility with different statuses. In an interview with a special preventive group, detainees and lawyers stated that in some cases, there were incidents of ill-treatment in these areas. The Public Defender considers that the practice of interviewing in the above-mentioned cabinets of detainees and persons with other status in the facility should be eliminated. At the same time, it is important to equip the corridors and connecting areas of all police facilities with video surveillance.

³²³ Letter MIA 3 20 02883195 dated 12 December 2020.

³²⁴ Old Tbilisi N1 Division, Police Department of the Autonomous Republic of Abkhazia, Jakhunderi Police Department, Kurti District I Unit (Ditsi), Kurti District Division II Unit (Nikozi), Kurti District Division Unit III (Knolev), Kurti District Division Unit IV (Atotsi), Eredvi District Division Unit II (Kveshi), Eredvi District Division Unit III (Mereti).

³²⁵ Old Tbilisi N1 Division, Police Department of the Autonomous Republic of Abkhazia, Jakhunderi Police Department, Didi Chkhoni Unit of Martvili District Division, Akhalkalaki District Division of the Ministry of Internal Affairs.

³²⁶ Old Tbilisi N1 Division, Police Unit of the Department of the Autonomous Republic of Abkhazia, Jakhunderi Police Division

3.4.5. Maintenance of documentation in police stations

The UN Subcommittee on Prevention of Torture recommends the State Parties to ensure that the registration and filing systems relating to detainees be standardized.³²⁷ The maintenance of standardized documentation is important to record in detail and in a timely manner all actions related to the detainee: apprehension, the exact time of entering and leaving the facility, body examination, detainee's request for contacting a lawyer / health professional / family member and information on whether the request was ensured, the exact time and reasons for a detainee's transfer or release; the precise information about where the person was held during the whole period of detention and other circumstances. The maintenance of documentation in filing systems will create more safeguards for protection from ill-treatment since police officers will have to timely and synchronously enter all information outlined above in the system depriving them of the possibility to arbitrarily change or modify information. The introduction of this mechanism in the era of modern technology should not be related to major obstacles.³²⁸

Apart from strengthening safeguards for detainees against ill-treatment, as well as protecting the police from false allegations of unlawful detention and / or ill-treatment, proper maintenance of detention records and documentation produced in the facilities is crucial.

Documentation maintained in the stations

As for the maintenance of documentation at police stations, similar to the previous years, the logbooks are kept for the registration of arrested persons.³²⁹ In addition to the fact that columns in the logbooks fail to cover all important issues,³³⁰ the titles of the columns included in the logbooks are problematic and police officers are not properly instructed on how to fill the columns.³³¹ Maintenance of documentation in such form fails to provide accurate information about detainees.

Similar to the previous years, the practice of inadequate maintenance of documentation about arrested persons in territorial police bodies remains problematic. Shortcomings related to producing logbooks

³²⁷ Report on the visit of the UN Subcommittee on Prevention of Torture to Cyprus undertaken from 25 to 29 January 2016, CAT/OP/CYP/1, para: 21. Available in English < <https://bit.ly/3dkjiev> > [last visited: 08.02.2021].

³²⁸ The CPT calls upon the Greek authorities to introduce electronic registers about the detainees in all police establishments. Report on the CPT visit to Greece on 6 July 2020, para. 25, available at: < <https://bit.ly/3jvY6Wd> >, [last visited: 08.02.2021].

³²⁹ "Logbook of persons detained in the Internal Affairs Bodies" and "Journal of Registration of Persons Transferred to a Temporary Detention Isolator".

³³⁰ "Logbook of persons detained in the Internal Affairs Bodies" has the following columns: name / surname / father's name / year and place of birth; workplace; date and time of entry / exit of the detainee from the facility; the results of the detainee examination; date of arrest time; reason and place of arrest; name of the person who detained the detainee; Article of the Criminal Code; case number; the date and time of the detainee's placement in the temporary detention isolatori shall be recorded in the "Logbook of Persons Transferred to Prison (Temporary Detention Isolator)".

³³¹ Only one police station provided the information to the Special Prevention Group that the journals were produced according to written instructions, while in other cases they were filled according to the titles and columns.

were identified in 27 out of 62 police agencies visited by the Special Prevention Group.³³² In fact, in some cases the date / time of the person's detention cannot be determined, the date / time of the detainee's departure from the police station is unclear, time of transfer at the temporary detention isolator precedes the time of detention, and the time of arrival at the police station precedes the time of detention; the date and time of taking the detainee to the temporary detention isolator or the time of detainee's release are not specified in some cases. It should be further noted that in those police stations where the Special Prevention Group carried out preventive visits in 2019, in 2020 the maintenance of logbooks has improved to some extent.

According to the Special Prevention Group, the logbooks are filled in accordance with the data indicated in the detention report, after the completion of such report. This can be easily identified by comparing the information included in the columns of the logbooks with the information in the detention report, where even the wording is identical. The Special Prevention Group has witnessed in 2 police stations a case when a detainee was present at the police station although he/she was not registered in the logbook for detainees. In one of these cases, a police officer himself confirmed that he would have registered the detainee after the completion of the detention report. According to the observed practice, mainly the following picture emerges in terms of document maintenance: the detention report is not filled in at the place of detention. The detainee is taken to a police station, where his body is not examined while entering or leaving the station by the on-duty inspector to detect injuries. Afterwards, a detention report is filled in, during which the police officers describe the injuries depicted on the detainee's body. The detention report is then handed over to the on-duty inspector of the police station for copying the data to the logbook for detainees. Therefore, the columns in the logbook for detainees, which should describe injuries on the detainee's body, both when entering and leaving the facility, lose their function and do not ensure protection from ill-treatment.

Inviting a person for an interview at the facility

Apart from the detainee, a person who is invited for an interview at a police station may be placed under police control. Under Article 21 of the Organic Law of Georgia on Police, the police have the right to invite a person to an interview at the police facility. From the legal point of view, appearance of the person invited to an interview through this procedure as well as leaving the police station is formally voluntary. The citizens invited under this procedure are not provided with procedural safeguards against ill-treatment in case of abuse of power, pressure and physical violence inflicted against them by police. Moreover, no document is drawn up when a person enters or leaves the police facility, which would have made it possible to prove that the person indeed entered the police facility. According to the information provided by the lawyers, it was still common practice in 2020 to "voluntarily" invite a person to the police station and restrict his right of movement during this period. Hence, it can be said that this is a *de facto*

³³² According to the information provided by the General Inspection of the Ministry of Internal Affairs of Georgia, from January 1, 2020 to November 15, 2020, 41 cases of filling the journals incompletely or incorrectly were revealed. Letter MIA 5 20 02723536 of the Ministry of Internal Affairs of Georgia of November 20, 2020.

and illegal detention. The lawyers also talked about the existence of this problem at the Investigation Service of the Ministry of Finance of Georgia.

Moreover, it was also common in 2020 when a person invited for an interview is arrested during or at the end of the interview. The lawyers as well as the records produced in the stations that were inspected by the Special Prevention Group, confirmed this practice. The logbook for detainees, in which normally only detainees should be registered, in some cases indicated that the time of entering the station precedes the time of person's detention. This represents the risky practice in terms of protection against ill-treatment, as prior to formal arrest, the person is deprived of access to legal safeguards although even before the detention his liberty was de-facto and unlawfully restricted. The EU Directive on Legal Aid emphasizes that where, in the course of questioning, it is revealed that a person might be the perpetrator of an alleged crime and there might be the need for his detention, questioning should be suspended immediately. It should be possible to continue questioning where the person concerned has been made aware that he or she is being considered as a perpetrator of an alleged crime and that person is able to fully exercise the procedural safeguards.³³³

The Public Defender considers that any person in the police station should enjoy procedural safeguards regardless of his or her status.³³⁴ To this end, it is crucial, inter alia, to establish a mechanism that would enable the monitoring bodies to obtain reliable information about the person's status, the time of his/her arrival and departure from the police station.

3.4.6. Detecting alleged cases of ill-treatment

Temporary detention isolators are one of the most important sources for the State Inspector's Service to receive notifications. The State Inspector's Service received 291 notifications from TDIs about alleged violence committed by the officers of the Ministry of Internal Affairs. It should be noted that the State Inspector's Service receives notifications from the Temporary Detention Isolator also on the persons placed with injury in the isolator who indicate that they have received those injuries before detention and that the injury, according to the detainees, is not related to any illegal action committed by the law enforcement officer. Even in such cases, representatives of the Investigative Department of the State Inspector's Service conduct interviews to ensure that the person has not been ill-treated. Accordingly, in several cases, a person placed with injuries in a temporary detention isolator initially did not indicate commission of physical or psychological violence against him, however, during interviews with the employees of the State Inspector's Service, he/she raised complaints.³³⁵

Those principles of the Istanbul Protocol related to the investigation of torture should be taken into account while investigating the cases of torture and ill-treatment. In this regard, interviewing the alleged victim and other witnesses is especially important, which should be carried out through appropriate

³³³ Directive 2016/1919 of the European Parliament and of the European Council, para. 10. Available at: <<https://bit.ly/3ksCIXH>>, [last visited: 08.02.2021].

³³⁴ Report to the Ukrainian Government, the European Committee for the Prevention of Torture, CPT/Inf (2018)41, 06.09.2018, para. 29, Information is available at: <<https://rm.coe.int/16808d2c2a>>, [last visited: 08.02.2021].

³³⁵ Letter SIS 2 20 00020027 of the State Inspector's Service of 8 December 2020.

procedures and include measures such as: informed consent of the victim and implementation of measures for his/her protection; ensuring conditions for conducting the investigation; safety of witnesses etc.³³⁶ To establish a complete picture of ill-treatment, it is first necessary to gain the trust of the alleged victim, which requires allotment of sufficient time to the interview, creating a confidential and safe environment.

Through reviewing the data in the temporary detention isolator, the Public Defender examined the rate of timely appearance of the State Inspector's investigator in the temporary detention isolator, as well as the duration and conditions of the interview with the detainee. Analysis of the data processed by the Special Prevention Group reveals that the State Inspector's investigator met the detainee in 274 cases, from which, the State Inspector's investigator averagely met the detainee within 7 hours after the notification was sent from the temporary detention isolator which is not a bad figure. However, out of the given 274 cases, the duration of the meeting between the detainee and the inspector lasted for 1-3 hours in 41 (15%) cases, from half an hour to 1 hour in 89 (32.5%) cases, for 21-30 minutes in 58 (21.2%) cases, for 11-20 minutes in 59 (21.5%) cases, and for 0-10 minutes in 27 (9.8%) cases. This data shows that the meeting between the inspector and the detainee is often very short, which raises questions whether it is possible to explain the mandate of the SIS to the detainee in such a short time, gain confidence, assess the detainee's physical and psycho-emotional condition, and conduct a thorough interview, especially remotely.

It should be noted with regret that according to the information received during the preventive visits to the temporary detention isolators, in 2020, due to the pandemic, the meeting with the investigators of the State Inspector's Service was mostly carried out remotely. Due to the fact that the temporary detention isolators do not have well-isolated infrastructure and the detainee is not left alone in the room used for remote meeting, a confidential environment is not provided during remote interviewing, which affects an honest conversation with the investigator of the State Inspector's Service. In addition, a face-to-face meeting is crucial for the investigator to provide more information about the State Inspector's Service and gain trust.

Judges can play an important role in preventing cases of ill-treatment. Their role is recognized by the first paragraph of Article 2 of the UN Convention against Torture, which indicates the importance of taking judicial measures to prevent torture.³³⁷ Under the Georgian legislation, at any stage of criminal proceedings, a judge applies to a competent investigative authority if he/she suspects that an accused/convicted person was subjected to torture, inhuman or degrading treatment, or when an accused/convicted person him/herself states about it before the court.³³⁸ According to the information

³³⁶ Office of the United Nations High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), Chapter three, legal investigation of torture, available in English: <https://www.ohchr.org/documents/publications/training8rev1en.pdf> [last visited: 10.01.2021].

³³⁷ „Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” UN Convention against Torture, Article 2(1).

³³⁸ Criminal Procedure Code of Georgia, Article 191¹.

provided by the Supreme Court of Georgia, judges applied to the relevant investigative authorities in 70 cases due to the suspicion that the detained person had been subjected to torture, inhuman or degrading treatment or the person concerned himself/herself stated about it before the court.³³⁹

Regarding the court, the practice of remote court trials is noteworthy. First, remote court hearings are conducted without respecting confidentiality in TDIs, as the staff does not leave a detained individual alone. In addition to the staff of the temporary detention isolator, employees of the Ministry of Internal Affairs also attend the remote court hearing. During their visits to the temporary detention isolators, members of the Special Prevention Group themselves witnessed remote court hearings, where the employees of the Ministry of Internal Affairs were present together with the detainee.³⁴⁰ The staff of the temporary detention isolator also confirms that this is a common practice. It should be further noted that a lawyer of the detainee also participates remotely in a court hearing which makes an accused feel that he/she is without a lawyer. The Public Defender believes that accused persons will be less motivated to speak of ill-treatment without a lawyer and in the presence of officers of the Ministry of Internal Affairs, which impedes the effective detection of alleged incidents of ill-treatment.

Another aspect related to the remote court hearings is the limited possibility for a judge to assess visually the physical and psycho-emotional state of detained person.³⁴¹ During a remote trial, it is extremely unlikely that a judge will be able to identify or suspect whether a person has been ill-treated.³⁴²

3.5. Conditions in Temporary Detention Isolators

3.5.1. Physical environment

The Public Defender of Georgia/National Preventive Mechanism welcome opening of a new temporary detention isolator and an institution for administrative prisoners in Tbilisi in August 2020. Further, it is a positive step that new isolators are being built in Bakuriani and Gurjaani.³⁴³ In 2020, renovation works were conducted to improve infrastructure and living conditions in temporary detention isolators.³⁴⁴

³³⁹ Letter P-1996-20 of the Supreme Court of Georgia of 8 February 2021

³⁴⁰ In Akhalkalaki, Mtskheta, Marneuli and Senaki temporary detention isolators.

³⁴¹ It should also be noted that the Public Defender's Monitoring Report on Remote Court Hearings also referred to technical flaws during remote court proceedings. There have been cases where the image of the accused did not appear at all or appeared in a flawed and blurred manner. See Public Defender's Monitoring Report on Remote Hearings of Criminal Case, available at: < <https://bit.ly/3p8Z6Rx> >, [last visited: 10.02.2021].

³⁴² The International Association for the Prevention of Torture, together with non-governmental organizations, has lodged a complaint before the Inter-American Commission on Human Rights regarding a resolution for Brazil on conducting remote trials. The International Association for the Prevention of Torture believes that it is possible to conduct trials on preventive measures in the courtroom during a pandemic in order the judge be able to identify suspicious cases. Information is available at: <https://bit.ly/3a79BQK>, [last visited: 08.02.2021].

³⁴³ Letter NMIA62100068437 of the Temporary Detention Department of the Ministry of Internal Affairs dated 12 December 2021.

³⁴⁴ According to the letter NMIA62100068437 of the Temporary Detention Department of the Ministry of Internal Affairs of 12 December 2021, repair works were carried out in the isolators of Ozurgeti, Senaki, Chiatura and Signaghi, where medical points were arranged and started operating. Various minor repair / cosmetic works were also carried out in 19 isolators: temporary detention isolators in Telavi, Sagarejo, Kvareli, Gori, Khashuri, Dusheti, Mtskheta, Rustavi, Marneuli, Tsalka, Kutaisi, Zestaponi, Batumi, Kobuleti, Akhalkalaki, Akhaltsikhe, Poti, Mestia and Chkhorotsku. As part of the repair works, the

Despite undertaken renovation works, a number of infrastructural problems remain requiring improvement and bringing in line with the international standards. As a result of visits carried out in 2020,³⁴⁵ it was revealed that some TDIs are not equipped with proper natural³⁴⁶ and artificial ventilation³⁴⁷ and lighting. Some isolators require refurbishment / cosmetic repairs.³⁴⁸ The environment was not adapted for people with disabilities in any of the temporary detention isolators inspected by the Special Prevention Group in 2020. The existence of semi-isolated³⁴⁹ sanitary facilities³⁵⁰ is still problematic in the cells intended for two or more people, where detainees have to meet their natural needs in the presence of another detainee/detainees. The toilets are not provided with a flushing system in some of the cells and the water pipe located a few centimeters above the sewer hole is used instead. Moreover, the detainees have to use this pipe for hand-wash and drinking, which is unhygienic causing fair dissatisfaction of the detainees.

Similar to previous years, malnutrition of the detainees,³⁵¹ which only includes dry food,³⁵² is still problematic in the isolators. The persons held under administrative detention have to eat dry food for up to 15 days, which can be detrimental to their health. The lack of dietary food is also a problem for the detainees held in the isolators.

3.5.2. Epidemiological situation

As in all closed facilities, temporary measures have been taken to control the infection in the temporary detention isolators. Employees of temporary detention isolators are provided with protective equipment, namely gloves, masks and face shields. Disinfectants are also available. Medical and non-medical staff are tested for COVID-19 every 2 weeks. In addition, all persons entering the isolator are subjected to thermoscreening.

lighting system was fully repaired in all mentioned isolators, while the heating system in Samtredia and Khashuri isolators was additionally repaired / changed. In 7 isolators - Telavi, Kvareli, Sagarejo, Rustavi, Marneuli, Mtskheta and Zestaponi, additional beds in the cells were dismantled.

³⁴⁵ In 2020, visits were conducted in the temporary detention isolators located in Sagarejo, Telavi, Kvareli, Sighnaghi, Rustavi, Marneuli, Tsalka, Mtskheta, Dusheti, Gori, Khashuri, Akhaltsikhe, Akhalkalaki, Batumi, Kobuleti, Ozurgeti, Lanchkhuti, Poti, Senaki, Zugdidi, Chkhorotsku, Kutaisi, Baghdati, Zestaponi, Samtredia, Chiatura and Ambrolauri.

³⁴⁶ Due to small windows, there is a problem of natural lighting and ventilation in the temporary detention isolators of Sagarejo, Telavi, Kvareli, Sighnaghi, Rustavi, Marneuli, Tsalka, Mtskheta, Dusheti, Gori, Khashuri, Akhaltsikhe, Akhalkalaki, Batumi, Kobuleti, Ozurgeti, Lanchkhuti, Poti, Senaki, Zugdidi, Chkhorotsku, Kutaisi, Baghdati, Zestaponi, Samtredia, Chiatura and Ambrolauri.

³⁴⁷ Artificial ventilation is insufficient in the cells of Akhaltsikhe, Batumi and Poti temporary detention isolators.

³⁴⁸ Moisture and dirt could be noticed on the walls and the paint has fallen off in some places in the cells of the temporary detention isolators of Akhaltsikhe, Chkhorotsku and Batumi.

³⁴⁹ The cells of isolators have semi-isolated sanitary facilities. It is particularly problematic in the cells intended for two or more people, where prisoners have to meet their natural needs in the presence of another person/persons.

³⁵⁰ The semi-isolated sanitary facilities are in the following temporary detention isolators: Gori, Khasuri, Mtskheta, Zestaponi, Poti, Batumi, Lanchkhuti, Kobuleti and Ambrolauri.

³⁵¹ The exception, which should be positively noted, is the new temporary detention isolator opened in Tbilisi in 2020 and the facility for administrative prisoners, where food is prepared on the spot for detainees.

³⁵² Canned beef, dry soup, pate and bread.

As for the detainee, his / her thermoscreening and collection of epidemiological anamnesis³⁵³ take place during the admission to the facility. If a detainee has a fever while admission, he / she is transferred to the fever center. The detainee is transferred to the fever center even if he / she is diagnosed with fever while being in the cell. Examination of the medical records revealed that in some of the isolators where the doctor is present for 24 hours, thermoscreening of detainees are conducted several times a day. It is important routine periodic thermoscreening of detainees to take place in all isolators to facilitate the timely detection of suspicious cases.

It is noteworthy that after being transferred to a fever center, medical personnel of the temporary detention isolators are not provided with information about the test response of the transferred patient. It should be noted that in case of a negative answer the persons detained under criminal procedure are transferred back to the temporary detention isolator. Most of the persons under administrative detention are not returned to the facility and the answer to their test remains unknown for the medical personnel. If the detainee was diagnosed with fever while being in the cell, the cell is cleaned with a special liquid after he/she leaves the cell, and if he / she did not have a fever and feels well, as in previous years the cell is cleaned by the maid after the detainee leaves the cell.³⁵⁴ The Public Defender considers that in order to timely detect a case of infection with the new coronavirus, it is important to test the detainee with a rapid antigen test while his / her placement in the temporary detention isolators. Therefore, it will be crucial to train the medical staff of the temporary detention isolators in conducting test.

3.5.3. Withdrawal syndrome management

Article 16 of the Instruction on medical care of persons placed in temporary detention isolators of the Ministry of Internal Affairs of Georgia³⁵⁵ ensures access to substitution therapy. For the purpose of continuous substitution therapy, individuals involved in the methadone and suboxin substitution program are smoothly transferred from the temporary detention isolator to the provider institution for receiving daily allowance. However, due to the epidemiological situation, according to the amendments of 19 March 2020, made to the Order no. 01-41/N of the Minister of Labour, Health Care and Social Security of Georgia of 3 July 2014 on the Special Substitution Programme for Treating Drug Addiction an exception was made for those involved in the methadone programme and each could take the five-day dose home.³⁵⁶ Consequently, individuals involved in methadone substitution therapy receive a 5-day dose, which, in some cases, is consumed before the specified days, or could be deprived as an evidence at the time of arrest. In such cases, if a person was arrested and transferred to a TDI, before expiring the dose taken in

³⁵³ Information about the illness collected by the doctor as a result of interviewing the patient or his/her relatives, available at: < <https://bit.ly/3a3us7J> > [last visited: 10.02.2021].

³⁵⁴ Similar to previous years, temporary detention isolators are disinfected and disinfected once a month.

³⁵⁵ Approved by the Order N691 of the Minister of Internal Affairs of Georgia of December 8, 2016.

³⁵⁶ Part 8¹ was added to Article 7 of the Order, according to which, during epidemic, pandemic, epidemiological outbreak, in order to prevent the spread of the disease, as an exception, the dose of patient's substitute drug sufficient for a maximum of 5 days, should be delivered/issued by a program employee, family member, a მინდობილი, or legal representative (based on the application of the authorized person and the decision of the Medical Advisory Commission). Based on the amendment to this Order made on September 8, 2020, the said entry was removed.

advance, he/she is not transferred to the methadone dispensing cabinet³⁵⁷ and it is important to manage the withdrawal syndrome of these individuals in a timely manner.

The management of withdrawal syndrome³⁵⁸ in TDIs is noteworthy. There are various methods of treating (detoxification) withdrawal syndrome – with or without drugs. Sedatives³⁵⁹ and analgesics, neuroleptics,³⁶⁰ anticonvulsants,³⁶¹ miorelaxant³⁶² and tranquilizers³⁶³ are prescribed when using the nonnarcotic method. The scheme of their reception depends on what substance, in what amount and for how long the drug-addict was taking it.³⁶⁴ The conducted visits revealed that medications for withdrawal syndrome are given to a patient to treat symptoms, which are mostly painkillers and/or sedatives. In some cases, the effect of medications lasted for a short time while the doctor had to administer additional doses of painkillers and sedatives several times a day,³⁶⁵ nevertheless, patients are not transferred to the hospital. It should be noted that medical personnel have no unified guide on managing withdrawal syndrome. Further, patients are mostly taken to the medical institution only after their condition deteriorates.

According to the case-law of the European Court of Human Rights,³⁶⁶ Article 3 of the Convention (prohibition of torture) imposes an obligation on the State to protect the physical well-being of persons deprived/restricted of their liberty, including by providing them with the requisite medical assistance. The lack of appropriate medical care amounts to inhuman treatment.³⁶⁷ According to the practice of the European Court of Human Rights, drug withdrawal causes serious physical strain and extreme mental stress which may attain the threshold of Article 3. The Court noted that the state has an obligation to substantiate that the detainee was provided with adequate medical care at that time.³⁶⁸ In order to minimize the suffering caused by withdrawal syndrome in patients, it is important the medical staff to have a unified guide for managing withdrawal syndrome in a temporary detention isolator, which will

³⁵⁷ For example, in one case, a person who had taken a 5-day dose in advance, was deprived of his/her dose of methadone at the time of arrest and sealed as evidence. The patient could no longer take methadone as a result of which withdrawal syndrome was developed. The staff of the temporary detention isolator called the doctor, who arrived on spot 15-20 minutes later and gave the patient 2 pills of "Diazepam".

³⁵⁸ A group of symptoms of variable clustering and severity occurring on absolute or relative withdrawal of a substance after repeated, and usually prolonged and/or high-dose use of that substance. Withdrawal syndrome may entail psychological disturbances, available at: <https://bit.ly/3aGshWM>, [last visited: 09.02.2021].

³⁵⁹ Healing medicines having a calming effect on the central nervous system.

³⁶⁰ Antipsychotic medications.

³⁶¹ Anti-seizure medications.

³⁶² Muscle relaxant medications.

³⁶³ Sedative medications.

³⁶⁴ The average duration of detoxification is ten days. The first 3-4 days are critical, while the next days are dedicated to medical rehabilitation. When the condition is relatively light or the person has already given up the drug and suffers from insomnia, anxiety, discomfort, outpatient treatment is allowed, but if the drug addiction is severe and the person is taking large doses, treatment should definitely be carried out in the hospital. For more information see: <<https://bit.ly/3aV3pvG>> [last visited: 09.02.2021].

³⁶⁵ For example, in one case, during 18:04 – 14:42 of another day, a patient applied eight times to the physician for joint pain and anxiety. The patient was given various painkillers and sedatives. Although he was in need of medical assistance once in every 2 hours, he was not hospitalized.

³⁶⁶ Judgment of the European Court of Human Rights of 2 June 2008 on the case of Dybeku v. Albania, para. 41.

³⁶⁷ Judgment of the European Court of Human Rights of 24 May 2009 on the case of Poghosyan v. Georgia, paras. 47-49.

³⁶⁸ Wenner v. Germany (Application no. 62303/13), paras 78-80.

include the volume of care to be provided in a temporary detention isolator and clear indication of when the detained person shall be transferred to the hospital.

3.6. Temporary Accommodation Center of the Ministry of Internal Affairs (status of implementation of recommendations)

The chapter below aims at reviewing the implementation of the recommendations issued as a result of the ad hoc monitoring conducted on 7 May 2020 at the temporary accommodation center of the Migration Department (hereinafter - the center).³⁶⁹ The Public Defender positively assesses the implementation of most of the recommendations issued to the temporary accommodation center of the Migration Department. In the report on Ad Hoc Monitoring of Temporary Accommodation Center,³⁷⁰ the Public defender issued 11 recommendations to the Minister of Internal Affairs of Georgia, out of which 6 recommendations were implemented, 2 recommendations were partially implemented, while 3 recommendations were not implemented.

The Public Defender welcomes the implementation of her recommendation on provision of special training for staff on infection control and the use of personal protective equipment. According to the information received from the Migration Department, on June 24-25, 2020, the National Center for Disease Control and Public Health conducted an online training for staff of the Migration Department (26 persons) on infection control and the use of personal protective equipment.³⁷¹

The Public Defender positively assesses the implementation of the recommendation on organizing 24/7-hour medical care in the center. During the visit, it was revealed that from January 1, 2021, 4 doctors were employed at the Migration Center who are on duty for 24 hours. The Public Defender's recommendation, which envisages provision of proper medical consultation and necessary medication to the persons placed in the center, is implemented. According to the medical personnel, upon the placement in the center, the person is consulted by a doctor and then, in accordance with the patient's complaints. If necessary, it is possible to transfer the placed person to the civil clinic for medical consultation, examination and / or treatment.³⁷²

The recommendation of the Public Defender, which related to screening for contagious diseases (tuberculosis, hepatitis B and C, HIV / AIDS) during the initial medical examination, was implemented. In addition, the visit revealed that the doctors working in the center do not have a separate tool for physical care screening, although, if needed, consulting a psychiatrist is possible.³⁷³ In case of necessity to transport

³⁶⁹ On 19 February 2021, a special prevention group paid a visit to the Temporary Accommodation Center of the Migration Department to assess the implementation of the recommendations.

³⁷⁰ The Public Defender's Office on Ad Hoc Monitoring at Temporary Accommodation Center, available at: <<https://bit.ly/3pWVr9C>> [last visited: 09.01.21].

³⁷¹ Letter of MIA 7 20 02758215 received on 26 November 2020 in response to the letter №03-4/11357 of the Public Defender's Office dated 13 November 2020

³⁷² In 2020, 19 cases of transferring the placed person to the civil sector clinic was observed.

³⁷³ A psychiatrist is invited from the Center for Mental Health and Drug Prevention.

the patient to the hospital, an ambulance is called for ensuring the patient's transportation to a psychiatric facility. However, on-site medication treatment is also available.³⁷⁴

The Public Defender positively assesses the implementation of the recommendation on arranging a recreation room in the center and equipping it with the necessary recreational means. As revealed during the visit of the Special Prevention Group, in 2020, another recreation room has been arranged in the "A" block (there are currently 2 such recreation rooms in the "A" block) equipped with a TV and chess.

The Public Defender's recommendation on ensuring the persons placed in the center to spend the maximum time in the fresh air during the day and equipping the yard with exercise equipment, was partially implemented. During the visit of the Special Prevention Group, two walking yards were under construction in the center (for "A" and "B" blocks), in fact, the yard fencing and roofing works were at the final stage. The internal works in the walking yards had not started yet, however, according to the information received from the administration during the visit, the project envisages arranging exercise equipment and chairs in the yards.

In the report following the Ad-hoc monitoring to the Temporary Accommodation Center for Migrants on 7 May 2020, the Public Defender of Georgia issued two recommendations which related to the conduct of periodic survey of the persons placed in the center when compiling the food menu and creating the possibility of substituting products, with maximum consideration of their desires and religious-cultural peculiarities. According to the information received from the Migration Department of the Ministry of Internal Affairs of Georgia, with regard to the status of implementation of these recommendations, persons placed in the center are provided with information by the relevant unit of the department on the products included in the ration and the possibility of replacing the products in the ration with other relatively same products. At the request of a foreigner placed in the center, different food menu is compiled taking into account the religious and cultural peculiarities of that person. Considering the caloric norms, meat and cereals are substituted by other relatively same products, for instance, meat is substituted with fish, buckwheat with rice, etc.³⁷⁵ It should be noted that during the visit to the Temporary Accommodation Center of the Migration Department on 18 February 2021, none of the individuals interviewed by the Special Prevention Group knew whether it was possible to substitute the products on the food menu with other relatively same products. During the visit, the representatives of the administration explained to the Special Prevention Group that the staff orally provided this information to the persons placed in the center and no document was compiled. Consequently, the Public Defender is currently unable to assess the implementation of these recommendations as the Special Prevention Group received substantially conflicting information from the administration and persons placed in the center and was unable to verify it through other sources (e.g. by reviewing the documentation). The Public Defender considers that it is important to determine the nutritional needs of the persons upon their placement in the center and they should be informed about the products included in the daily ration and

³⁷⁴ On the basis of a consultation issued by a psychiatrist, it is possible to apply to the Medical Department of the Ministry of Internal Affairs to provide with the prescribed medication.

³⁷⁵ Letter 7 20 02758215 of MIA received on 26 November 2020 in response to the letter №03-4/11357 of the Public Defender's Office dated 13 November 2020

the possibility of their replacement with other relatively same products. Also, it is necessary to consider their religious-cultural peculiarities and desires when compiling the food menu. In addition, it is important that the interviews conducted with all placed persons be reflected in a relevant document and confirmed by the signature of the placed person.

The Public Defender's recommendation to lift the ban on bringing their own food from the canteen into their living rooms after 6 pm or, alternatively, to arrange a dining room in the wing area was not implemented.

The recommendation of the Public Defender to offer a variety of organized activities (such as lectures, crafting, and cooking lessons) to individuals placed in the center for up to 9 months, was not implemented. According to the Migration Department, after the epidemiological situation in the country improves, in cooperation with the International Organization for Migration, planning of activities tailored to the interests of the persons placed in the center for up to 9 months is being considered.³⁷⁶

With one of the recommendations, the Public Defender requested discussion of functioning of a shop or self-service machine in the territory of the center, where the persons placed in the center would be able to buy the desired products or permitted items through cards. This recommendation has been implemented. The persons accommodated in the center, if they wish, will be given bank cards free of charge, with which they have the opportunity to buy the desired product in the food outlet located in the territory of the center.

The Public Defender welcomes the readiness of the Migration Department to have a constructive dialogue with the Public Defender's Office. We hope that this close cooperation will also continue in future, which will contribute to the introduction of human rights-based standards in the temporary accommodation center.

Proposal to the Parliament of Georgia

- To amend the Code of Administrative Offences of Georgia to the effect of determining that, whenever a judge suspects that a person under administrative responsibility could have been subjected to torture, inhuman or degrading treatment or that person him/herself states about it before the court, the judge applies to the competent investigative authorities.

Recommendations

To the Minister of Internal Affairs:

Informing detainees of their rights

³⁷⁶ Letter 7 20 02758215 of MIA received on 26 November 2020 in response to the letter №03-4/11357 of the Public Defender's Office dated 13 November 2020

- To ensure in a pilot mode, in several police stations that the process of informing detained persons about their rights by police officers is recorded by technical means (audio-video recordings)

Access to a lawyer and contacting a family

- By maintaining appropriate logbooks, to ensure proper documentation of the arrested persons' requests on notifying family or lawyer

Medical examination

- To increase the number of those TDIs in 2021 where a medical centre is functioning; In addition, to ensure that in those TDIs, where due to small number of arrested persons it is not planned to open a medical centre, physicians shall be contracted
- To conduct training sessions for medical professionals employed in TDIs about instructions on photographing injuries found on arrested persons' body and the rules on storing the respective photographic material
- To ensure that, in those TDIs where medical centres operate, the reports drawn up by the physicians of the ambulance are kept with the TDI physicians

Audio video recordings

- To equip gradually officers of territorial agencies and the Criminal Police with body cameras in 2021 and to determine by regulations their duty to record their communication with citizens as well as the procedure and terms of storing recordings
- To determine by Order no. 1310 of the Minister of Internal Affairs of Georgia of 15 December 2005 on Approving Instructions on the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia the duty of recording a video during communications of patrolling inspectors with citizens. The duty of video recording should be introduced in the following instances: identifying a person; frisking and examining a person; carrying out special inspection and examination; restricting a person or a vehicle from moving or restricting actual possession of an item, arresting a person
- To equip gradually police vehicles with an internal and external CCTV system
- To determine by a normative act the duty of uninterrupted video recording of a person placed in a police vehicle with an internal and external CCTV system or, if there is no such system, with a body camera
- To install CCTV systems everywhere in police departments, divisions and stations where an arrested person or a person voluntarily invited to the questioning has to be present
- To eliminate the practice of conducting interviews with arrested persons in the offices of a Head of Police/Deputy Head of Police and to ensure such meetings to take place only in the areas that are equipped with a CCTV system
- To ensure in a pilot mode uninterrupted audio and video recording of questioning an arrested person in several police stations

Maintenance of documentation

- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 and to add a column to the sample of a protocol approved by Annex 9 for entering the following information: the time of drawing the report; the description of the injuries on an arrested person's body; the circumstances of the arrest; if there was resistance to police and if force was used in any manner
- Through maintaining a register, to ensure documenting all persons brought to police departments, divisions and stations indicating their status, the time of entering and leaving buildings
- To introduce systematised, standardised and unified databases replacing logbooks maintained in police stations
- Before the introduction of the electronic databases to ensure provision of clear instructions to police officers regarding filling out logbooks and provision of guidelines about maintaining the logbooks

Detecting alleged cases of ill-treatment

- To ensure meetings between persons placed in TDIs and investigators of the State Inspector's Service (among others, remote meetings) to be held in a confidential environment
- To ensure that remote court hearings in TDIs are held in a confidential environment, in the absence of employees of the Ministry of Internal Affairs.

Physical environment

- To ensure the inspection of the TDIs and appropriate responses to the shortcomings concerning living conditions that were identified in the 2020 Report of the National Preventive Mechanism

Epidemiological situation

- To ensure testing of detainees with COVID-19 for timely detection of infection upon placement in temporary detention isolators and train medical personnel for this purpose
- To provide periodic thermoscreening of detainees in all temporary detention isolators for timely detection of suspicious cases

Management of withdrawal syndrome

- To elaborate unified guidelines for medical personnel on managing withdrawal syndrome in TDIs, which should determine the volume of care to be provided in a TDI and clear instructions on under what circumstances an arrested person must be transferred to an inpatient facility
- Ensure timely referral of substance addicts to a medical facility

Recommendation to the State Inspector's Service

- To ensure to a maximum extent, face-to-face meetings with persons placed in TDIs.

4. Psychiatric institutions

4.1. Introduction

During 2020, the Special Prevention group paid 5 preventive visits to 3 psychiatric institutions. Special Prevention Group visited Center for Mental Health and Prevention of Addiction³⁷⁷, Senaki Mental Health Center³⁷⁸ and Tbilisi Mental Health Center.³⁷⁹ Special Prevention Group also conducted monitoring visit in Batumi housing designed for 24 beneficiaries.³⁸⁰

It should be noted that prior to the monitoring visits, the Special Prevention Group adapted the working methodology to the existing challenges. The rules for conducting a safe monitoring visit during a pandemic were defined and members were given appropriate instructions. Individual protection means were purchased while the rules for their use were explained to members. The adoption of these measures aims at reducing the risk of new coronavirus spreading during monitoring visits and protection of staff and persons in the facilities. It should be further noted that psychiatric facilities assisted monitoring groups in carrying out their activities safely and without undue restrictions.

The visits conducted during 2020 also focused on examining whether the patients were treated in an epidemic-protected environment and studying the impact of undertaken epidemic prevention measures on their rights. In addition, the Special Prevention Group methodically, thematically studied the state of protection of patients' rights in psychiatric institutions, in particular, the patients' protection from violence, inhuman or degrading treatment; the practice of using restraint methods; sanitary-hygienic conditions; safe and therapeutic environment; psycho-social rehabilitation; legal protection safeguards; somatic and mental health of patients; contact with the outside world, etc. During the visits, the Special Prevention Group examined the documentation produced in the institutions and physical environment, conducted individual and group interviews with both patients and staff of the institution.

The report below systematically describes the situation in the institutions, analyzes the problems identified during the monitoring visits and their causes. The normative framework and the progress of the implementation of the Public Defender's recommendations issued in 2019 are assessed.

4.2. The Status of recommendation implementation

This subchapter aims at reviewing the recommendations issued in the report of the National Prevention Mechanism and the state of their implementation. Information on these issues is additionally presented in the relevant thematic subchapters.

In the 2019 report of the National Prevention Mechanism, the Public Defender of Georgia issued 20 recommendations for the prevention of ill-treatment in the psychiatric institutions. 18 of them were

³⁷⁷ Monitoring visits were conducted on 7 May and 12 June, 2020. There were 99 patients in the facility at the time of the first visit and 94 patients during the second visit.

³⁷⁸ Monitoring visit was conducted on 30 July 2020, 15 patients were in the facility at the time of the visit.

³⁷⁹ Monitoring visits were conducted on 15-16 September 2020. 210 patients were in the facility at the time of the visits.

³⁸⁰ Monitoring visits were conducted on 12-13 July, 2020.

reflected in the resolution of the Parliament of Georgia and the state institutions were given relevant tasks.³⁸¹

One proposal was issued to the Parliament of Georgia which has been implemented. One recommendation issued to the Government of Georgia has been partially implemented. Out of 18 recommendations issued to the Ministry of Internally Displaced Persons from the Occupied Territories of Georgia, Labor, Health and Social Affairs (hereinafter the "Ministry"), 2 have been partially implemented and 16 recommendations are unfulfilled at this stage.

The Public Defender welcomes the fact that while amending the Law of Georgia on Psychiatric Care the recommendations of the Public Defender and the European Committee for Prevention of Torture were considered. In fact, it became mandatory to revise the legal status of the patient undergoing voluntary treatment when the restraint method is applied.³⁸² This represents an important guarantee for the patients undergoing voluntary treatment not to be subject to unwarranted restrictions and to be protected from staff arbitrariness.

The Public Defender also welcomes the amendment made in the Law of Georgia on Psychiatric Care introducing a statutory mechanism for monitoring the protection of patients' rights and the quality of services provided in the field of mental health.³⁸³ According to the amendment, monitoring implies on-site inspections, development of recommendations, publication of a report and communication with stakeholders. However, it should be noted that this recommendation was partially implemented as the monitoring mechanism does not provide for the possibility of receiving either confidential or open complaints from patients or other stakeholders. Furthermore, the monitoring grounds were supposed to be defined by the Ministry until 1 September 2020, which have not been determined so far.

Despite the recommendation of the Public Defender, one of the components of state supervision and control, which included assessment of compliance with the permit conditions of the institutions by the State Agency for Regulation of Medical and Pharmaceutical Activities, was not implemented in 2020.

It is regrettable that in 2020, the vast majority of systemic recommendations issued by the Public Defender have not been implemented. Unfortunately, the multi-component recommendations of the Public Defender which aimed at strengthening safeguards against ill-treatment in the psychiatric institutions, have not been implemented. According to the information received from the Ministry, the process of revising, updating and harmonizing mental health legislation with EU legislation is underway within the technical assistance of the French Agency for International Development, however, the letter further states that this process could not be completed in 2020 due to the new Coronavirus pandemic. Unfortunately, normative acts have not yet been developed on measures to be taken to prevent violence and ensure safety among patients. In addition, the psychiatric institutions have no legal mechanism for documenting

³⁸¹ The resolution of the Parliament of Georgia on the "Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in 2019 in Georgia.

³⁸² Article 16, para. 8.

³⁸³ The Law of Georgia on Amending the Law of Georgia on Psychiatric Care, Chapter VII¹, available at: <https://matsne.gov.ge/ka/document/view/4900468?publication=0> [last visited: 03.01.21].

alleged violence against a patient and sending a notification to the investigating authority. Also, in 2020, the State Agency for Regulation of Medical and Pharmaceutical Activities has not examined the cases of involuntary hospitalization of patients receiving formally voluntary psychiatric care.

For protection of the patients' rights, it is essential the institutions to introduce a unified in-hospital complaints review and feedback procedure, which should be human rights centered, accessible, simple, fair and transparent. It should be noted that despite the recommendation issued by the Public Defender, the Law of Georgia on Psychiatric care still fails to regulate complaints review and feedback procedures.

Methods of physical restraint were also specified at the legislative level. Notwithstanding the above-noted, a number of important issues related to restraint procedures remain beyond the legislative regulation. In particular, the Law on Psychiatric Care only refers to verbal reassurance and medical treatment as methods of de-escalation,³⁸⁴ while many other effective methods of de-escalation exist. In addition, the instruction on the implementation of physical restraint was not amended to determine the obligation to develop a special register / journal; place and circumstances of the restriction; specific characteristics of used special means; obligation to document the injury and staff obligation to interview the patient.

The Public Defender has been discussing the problem of long-term hospitalization for years and considers that the measures should be taken immediately to solve this problem. The first task is to assess the needs of the patients placed in the psychiatric institutions for more than 6 months in order to discharge them from the institution and refer them to the community-based services, as well as to develop a plan for setting up housing based on the number of future beneficiaries of the shelter. Unfortunately, this was not done in the reporting year. The Ministry informed us with a letter that, within the technical assistance of the French Development Agency, a study on the geographical location of services is underway, which will form the basis for the development of a plan for the deinstitutionalization of mental health services.

With one of the recommendations, the Public Defender, aiming the deinstitutionalization in the psychiatric institutions in 2020, demanded the assessment of the patients and the transfer of those beneficiaries to the services close to the family environment who do not require inpatient treatment. This recommendation has been partially implemented. It should be noted that in 2019, long-term housing designed for 24 beneficiaries was opened in Batumi. In addition, according to the information provided by the Ministry, 4 more housings will be built in Kutaisi, Poti and Senaki during 2021-2022.

The Public Defender welcomes the activities of the Ministry and further notes that the measures to be taken in terms of housing should be based on needs assessment and evidence. However, it is important one institution not to replace another, the newly created one, as the institutions are not compatible with deinstitutionalization policies. In order for service beneficiaries to become independent and have the opportunity to engage in public life, it is important for the state to prioritize accelerating the

³⁸⁴ Law on Psychiatric Care, Article 16.1

deinstitutionalisation process, envisaging a plan to close large institutions in the foreseeable future, and allocating financial resources for community-based services.

The Public Defender's recommendations regarding the provision of psycho-social rehabilitation services tailored to individual needs and based on the respect for patients' rights in the psychiatric institutions remain unfulfilled.

During the reporting period, not all social workers employed in the psychiatric hospitals, who do not have a bachelor's degree, master's /equal to a master's or a doctorate in the field of social work, were trained.

Institutions still have restrictions on patients' access to telephone communications. The State Agency for Regulation of Medical and Pharmaceutical Activities has not studied the practice of using antipsychotic medications and managing the side effects in the psychiatric institutions. The Public Defender's recommendation, which required all psychiatric institutions to justify the need for forcible rapid tranquilization, to document in writing the patient's consent to tranquilization, to implement physical monitoring in accordance with the national recommendations on clinical guidelines (guidelines), and reflect the results of this monitoring in medical records, was not implemented. Despite the Public Defender's recommendations, the institutions still do not provide full treatment for the beneficiaries having physical health problems. No changes were made to the psychiatric care program to address the issue of treating somatic health problems of the patients admitted to a psychiatric hospital. In addition, no changes have been made to the psychiatric care program to manage the side effects of medications through appropriate examinations and consultations in accordance with guidelines existing in the country.

In order to protect the right of service users to enjoyment of the highest attainable standard of physical and mental health care,³⁸⁵ it is important to undertake complex and systemic legislative and institutional changes, which primarily require the development of community-based services, the introduction of psycho-social model and other fundamental reforms. The Public Defender hopes that the Ministry will take active steps to implement the systemic recommendations.

4.3. Protecting patients from violence, inhuman or degrading treatment

Patients in the psychiatric institutions are not protected from violence, inhuman and degrading treatment. Facts of ill-treatment are manifested in the psychiatric institutions in various forms, scales and severity.

Incidents involving physical violence and verbal abuse of patients by staff in overcrowded psychiatric institutions was evidenced also in 2020. For instance, during the monitoring visit made to LTD Tbilisi Mental Health Centre, patients spoke about beatings, rude and indifferent treatment. During the visit, the Special Prevention Group itself witnessed the incidents where personnel shouted at patients, addressed and replied to them in a rude manner. Patients of the LTD Senaki Mental Health Center did not talk about physical violence by staff, although addressing in an unethical and rude manner remains a problem here as well. Inadequate qualifications and number of personnel is a major cause of ill-treatment, which is even

³⁸⁵ Convention on the Rights of Persons with Disabilities, Article 25.

more evident in overcrowded psychiatric institutions. Further, under the State's improper supervision, the risk of arbitrariness from the institution is high.

The Public Defender reiterates that the state has an obligation to exercise proper oversight,³⁸⁶ to proactively detect and prevent facts of violence against patients by staff, as this falls under its positive obligation.³⁸⁷ The new legislative amendments set an obligation for the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia to proactively monitor the quality of protection of the patients' rights and services in the field of psychiatric care.³⁸⁸ Unfortunately, the order of the Minister of the same agency on monitoring / evaluation rules, conditions and the composition of the monitoring group has not been approved yet.³⁸⁹

There are also incidents involving conflict and inter-patient violence in the psychiatric institutions. This problem is even more serious in large psychiatric institutions where a chaotic, non-therapeutic environment, overcrowding and inadequate living conditions are evident. The insufficient number of staff further worsens the situation, due to which the staff not only fails to prevent conflict, but also does not undertake rapid response or fails to undertake at all to the cases of violence between patients.³⁹⁰ For instance, patients at the LTD Tbilisi Mental Health Center reported that staff arrived late to help the patient beaten by another one, while in one case did not arrive at all. One of the causes of the problem is the lack of an inter-patient conflict prevention strategy in the establishments. Consequently, the staff is unable to identify the dangers posed from the patients.

Responding to violence is one of the key components of a conflict prevention strategy. Psychiatric institutions practically leave the conflicts that have already occurred without responding. Institutions are not obliged to document an incident of violence in a special logbook and take appropriate measures to prevent a recurrence of such incident. Patients who are victims of violence do not receive adequate psychological assistance. Leaving incidents of conflict and violence between patients unattended increases the risk of recurrence of conflicts. To ensure a safe and therapeutic environment, it is important, in addition to the Conflict and Violence Prevention Tool, the institutions to have a strategy on measures that should be implemented in the event of conflict and violence.

The living conditions in which patients have to live and receive treatment in the psychiatric institutions, amount to ill-treatment. During the visits in 2020, the situation was especially difficult at LTD Centre for Mental Health and Prevention of Addiction. Overcrowded wards, faulty and outdated WCs, unhygienic

³⁸⁶ Judgment of the European Court of Human Rights of 1 February 2018 in the case of V.C. v. Italy, no. [54227/14](https://bit.ly/2Lq2skO), paras:89-95, available at: <<https://bit.ly/2Lq2skO>>, [last visited: 29.12.2020]. See also Osman v. the United Kingdom.

³⁸⁷ UN Convention on the Rights of Persons with Disabilities, 2006, Article 14.2.

³⁸⁸ Law of Georgia on Psychiatric Care, Article 26¹.

³⁸⁹ Law of Georgia on Psychiatric Care, Article 28².

³⁹⁰ It is an obligation of the staff of the psychiatric institutions to take care of the patients, which also includes protecting patients from danger coming from other patients. Report on the visit to Georgia carried out by the European Committee for the Prevention of Torture from 10 to 21 September 2018, (CPT/Inf (2019) 16), para 108, available in English: <<https://rm.coe.int/1680945eca> > [last visited: 30.12.20]

conditions, especially given the fact that patients are not allowed to be in the open air or engage in meaningful activities, create a particularly depressing and harsh environment.

Methods of controlling the behavior of an agitated patient and involuntary medical interventions for fulfilling the prescription, create a high risk of arbitrariness in the psychiatric institutions. The cases of forced injections as well as rapid tranquilization used against the patient to control his/her behavior are not documented which increases the risk of arbitrariness.³⁹¹ The only way for obtaining information on these issues are interviewing the patient or directly witnessing the fact.³⁹² Patients at the LTD Tbilisi Mental Health Center noted that forced injections as well as participation of other patients in this process were frequent. Cases of male patients' involvement in the process of forced injections used against female patients have also been reported. Patients also spoke out to take medication in powdered form by using force against their will.³⁹³

In the Public Defender's opinion, the established practice of rapidly acting tranquilisation against a patient's will without an adequate justification or legal safeguards, which leads to complete or partial suppression of the patient's consciousness and reflexes as well as excessive sedation, violates the patient's physical integrity³⁹⁴ and amounts to inhuman and degrading treatment of a patient. According to the CPT, use of rapidly acting sedative injections is a form of chemical restraint that causes significant harm to a patient's health. The application of rapid tranquilisation is permitted only in accordance with a strictly determined protocol under appropriate legal safeguards.³⁹⁵ According to the National clinical practice recommendation (guideline) on Treatment and Management of Schizophrenia in Adults, the use of rapid tranquilization is allowed as a last resort, when other sedation methods are exhausted and the patient refuses to take the medicine.³⁹⁶ However, the procedure on application of chemical restraint or rapid tranquilization is not regulated at the legislative and normative levels, which allows medical staff to disregard the standards set out in the guideline and without any legal safeguards use rapid tranquilization against the patient's will.

4.4. Practice of Using Restraint Methods

Restraint methods are still actively used in psychiatric institutions to manage the behaviour of agitated and/or aggressive patients. However, not all cases are documented. After the adoption of the new version of the Law of Georgia on Psychiatric Care on June 23, 2020, the two methods of physical restraint -

³⁹¹ In case of forced injections, only the fact that the patient was injected beyond the prescription is recorded in the medical documentation.

³⁹² The Special Prevention Group itself witnessed the fact of using forced injection against the patient in LTD Sekani Mental Health Center.

³⁹³ The medical staff of the institution also confirmed the fact that medicines are frequently given in powdered form.

³⁹⁴ Article 17 of the 2006 UN Convention on the Rights of Persons with Disabilities reinforces the physical integrity of persons with disabilities.

³⁹⁵ Report on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 December 2019, (CPT/Inf (2020) 33), para.101, available in English: <<https://rm.coe.int/1680a05953>> [last visited: 30.12.2020].

³⁹⁶ The National clinical practice recommendation (guideline) on Treatment and management of schizophrenia in adults, para. 7.3.3. available at: <<https://bit.ly/3bgMtAj>> [last visited: 30.12.2020].

isolation and mechanical restraint - were separated by a third method - manual restraint, which is different from mechanical restraint as at that time the patient is restrained manually without special means.³⁹⁷ Notwithstanding this amendment, there is no updated instruction (hereinafter, the Instruction on Restraint Methods) which will regulate the process of using the restraint methods in detail.³⁹⁸

Before and after the amendment, the psychiatric institutions document only the mechanical restraint for which they use the so-called "Fixation journals". However, as mentioned above, the facts of rapid tranquilization are not properly documented, which in its essence can amount to a chemical restriction and during which the staff applies the method of manual restraint against the patient for forced injection.

According to the Law of Georgia on Psychiatric Care, the restraint method is an exceptional measure of last resort used for safety reasons and its use is permissible only when the patient poses a threat to his or her own health or another person's health and prevention of danger is not otherwise inevitable.³⁹⁹ Examination of "fixation journals", "nursing diaries" and medical cards produced in the institutions reveals that mechanical restraint is still actively used to manage crisis cases in the psychiatric institutions. The growth trend of using mechanical restraint in the LTD Centre for Mental Health and Prevention of Addiction is observed.⁴⁰⁰ It is noteworthy that physical restraint is usually used in combination with chemical restraint as revealed through the dosage of medications listed in the "fixation journals". Isolation as another method of restraint is also used, however it is not documented. Interviews with the patients of LTD Tbilisi Mental Health Centre revealed a possible incident of resorting to long-term isolation of the patient in the ward.

The established practice of restraint methods is explained by the fact that the psychiatric institutions do not have a policy on crisis prevention and use of non-violent (de-escalation)⁴⁰¹ management methods that in the end should eradicate the practice of using restraint methods. The institutional management policy is not designed to minimize the risks of escalation and therefore no longer require use of restraint methods. In addition, enhancing the qualifications of the medical staff is particularly important for them to be able to calm a patient verbally or by resorting to other modern methods recognised in psychiatry, also convince and persuade a patient for ensuring the treatment. It is also noteworthy that due to insufficient numbers and inadequate qualifications of medical staff, staff without special qualifications, non-medical staff or patients participate in the process of physical and chemical restraints of psychiatric patients. Against this background, staff do not attempt to find out with the service users the possible causes of the crisis and their priority needs in times of crisis. The shortest and easiest way for unqualified

³⁹⁷ Law of Georgia On Psychiatric Care, Article 16.2.

³⁹⁸ Order №92/N of the Minister of Labor, Health and Social Affairs of March 20, 2007 "On Approval of the Instruction on the Rules and Procedures for the Use of Physical Restraint Methods against the Patients with Mental Disorders.

³⁹⁹ Law of Georgia on Psychiatric Care, Article 16(1).

⁴⁰⁰ According to the data of the first 5 months of 2019, 64 cases of physical restraint were registered in the institution, while, according to the data of the first 5 months of 2020, 79 cases were registered.

⁴⁰¹ Elements of de-escalation techniques are: immediate assessment of potential crisis and prompt intervention; problem-solving orientation; empathy and persuasion; stress management or relaxation techniques such as breathing exercises; allocating space for a person; offering choice; giving time to think.

personnel to manage the crisis and ensure their own peace is to restrict the patient physically and chemically, which is unacceptable⁴⁰² and constitutes a gross violation of the patient's rights.

Incomplete and unsubstantiated documentation of the incident increases the risk of arbitrariness from the staff.⁴⁰³ Institutions produce "fixation journals" in various formats. For example, LTD Center for Drug Prevention and Mental Health did not provide any justification as to why the restriction was used. Some records at LTD Tbilisi Mental Health Center do not adequately describe how dangerous the patient's behavior was towards himself / herself and / or those around him / her. None of the fixation journals examined during the 2020 monitoring contained information on whether de-escalation methods were used prior to the restriction.⁴⁰⁴

Staff without special qualifications, non-medical staff or patients are involved in the process of physical and chemical restraints of patients in the institutions which is contrary to the Instruction on Restriction Methods,⁴⁰⁵ according to which physical restraint must be carried out by the relevant personnel determined with the internal regulation of the institution, who have the necessary qualification and experience in using physical restraint methods. The documentation⁴⁰⁶ produced by the medical and support staff of the institutions does not indicate who exercised the restriction, by what means and in what place. In exceptional cases, it is stated that the patrol inspectors and other department employees assisted the staff in the restraining process.⁴⁰⁷ The practice of involving non-medical, personnel without special qualifications in the restraint process is not only a threat to the patient's health but also a strongly stigmatising experience, especially if another patient is involved or attends the restraint process. The general exception is only when the patient him/herself requests the presence of another patient.⁴⁰⁸

4.5. Legal safeguards

Inpatient psychiatric care is voluntary except in cases determined by law.⁴⁰⁹ Voluntariness implies a patient expressing a genuine will that he/she wishes to receive psychiatric care at a psychiatric institution. The

⁴⁰² CPT standards on Means of restraint in psychiatric establishments for adults. Standard 1.6. notes that means of restraint should never be used as punishment, for the mere convenience of staff, because of staff shortages or to replace proper care or treatment. Available at: < <https://rm.coe.int/16807001c3> > [last visited: 30.12.2020].

⁴⁰³ According to Article 16.1 of the Law of Georgia on Psychiatric Care, the restraint method is an exceptional measure of last resort used for safety reasons and its use is permissible only when the patient poses a threat to him/herself or those around him/her.

⁴⁰⁴ Judgment of the European Court of Human Rights, M.S. v. Croatia (No. 2)) (no. 75450/12), para. 106, available at: < <https://bit.ly/3q2HSWv> >, [last visited: 30.12.2020]. The Court found a violation of Article 3 after examining the documentation produced on restraint methods which did not indicate the reasons why the use of mechanical restraint became necessary and whether alternative, non-coercive methods were used against the patient, which proved ineffective.

⁴⁰⁵ Order №92/N of the Minister of Labor, Health and Social Affairs of March 20, 2007 "On Approval of the Instruction on the Rules and Procedures for the Use of Physical Restraint Methods against the Patients with Mental Disorders, para 8. See also CPT standards on Means of restraint in psychiatric establishments for adults, Standards 3.2. and 3.6. available at: < <https://rm.coe.int/16807001c3> > [last visited: 30.12.2020].

⁴⁰⁶ "Fixation journals", "nursing diaries" and medical cards.

⁴⁰⁷ Records of LTD Tbilisi Mental Health Center's fixation journals.

⁴⁰⁸ CPT standards on Means of restraint in psychiatric establishments for adults, Standard 3.5, available at: < <https://rm.coe.int/16807001c3> > [last visited: 30.12.2020].

⁴⁰⁹ Law of Georgia on Psychiatric Care, Article 15.1

legislation provides for the need to establish a patient's informed consent for hospitalisation and treatment, which must be confirmed in a medical documentation.⁴¹⁰ According to the CPT, consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed.⁴¹¹

The free expression of the patient's will is still problematic in Georgia, both in terms of hospitalization and treatment. Signed informed consent forms were available in all examined medical documentation as it avoids the administrations of the procedure of involuntarily⁴¹² placing a person in a hospital.⁴¹³ Actually most patients sign the informed consent form upon entering a psychiatric establishment unknowingly or forcibly. Most of the patients are brought in by the ambulance, accompanied by police officers and a family member, against the will of the patient. Patients say they do not know what they signed, some of them cannot even remember the fact of signing. While visiting the Senaki Mental Health Center, the members of the Special Prevention Group had a reasonable suspicion that the signature on one of the informed consent forms belonged to the doctor and not to the patient.⁴¹⁴ The example of the Tbilisi Mental Health Center also questioned the existence of informed consent, for instance, when the restriction method was used against 19 patients within 15-30 minutes after signing the informed consent.

Challenges related to the expression of the patient's will during hospitalization are followed by a chain reaction of the treatment process. Patients are not informed about the methods of their treatment or alteration of the course of the treatment, in order to express informed consent to each modification of treatment strategy and to be fully involved in the process. This is primarily conditioned by the fact that the obligation to obtain informed consents for hospitalization and treatment separately is not determined at the normative level. According to the CPT Standards, even in case of involuntary psychiatric treatment, the admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment.⁴¹⁵ It is important to provide patients with information about their rights, the essence, methods and duration of treatment, both at the initial stage of hospitalization and later.⁴¹⁶ The patient's informed consent on treatment is crucial, as it concerns the use of powerful psychotropic

⁴¹⁰ Law of Georgia on Psychiatric Care, Article 17.2.

⁴¹¹ CPT Standards, para 41. Available at: <<https://rm.coe.int/16806cd43e>>, [last visited: 30.12.2020].

⁴¹² During the monitoring conducted in the psychiatric institutions in 2020, involuntary psychiatric care was provided only to a small number of patients.

⁴¹³ Article 18 of the Law of Georgia on Psychiatric Care regulates involuntary placement of a person in a hospital, according to which, if the doctor on duty decides on the necessity of involuntary placement of a person in a hospital, a commission of psychiatrists must be established within 48 hours which by a majority of votes adopts a reasoned decision and applies to the court. Within 24 hours of application, the court shall review and decide on the issue of involuntary inpatient psychiatric care, which should not exceed 6 months. In addition, the Commission of Psychiatrists shall consider the expediency of continuing involuntary hospitalization every month. Each adopted decision shall be duly substantiated.

⁴¹⁴ The signature on the consent form (outline of the letters) was practically identical to the doctor's handwriting.

⁴¹⁵ Extract from the 8th General Report of the CPT on Involuntary placement in psychiatric establishments, para. 41. Available at: <<https://rm.coe.int/16806cd43e>> [last visited: 30.12.2020].

⁴¹⁶ "Every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances." Extract from the 8th General Report of the CPT on Involuntary placement in psychiatric establishments, para. 41, available at: <<https://rm.coe.int/16806cd43e>> [last visited: 30.12.2020].

medication, which may cause suffering and significant harm to the individual's health. Treating a patient without consent may even reach the threshold of torture and ill-treatment.⁴¹⁷

The formal and illusory nature of voluntary placement and treatment of patients is also confirmed by the fact that the patients cannot leave psychiatric establishments voluntarily. The essence of voluntariness implies that a patient should be able to withdraw informed consent for hospitalisation at any time and leave the psychiatric institution. According to Article 17 (1) (b) of the Law of Georgia on Psychiatric Care, a patient on voluntary treatment can be discharged from the hospital at any stage. The exception is when the patient's condition has changed and he or she refuses treatment, during which review of his or her legal status is required.⁴¹⁸ Institutions, bypassing formal procedures, place patients in conditions of de facto restriction of liberty. According to the management of the Tbilisi Mental Health Center, patients cannot be allowed to be discharged freely without a family member on the grounds that if the life or health of an outpatient is endangered, the institution will be held responsible.⁴¹⁹ The Public Defender considers that formally voluntary psychiatric inpatients requesting discharge, should be immediately discharged if there is no legal basis for the use of involuntary psychiatric care. In a number of recommendations, the Public Defender referred to the Ministry of Internally Displaced Persons from the Occupied Territories of Georgia, Labor, Health and Social Affairs, to examine the cases of hospitalization of patients receiving formal voluntary psychiatric care against their will. Against this background, LEPL "Agency for Regulation of Medical and Pharmaceutical Activities" with the revision act of 2020, fined LTD Kutaisi Mental Health Center (Ltd Mental Health and Drug Prevention Center) on the ground that a patient on voluntary treatment was discharged without the decision of the Psychiatric Commission.⁴²⁰ The decision of the Psychiatric Commission is one of the grounds for discharging a patient on voluntary treatment under Article 17.3.a of the Law of Georgia on Psychiatric Care, however, it is not mandatory to fulfill in case of patient's request as defined under Article 17.3.b.

According to the law, in addition to the right to leave the hospital at any time, patients on voluntary treatment have the right to leave the hospital for a short period of time without being discharged from

⁴¹⁷ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment submitted before the General Assembly, A/63/175, 28 July 2008, para. 63, available at, < <https://digitallibrary.un.org/record/635981?ln=en> >, [last visited: 30.12.2020].

⁴¹⁸ Law of Georgia on Psychiatric Care, Article 17.4.

⁴¹⁹ Judgment of the European Court of Human Rights in the case of Fernandes de Oliveira v. Portugal, no. 78103/14, 31 January of 2019, para. 124-132. The Grand Chamber did not find the violation of the right to life by the state, for fleeing a patient on voluntary treatment from a psychiatric institution, and for committing suicide. The judgment stated that although patients are vulnerable when there is no real and imminent danger, especially in the case of a person receiving voluntary treatment, the institution / state is not liable for that and is not considered to be in violation of a positive obligation. Also, in the 2020 report of the CPT on the visit to the Republic of Moldova (CPT/Inf (2020) 27), the European Committee for the Prevention of Torture called on Moldova to terminate the practice when the investigation is launched against the staff of the institution if civil patients, whether voluntary or involuntary, "escaped" from the institution, committes a criminal offence, The report further notes that such approach may represent a strong incentive for imposing additional restrictions on movement of patients, para. 143, available at: < <https://rm.coe.int/16809f8fa8> >, [last visited: 30.12.2020].

⁴²⁰ Revision act NR/R-794-154 of LEPL "Agency for Regulation of Medical and Pharmaceutical Activities" 2020 of 16 July 2020.

the hospital.⁴²¹ Patients in the psychiatric institutions do not enjoy this right at all. Entrance doors to facility wards are locked and patients can neither enter the yard nor outside the yard, despite the absence of the physician's decision on restricting this right due to the extreme necessity.⁴²²

In overcrowded psychiatric facilities, patients are also restricted from using the telephone. Patients at the LTD Center for Mental Health and Drug Prevention⁴²³ as well as at the LTD Tbilisi Center for Mental Health had their mobile phones confiscated.⁴²⁴ Patients' right to use the telephone is arbitrarily restricted without a written justification provided by law.⁴²⁵ Staff of the institutions justify confiscation of the phone by noting that the calls made by the patient bother his/her family, which is completely unacceptable and a gross violation of the law, since the restriction of the patient's right should serve a legitimate purpose and not creation of comfort for the patient's family members. It is important to return their own phones to the patients and, in case of phone absence, the patients should be able to make at least 1 call per day from the institution phone.⁴²⁶ The patients should not depend on the goodwill of the staff to return their phone, especially during pandemic-related constraint, when patients have even more limited contact with family members.

Another issue to be considered is the authority granted to a physician under Article 15.3 of the Law of Georgia on Psychiatric Care, in case of extreme necessity, to restrict patients' various rights for safety reasons by a written decision. These rights include: the right to use the telephone; right to leave the hospital for a short time; the right to receive letters, parcels and visitors; the right to own a personal item; right to receive audio-visual information, as well as the right to access to the information and medical documentation about his/her health condition.

First of all, the Public Defender believes that the list of the rights subjected to restrictions should be reduced to a minimum. For instance: restriction of the right to access information and medical documentation about his/her health condition can not be justified for any reason. Although the Law of Georgia on Patients' Rights also makes an exception, not to provide complete information to the patient, if there is a reasonable presumption that it will cause serious harm to his/her health,⁴²⁷ but the law takes into account the right guaranteed by the Constitution and states that if the patient insists, then the information shall be provided. It is unclear what the restriction of the right to receive audio-visual

⁴²¹ Law of Georgia on Psychiatric Care, Article 15.2.d.

⁴²² Law of Georgia on Psychiatric Care, Article 15.3.

⁴²³ It should also be noted positively that the patients at the Center for Mental Health and Drug Prevention had the possibility to use the computer and the Internet in the social worker's room.

⁴²⁴ Only one patient had his/her own phone at the time of the interview. Most of the patients reported having their phones confiscated during admission and only being given back to make a call. According to several patients, they are able to make calls using the employees' phones. When calling, the staff of the institution does not leave patients and it is impossible to speak confidentially. There were patients who had not used the phone for a long time. One patient mentioned that he has been in the facility for a year and has not used the phone during that time.

⁴²⁵ Law of Georgia on Psychiatric Care, Article 15.2.b and Article 15.3.

⁴²⁶ Report 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 10 to 21 August 2020, (CPT/Inf (2020) 39), para. 53, available in English: < <https://rm.coe.int/1680a090b7> > [last visited: 30.12.20]

⁴²⁷ Law of Georgia on Patient's rights, Article 18.2.

information for safety reasons means. The same applies to the right to use the phone. Restricting the right to use the phone may be justified by protecting the caller from threats and / or psychological violence, although it is also possible to take preventive measures in such a way that the patient is not completely restricted from using the telephone.

Another issue that the Public Defender emphasizes is, to specify the procedure for restricting the right. It is unclear what the restriction of the right to security means and it is unclear what kind of security and whose security is implied here. In addition, the law does not specify the maximum duration of the restriction. Therefore, to prevent arbitrary decisions by physicians, it is important to clearly determine the procedure and criteria and specify circumstances for restriction of each right. Also, determine the procedure on appealing the decision of physician promptly and effectively.

Granting indefinite authority to the physicians and institutions to restrict the patients' rights, adopt decisions instead of them both with regard to treatment and other matters creates an even greater disbalance between the patient and personnel⁴²⁸ and is contrary to the UN Convention on the Rights of Persons with Disabilities, the basic approach of which is that patients are the right holders and not recipients of mercy. Paternalistic treatment of the patient in the institutions not only gives ineffective results, but also represents a gross interference in the autonomy and personal life of patients. In order for patients to be able to lead their own lives and exercise their rights independently, it is important to comprehensively provide information about their rights upon entering the facility. Interviews with patients in the psychiatric institutions revealed that they have no information about their rights. They can not recall the provision of information about their rights in writing and / or verbally. Also, legal advice is not available in the facilities and patients do not have information on complaint mechanisms.

One of the most important safeguards against the patient's ill-treatment is the implementation of an accessible, simple and confidential internal and external complaint mechanism.⁴²⁹ While the legislation lays down a patient's right to lodge a complaint or an application before the court and other state institutions,⁴³⁰ there is no statutory procedure to ensure the use of these remedies by the patient. Information on complaint procedures, including the Public Defender's hotline number, is not in the area accessible for patients in the psychiatric institutions. Furthermore, due to the lack of a telephone and the inability to speak in a confidential environment, it is practically impossible to reach the state authorities or the Public Defender's Office by telephone. The situation in terms of the introduction of an internal complaint mechanism has not improved. The Law of Georgia on Psychiatric Care does not oblige a psychiatric institution to develop an internal mechanism for reviewing patients' complaints, neither the psychiatric institutions undertake any effort to either develop or introduce this mechanism on their own

⁴²⁸ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment submitted before the General Assembly, A/HRC/35/21, 28 March 2017, para. 22, available at, < <https://bit.ly/38mYWR4> > [last visited: 07.01.2021].

⁴²⁹ Convention on the Rights of the Persons with Disabilities, Article 13.

⁴³⁰ Law of Georgia on Psychiatric Care, Article 5.1.g.

initiative.⁴³¹ An internal complaint box is located in the LTD Senaki Centre for Mental Health, albeit without any function, as patients have no information about complaint procedures.

4.6. Therapeutic and safe environment

Psychiatric institutions shall ensure that patients are treated in a safe and therapeutic environment and in the conditions respecting their dignity.⁴³² During the monitoring visits to the psychiatric institutions in 2020, it is still noticeable that the existing infrastructure, living conditions and sanitary-hygienic condition fail to ensure the treatment of patients in conditions respecting their dignity. Further, the principle of universal design and reasonable accommodation is not ensured in the hospitals.⁴³³

The living conditions of patients in the psychiatric institutions inspected during 2020 have not improved. It is noteworthy that the infrastructure of inpatient institutions is not fully or partially adapted for people with mobility and sensory impairments. For example: there is no elevator in the LTD Tbilisi Mental Health Center, and the stairs between the 3rd and 4th floors are depreciated, which creates a risk of falling down. The elevator is functioning at the LTD Center for Mental Health and Drug Prevention, while the LTD Senaki Center for Mental Health is equipped with ramps, although the sanitary-hygienic facilities in both institutions are not adapted to the needs of patients with mobility impairments.

Both the buildings and the household inventory are outdated requiring renovation. 4, 5 and 6 patients live in some wards at LTD Centre for Mental Health and Prevention of Addiction and LTD Tbilisi Mental Health Centre making it impossible to ensure the minimum living space set by the standard.⁴³⁴ In addition, in the Center for Mental Health and Drug Prevention the standard of minimum distance⁴³⁵ between the beds are violated while in small wards the beds are practically put next to each other. Lack of personal space, especially against the background of impossibility to engage in meaningful activities outside the ward, negatively affects the health of patients. Not all patients in the wards have a storage room for personal items. Existing closets are still not locked with a key and loss of item often becomes a cause of conflict between the patients.

⁴³¹ In 2019, In the thematic monitoring report of Ltd., Acad. B.Naneishvili National Center for Mental Health, the Public Defender welcomed the introduction of a Patient Complaints Review Commission, which studies the suggestions and complaints made by patients orally or in writing. See the special report of the Public Defender on Monitoring Ltd., Acad. B. Naneishvili National Center for Mental Health. p. 10, available at: <<https://bit.ly/3slxe9H>>, [last visited: 21.01.2021].

⁴³² Extract from the CPT general report, CPT/Inf(98)12-part. para 32.

⁴³³ UN 2006 Convention on the Rights of Persons with Disabilities, Article 4.

⁴³⁴ According to the rules and conditions on issuing a license for medical activities and the permit for an inpatient institution approved by the Resolution N385 of the Government of Georgia of December 17, 2010, the area per patient in the ward should not be less than 8 sq.m.

⁴³⁵ According to the rules and conditions on issuing a license for medical activities and the permit for an inpatient institution approved by the Resolution N385 of the Government of Georgia of December 17, 2010, distance between the beds should not be less than 1.5 meters.



Wards at LTD Tbilisi Mental Health Center

Proper protection of personal hygiene is problematic in the institutions. Damaged infrastructure as well as the problem of organizing and promoting personal hygiene by staff are challenge in terms of hygiene protection. The showers and toilets in the LTD Tbilisi Mental Health Center and the LTD Mental Health and Drug Prevention Center need to repair damaged faucets and to install caps on toilets. In these institutions, patients do not have the opportunity to take a shower with sufficient frequency for proper protection of hygiene.⁴³⁶ In addition, as revealed in the LTD Tbilisi Mental Health Center, staff did not regularly distribute personal hygiene items⁴³⁷ and they are given to patients only upon request. Some patients in the same facility do not have personal soap and it is problematic for female patients to receive menstrual products. Some patients do not know, if necessary, how and with whom to request the hygiene items.

Patients in the facilities do not have clothes and linens for individual use.⁴³⁸ Patients' clothes are washed together and at the same time, patients are given someone else's used clothes, socks, underwear and linen (washed), which, according to the Public Defender, poses a risk of spreading contagious diseases. These conditions complicates protection of patients from various infections and parasites. Head lice in patients' is widespread in LTD "Tbilisi Mental Health Center". The institution tried to solve this problem by shaving patients' hair along with an anti-lice spray. According to the Public Defender, shaving hair can be offensive for the patient and negatively affect his self-estimation.

4.7. Nutrition

Under the State Psychiatric Care Program psychiatric institutions have an obligation to provide nutrition to patients.⁴³⁹ However, no uniform nutrition standard has been developed for psychiatric institutions, determining the institution's duty to provide patients with appropriate products and calories. Number of patients at the LTD Tbilisi Mental Health Center and the LTD Senaki Mental Health Center complained

⁴³⁶ Patients at LTD Tbilisi Mental Health Center are given the opportunity to take a shower only once a week.

⁴³⁷ Soap, shampoo, toothbrush and paste, hygienic diapers.

⁴³⁸ According to the standards of the European Committee for the Prevention of Torture, individual clothing is an important component for therapeutic purposes. Extract from the CPT general report CPT/Inf(98)12-part. para 32.

⁴³⁹ Resolution №674 of the Government of Georgia of December 31, 2019. Mental Health, (Program Code 27.03.03.01) Article 6 (A.D.A.), available at: <<https://bit.ly/2Lb1hGa>>, [last visited: 07.01.2021]

about the taste, quality and quantity of food. Further, the menu at the institutions does not include fruit or only in small quantities.

Given the vital importance of adequate nutrition, the Public Defender considers that a uniform standard should be developed to ensure a healthy and varied nutrition for patients, taking into account their age, health status and cultural / religious characteristics.

4.8. Epidemiological conditions

The monitoring revealed that certain measures were taken to prevent the spread of the new coronavirus in the institutions. First of all, it should be noted that meeting of patients and visitors was prohibited. It is important that if patient visits are allowed, the patient and the visitor are equipped with personal protective equipment and keep a distance.⁴⁴⁰ The Center for Drug Prevention and Mental Health Ltd. has defined the rules for disinfection of items brought in from the outside and a meeting room for doctors and family members/supporters was allocated.⁴⁴¹

In the opinion of the Public Defender, the sanitary-hygienic condition of the institutions, overcrowding, inability to maintain distance and incomplete use of personal protective equipment by the personnel increase the risk of spreading the infection. It is noteworthy that the minimum rules of safety were ignored in Tbilisi Mental Health Center Ltd. Entrants were not subjected to thermo-screening and most staff were not wearing face masks. It should be noted that at the time of the visit of the special preventive group (September 15-16, 2020) the staff of the institution was not being tested for COVID-19.

As for the hospitalization of the patient, the patients were being thermo-screened and an epidemiological history was collected. Interviews with medical staff revealed that if a patient did not have a fever during admission, they would be hospitalized. If the patient had a fever, they would be taken to a fever center.⁴⁴² According to the written response received from the Ministry regarding the COVID-19 testing prior to the placement in the patient unit, "Laboratory Diagnosis Algorithm for Infection (COVID-19) caused by the new coronavirus (SARS-COV-2)" approved by the order #1-144/O of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia on April 1, 2020 provides methods and conditions for laboratory testing in inpatient psychiatric facilities.⁴⁴³ With the above algorithm, inpatient testing is provided only in case of symptoms. In the opinion of the Public Defender,

⁴⁴⁰ Members of a special preventive group saw a visitor at the Tbilisi Mental Health Center who had arrived to meet with the patient. Neither the patient nor the visitor was wearing a face mask during the meeting.

⁴⁴¹ Letter OL-5047/Sh-1282//-4/20 of 14 April 2020 from the General Director of the Mental Health and Drug-addiction Prevention Center.

⁴⁴² During a visit to the Tbilisi Mental Health Center, it was established that if the patient's fever would be discovered by the doctor on duty at the facility and not by the ambulance doctor, the ambulance brigade that brought the patient to the facility would refuse to transfer the patient to the fever center. The reason for this was named the lack of places in the fever center and because of this the facility had to transport the patients on its own. In case the patient was diagnosed with fever by the ambulance brigade, they would be taken to the fever center and placed in the inpatient unit after the COVID-19 test result was negative.

⁴⁴³ Letter №01/8992 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of August 3, 2020.

this does not ensure the effective detection of a newly introduced, possibly infected, asymptomatic patient, and it is important that all patients undergo the said test when placed in a psychiatric institution. The mentioned algorithm also does not comply with the clinical practice recommendation,⁴⁴⁴ which instructs psychiatric institutions to introduce pre-triage⁴⁴⁵ and triage⁴⁴⁶ stages. At the "triage" stage, all patients should be referred to the facility's "filtration zone", where they will be tested for COVID-19 upon entry. To this end, it is important that two isolated patient rooms be set up in the facilities with individual bathrooms, where it will be possible to isolate the patient before the result of the COVID-19 test. This will significantly reduce the risk of spreading infectious disease in the facility and at the same time it will be necessary to isolate the patient only before receiving a test result.

According to the letter received from the Ministry,⁴⁴⁷ From October 22, 2020, patients admitted to the hospital are tested for COVID-19. During the visits, it was found that despite the response received from the Ministry, there is a different approach in different psychiatric hospitals. For example, all patients admitted to Batumi Medical Center undergo PCR testing⁴⁴⁸ in contrast, in "Senaki Mental Health Center"⁴⁴⁹ patients are not tested. It is important that all psychiatric hospitals have the same approach and ensure that patients are tested during hospitalization, which will significantly reduce the risk of spreading the disease.

Visits revealed that if a hospitalized patient had a fever, it was managed locally by a doctor-therapist, and testing for COVID-19 was performed only if the fever persisted again after completion of treatment. It is important that in the event of a pandemic, in the presence of a fever, the patient be isolated in a timely manner and tested.

In addition to the above-mentioned, testing the staff of the facility is important. The letter received from the Ministry on November 12, 2020 states that "According to the Ordinance of the Government of Georgia N975 of July 15, the priority persons subject to mandatory testing for coronavirus (SARS-CoV-2) infection (COVID-19) are medical staff, including inpatients and ambulatory services. In case of confirmation of the virus in the institution on the basis of paragraph 12 of the ordinance N2025 of the Government of Georgia of October 21, 2020, the persons in contact are tested, which is welcomed by the Public Defender.

⁴⁴⁴ "Mental Health and COVID-19"; see the link <https://bit.ly/2JwFkjY> [Last visited 31.12.2020].

⁴⁴⁵ The patients are initially evaluated at the pre-triage stage. If the survey reveals a "suspicious case of COVID-19", the patient is referred to a fever clinic and/or COVID-19 reception facility. The pre-triage stage is carried out before admission to the facility.

⁴⁴⁶If the patient does not show any suspicious symptoms during the pre-triage phase, s/he is transferred to the triage phase, which is performed in the filtration zone of the facility where the patient is being tested for COVID-19. If the patient is not confirmed with COVID-19, s/he leaves the filtration zone and is transferred to a psychiatric hospital/unit for further treatment or is released for home treatment.

⁴⁴⁷ Letter N01/1877 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of February 10, 2021.

⁴⁴⁸ Visit by the Department for the Protection of Persons with Disabilities on February 2, 2021.

⁴⁴⁹ Visit by the Department of Protection of Persons with Disabilities on February 5, 2021.

At the time of the visit, information posters related to the new coronavirus were not displayed in either patients' rest rooms or wards.⁴⁵⁰ Disinfectant solutions were placed in areas where patients could not reach them. It should be noted that hand hygiene is of particular importance for the prevention of the new coronavirus, but hand washing rules were not placed at the washbasins. Besides, in some cases there was no soap in the sanitary points. Interviews with patients revealed that in many cases they had no soap and could only wash their hands with water.

4.9. Psychiatric Assistance

4.9.1. Treatment with antipsychotic medications

Psychiatric assistance in psychiatric hospitals is not of biopsychosocial nature and is practically reduced to pharmacotherapy. According to the Public Defender, a biopsychosocial approach is important to provide adequate psychiatric care, which, in addition to pharmacotherapy, also includes the psycho-social rehabilitation of the patient according to the needs. Against the background of the challenges in terms of psycho-social rehabilitation in psychiatric institutions⁴⁵¹ pharmacologic burden is rising. Besides, patients are not properly involved in the process of providing psychiatric care, some of them do not know the the diagnosis and name of the prescribed medication. They also do not have information about the main and expected side effects of the prescribed medications.

In 2020, prescription of several antipsychotic medications at the same time was still a problem. A study of medical records at the Senaki Mental Health Center and the Tbilisi Mental Health Center revealed that in several cases patients had been prescribed two, three, or more antipsychotic medications at the same time, including in some cases together with Zopin (clozapine).⁴⁵² According to the national recommendations for clinical practice in the country,⁴⁵³ for most patients, except for special circumstances, it is recommended to prescribe one antipsychotic medication. It is important to avoid polypharmacy to prolong the QT interval⁴⁵⁴ and reduce the risk of sudden cardiac death.⁴⁵⁵

⁴⁵⁰ Information posters were posted in the wings of the departments, where the staff work rooms are located at the Center for Drug Prevention and Mental Health and the Senaki Center for Mental Health. Information posters were posted only in the canteen at the Tbilisi Mental Health Center.

⁴⁵¹ See the subchapter Psycho-social rehabilitation.

⁴⁵² One of the patients was prescribed Benzene 2 mg. Cedarex 2 mg. 1 tablet three times a day, "Amitriptyline" ½ tablets 3 times a day, "Azaleptin" 0.1 1/4 tablets and haloperidol 5 mg; One of the patients was prescribed "Olzap" 10 mg, "Amitriptyline" 25 mg, "Truxal" 50 mg. "Carbamazepine" 0.2, "Tryptazine" 5 mg. and benzene 2 mg; Also, one of the patients was prescribed "Sedarex" 6 mg, "Tisercin" 25 mg. "Ketilept" 200 mg. Haloperidol Decanoate; The second patient was prescribed Haloperidol 20 mg and Zopin 200 mg. and Clopixol Depot.

⁴⁵³ National Recommendation for Clinical Practice (Guideline) - "Treatment and Management of Schizophrenia in Adults", p. 46.

⁴⁵⁴ A heart rhythm disorder that potentially causes a rapid, chaotic heartbeat.

⁴⁵⁵ Most authors consider the use of 5 to 10 medications or, regardless of the number, the simultaneous use of different drugs of the same group or even the misuse of one medication as polypharmacy. See the link: <https://bit.ly/35h14YY> [Last visited 30.12.2020].

The Public Defender points out in numerous reports that⁴⁵⁶ The use of drug "Zopin" (active ingredient "Clozapine") in combination with other antipsychotic and different groups of psychotropic drugs, as well as monotherapy needs to be paid adequate attention. Besides, the European Committee for the Prevention of Torture in its report⁴⁵⁷ underlines the need for regular blood tests when prescribing clozapine. On their recommendation, the Georgian authorities should immediately ensure that regular blood tests are performed in all psychiatric institutions in case of clozapine use. Also, train the staff of the institution so that they can identify the side effects of "clozapine", which may have fatal consequences.

In view of all the above, the special preventive group concludes that there is no adequate management of the psychiatric case. The services provided are not focused on cure/recovery and are not based on respect for personal autonomy. Moreover, in some cases, the intervention performed causes significant harm to the patient.

4.9.2. Psycho-social rehabilitation

Psycho-social rehabilitation is an integral part of psychiatric care.⁴⁵⁸ The 2006 UN Convention on the Rights of Persons with Disabilities obliges Member States to provide comprehensive rehabilitation and habilitation services and programs in the field of health and social services in such a way that these programs are implemented at the earliest possible stage, taking into account individual needs and strengths. Their involvement in all spheres of public life.⁴⁵⁹ According to the Strategic Document for Mental Health Development and the Action Plan for 2015-2020, one of the priority areas of psychiatry is psycho-social rehabilitation, which involves the development of a multidisciplinary network of patient care and support services for people with mental disabilities to help in reaching the level of independent life in society."⁴⁶⁰ In addition, according to the state program of mental health, the provider of inpatient psychiatric services is obliged to carry out psychosocial rehabilitation intervention during long-term treatment..⁴⁶¹

⁴⁵⁶ National Preventive Mechanism 2019 Report, p. 78, see the link: <https://bit.ly/38nTDAV> [Last visited 30.12.2020].

⁴⁵⁷ European Committee for the Prevention of Torture report on the visit to Georgia on September 10-21, 2018. See the link: <https://rm.coe.int/1680945eca> [Last visited 30.12.2020].

⁴⁵⁸ Excerpt from the European Committee for the Prevention of Torture General Report CPT/Inf(98)12, para. 37. The European Court of Human Rights in *Rooman v. Belgium*, in finding a violation of Article 3 of the Convention, took into account one of the factors that the applicant was not provided with an appropriate psycho-social therapeutic component because he could not communicate with the staff of the institution due to his lack of language knowledge. Available at: <https://bit.ly/399eAPs> [Last visited: 28.12.2020].

⁴⁵⁹ UN Convention on the Rights of Persons with Disabilities, 13 December 2006, Article 26.

⁴⁶⁰ Ordinance #76231/12/2014 of the Government of Georgia on the approval of the Strategic Document for Mental Health Development and the Action Plan for 2015-2020 is available: <https://matsne.gov.ge/ka/document/view/2667876> { Last visited: 28.12.2020].

⁴⁶¹ State Program of Mental Health approved by the Ordinance №674 of the Government of Georgia (Program Code 27 03 03 01), Article 6, a.d.b. subparagraphs. Available: http://ssa.gov.ge/files/01_GEO/JAN_PROG/SXVA-JAN-PROG/674.pdf [Last visited: 28.11.2020].

The results of the monitoring conducted in 2020 show that psychiatric institutions do not meet the minimum standards of psycho-social rehabilitation in the country⁴⁶² and the country fails to meet its obligations under international treaties. There is no therapeutic environment in the facilities and patients spend all their time mostly in the wards or corridors idle.

The worst situation in terms of psycho-social intervention is in Tbilisi Mental Health Center Ltd. Although according to the staff schedule, 4 specialists are considered as members of the multidisciplinary team (psychologist-art therapist; psychologist⁴⁶³; ergo-therapist; social worker), after interviewing the staff and patients, it becomes clear that the existence of the named team is only of a formalistic nature and does not determine the individual needs of service recipients, identify/assess the problem, delineate the real way to solve it and select the appropriate method. This is confirmed by the fact that no individual rehabilitation plans have been drawn up and there are no individual records. Due to the lack of rehabilitation activities and difficult living conditions, patients are forced to clean the common areas of the facility in exchange for cigarettes and other food. This activity has no therapeutic purpose and may even indicate labor exploitation.

The situation is relatively better in the Center for Mental Health and Drug Prevention Ltd,⁴⁶⁴ where rehabilitation activities were scarce, but still ongoing.⁴⁶⁵ The challenge is the poor infrastructure that, especially in pandemic conditions, prevents all patients from engaging in group therapies.

There is no multidisciplinary work in Senaki Mental Health Center Ltd and rehabilitation activities are scarce.⁴⁶⁶ The institution employs a psychologist, who only sees patients for psychodiagnostic purposes when they are being hospitalized. The lack of psycho-social rehabilitation is also explained by the fact that patients are discharged from the institution in a short time. The state program of mental health provides psycho-social rehabilitation only for patients on long-term treatment.⁴⁶⁷ The Public Defender considers it important for the state mental health program to cover the psycho-social rehabilitation component for patients receiving short-term treatment, as the above-mentioned international standards do not apply only to patients receiving long-term treatment. In addition, the provision of bio-psycho-social psychiatric care at all stages of treatment will help the patient recover, which in turn will help unload inpatient spaces.

The qualification of the personnel employed on of psycho-social rehabilitation remains a challenge. The special preventive group studied this issue in depth during a monitoring visit to the Tbilisi Mental Health Center Ltd. and found that according to the qualification documents, psychologists had not recently passed the relevant training courses and the certificates in their personal records date back to 2011-2012.

⁴⁶² Order №112/n of the Minister of Labor, Health and Social Affairs of Georgia of April 2, 2007 approving the standards of psychosocial rehabilitation. <<https://bit.ly/3s6rR3G>> [Last visited: 28.12.2020].

⁴⁶³ Patients note that they met with a psychologist only upon entering the facility for primary psycho-diagnostics.

⁴⁶⁴ During the visit, the facility employed 2 psychologists.

⁴⁶⁵ Individual psychotherapy, ergotherapy and art therapy are ongoing.

⁴⁶⁶ Patients sometimes paint or watch a movie.

⁴⁶⁷ State Program of Mental Health approved by the Ordinance N4674 of the Government of Georgia (Program Code 27 03 03 01), Article 6, a.d.b. subparagraphs. Available: <https://bit.ly/3opyADP> [Last visited: 28.12.2020].

As for the social worker, their personal files contained neither a bachelor's, master's/equal to master's or doctoral degree in social work and nor a certificate of completion of the skills training required for a social worker.

In the situation of the strong pharmacotherapy, patients in a depressing environment without psycho-social rehabilitation even have limited access to the fresh air. In all three facilities visited, patients were not allowed to walk freely in the courtyard. The Center for Mental Health and Drug Prevention Ltd. indicated the epidemiological situation as the reason, noting that letting the patients down in the yard increased the risk of infection transmission. In an overcrowded facility where the beds are next to each other, it is unclear why being in the fresh air should be more risky. However, the clinical practice recommendation emphasizes the need to increase the length of time patients stay in the facility's yard.⁴⁶⁸ At the Tbilisi Mental Health Center Ltd, only a few patients close to the administration were allowed to go out in the walking yard. According to patients, their going out depends on the good will of the staff. There were patients in the facility who reported that they were not taken to the fresh air despite their wishes. The situation is similar in Senaki Mental Health Center Ltd., where it depends on the director's desire when patients are taken for a walk. However, in the absence of the director, the staff does not take patients to the walking yard.

Challenges in terms of psycho-social rehabilitation most severely affect patients who do not require active treatment but are unable to leave the facility due to the scarcity of community services and because they have nowhere to go. Accordingly, the Special Preventive Group believes that in the short term, a comprehensive study of the needs of such patients should be conducted in order to refer them to outpatient services. As of September 16, 2020, 71 patients (24 men and 47 women) were in the facility at the Tbilisi Mental Health Center Ltd. for more than 6 months, of which 5 patients had been hospitalized for more than 1 year. The facility has patients who have been placed in a psychiatric hospital since 2008, 2014, 2015, 2016, 2017. At the Center for Mental Health and Drug Prevention Ltd., as of June 12, 2020, there were 12 patients in the facility for more than 6 months, 5 of whom had been hospitalized for more than 1 year. Among them are patients who had been in a psychiatric hospital since 2011.

In 2020, housing for 24 beneficiaries started operating under the auspices of the Batumi Medical Center with the funding of the Ministry of Health and Social Affairs of the Autonomous Republic of Adjara. In July 2020, a special penitentiary team made an emergency visit to the above residence. During the visit of the special preventive group, the beneficiaries lived in a private house-type hotel on the outskirts of Batumi.⁴⁶⁹ Interviews with beneficiaries and staff revealed that beneficiaries feel much better in the housing than in a hospital, which the ombudsman welcomes. However, the only difference between a

⁴⁶⁸National Recommendation for Clinical Practice - "Mental Health and Covid-19", para: 2.7. Available at: <https://bit.ly/3eH1yK6> [08.01.2021].

⁴⁶⁹ Since the opening of the housing (January 6, 2020), 24 beneficiaries have been accommodated in one of the hotels in Gonio, where they stayed for 7 months. A special preventive group visited the hotel infrastructure in Gonio. It should be noted that the hotel did not have an isolated walking yard and the beneficiaries did not have the opportunity to go out in the fresh air independently, at will. Also, unlike the current residence, the Gonio Hotel did not create a sense of family atmosphere.

housing and a psychiatric hospital is the fact that the living conditions are improved, brought closer to the family environment and the beneficiaries have the opportunity to move freely in the inner courtyard of the dwelling. In the assessment of the Public Defender, this housing is a small, closed type institutio,⁴⁷⁰ where beneficiaries have the same limited freedom as those placed in a hospital. In particular, beneficiaries are not allowed to leave their dwellings independently, with permanent surveillance and control by staff and video cameras. Beneficiaries do not have a private environment and are not allowed to lock their own bedroom door. They are obligated to follow the housing routine and regime, are unable to use the telephone independently, and no rehabilitation work is underway that will ultimately provide the beneficiaries with the skills needed for independent living. The Public Defender considers that the transfer of beneficiaries from one institution to another is not compatible with the deinstitutionalization policy and therefore, beneficiaries should be redirected to out-of-hospital services that will maximally contribute to the independent life of persons with disabilities.

4.10. Somatic (physical) health

Patients who have been taking antipsychotic medications for a long time should undergo regular physical health examinations.⁴⁷¹ The National Guideline⁴⁷² for the Management of Schizophrenia emphasizes the importance of monitoring antipsychotic medications for early detection of somatic problems, assessment of severity, and correct selection of antipsychotic treatment strategies. There is also a table of the estimated frequency of the examination of patients' physical and biochemical parameters.

When being placed in the hospital, patients undergo common blood and urine tests, hepatitis C and glucose tests, and if necessary, these tests are repeated. Common blood and urine tests alone can not ensure proper management of side effects and it is important for effective management of the clinical side effects to ensure clinical-laboratory, dynamic assessment and control of the risk of developing agranulocytosis, metabolic processes.⁴⁷³ It should be positively noted that the Center for Drug Addiction and Mental Health, the Senaki Mental Health Center and the Tbilisi Mental Health Center have contracted therapists.⁴⁷⁴ The therapist's work in these institutions is limited to counseling and symptomatic treatment. It is noteworthy, however, that in some cases⁴⁷⁵ the patient either was not provided with the treatment prescribed by the therapist or was provided with it partially. This does not ensure a complete cure for

⁴⁷⁰ According to Article 19 (5) of the UN Convention on the Rights of Persons with Disabilities (CRPD/C/18/1), although institutions may differ in name, size and arrangement, there are still several elements for differentiating the institutions, including isolation and segregation from independent life, a paternalistic attitude when it comes to service delivery. It is possible for an institution to provide some degree of independence to the beneficiaries, although this independence is within the frames and reinforces the segregational nature of the institution. CRPD Committee (2017), General Comment No. 5 – Article 19: Living independently and being included in the community, CRPD/C/18/1, 29 August 2017, para. 16 (c).

⁴⁷¹ Treatment and Management of Schizophrenia in Adults National Recommendation for Clinical Practice (Guideline), Chapter 4.2.

⁴⁷² Treatment and management of schizophrenia in adults - Clinical Practice Recommendation (Guideline), Chapter 4.7.

⁴⁷³ Treatment and management of schizophrenia in adults - National Recommendation for Clinical Practice (Guideline)

⁴⁷⁴ Patients at the Senaki Mental Health Center and the Center for Drug Prevention and Mental Health are consulted by a therapist routinely when they are being admitted to the facility. At the Tbilisi Mental Health Center, the consultation with a therapist is not routine and is held only when necessary.

⁴⁷⁵ In "Tbilisi Mental Health Center".

patients' somatic (physical) health problems. In case the patient needs additional examinations and long-term treatment they have to seek it themselves,⁴⁷⁶ which is especially problematic for patients who are placed in a psychiatric hospital for a long time and are unable to leave the institution independently.

Patients admitted to a psychiatric hospital are involved in a universal health care program. However, patients are not capable to benefit from the planned medical care because it needs co-financing, which is an additional cost for patients, this coupled with the problem of patient transportation, including for dental care, which is also associated with additional costs and human resources. Psychiatric institutions say that it is virtually impossible to allocate additional funds from the insufficient funding of a psychiatric hospital to provide physical health and the necessary laboratory tests at the institution level. In many cases, patients are placed in a psychiatric hospital for a long time so that they cannot leave the facility. Also, they do not have the financial means and the provision of medical services to them is associated with significant costs. In view of the above, it is important that the Ministry take all necessary measures to make scheduled medical care available to patients admitted to a psychiatric hospital in the presence of somatic health problems.⁴⁷⁷

Recommendations:

Ill-treatment

Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- The Ministry should develop and implement a rule on reporting to the independent bodies the detection, documentation, investigation and monitoring of acts (torture, cruel or inhuman, degrading treatment or punishment, exploitation, violence and insults) referred to in Articles 15 and 16 of the Convention on the Rights of Persons with Disabilities.
- The Ministry should develop and implement a strategy for the prevention and response to conflicts between patients, which will also include the obligation to document in a special journal of violence and provide appropriate psychological assistance to patients who are victims of violence.
- The Ministry through monitoring in psychiatric facilities should identify and prevent violence against patients by staff, including involuntary forced injections and medications.
- The Ministry should develop and implement detailed instructions for staff communication with patients in psychiatric institutions, which should include standards for the protection of patients' rights and the provision of quality psychiatric care.

⁴⁷⁶ For example, one patient had long-term arterial hypertension and was symptomatically given antihypertensives, although no further examination has been performed on the causes of the hypertension.

⁴⁷⁷ The European Committee for the Prevention of Torture also points out this problem in its report on its visit to Georgia on 10-21 September 2018. The Committee does not accept that the inpatients with mental health problems who do not have the financial means should take care of their somatic health and calls on the government to take immediate action to resolve this challenge. Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT/Inf (2019) 16), para. 128, Visit of September 10-21, 2018.

- Staff in psychiatric facilities should be trained on at least the following issues: multidisciplinary work, de-escalation techniques, patient rights and ethics standards, a rehabilitation-based approach and modern psychiatry, with particular emphasis on the importance of understanding by staff the importance of bio-psycho-social model and development the necessary skills to implement it in practice

Practice of using restraint methods

Proposals to the Parliament of Georgia:

- By amending the Law of Georgia on Mental Health, it should be determined that the requirements and guarantees provided for by Article 16 of the Law of Georgia on Mental Health (application of restrictions on the patient) shall be extended to the forced rapid tranquilization of a patient.
- The Law of Georgia on Mental Health should determine the obligation of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia to develop and approve a mandatory internal document on crisis prevention and management for psychiatric institutions in order to minimize the risks of escalation of the situation so that the use of extreme measures does not become necessary.

Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- Develop and implement mandatory internal crisis prevention and management guidelines for psychiatric institutions to minimize the risk of escalation of the situation and therefore use of extreme measures does not become necessary
- Study through the monitoring the legality and justification of the use of restraint methods, as well as the issue of revising the status of patients who are formally voluntarily treated in psychiatric institutions, after the use of restraint methods towards them
Update the instructions on the rules and procedures for the use of methods of physical restraint through consultations with the Public Defender's Office and organizations of persons with disabilities

Legal protection guarantees

Proposals to the Parliament of Georgia:

- Through the amendments to the Law of Georgia on Mental Health provide a clear procedure for restricting a patient's rights for the sake of safety ensuring the legal guarantees (specify what criteria need to be met for each right to be restricted, for how long each right may be restricted and how this decision can be appealed)
- Clearly distinguish between informed consent for hospitalization and informed consent for treatment by amending the Law of Georgia on Mental Health

Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- Study the cases of hospitalization by receiving formal voluntary consent of patients subject to psychiatric care and take all necessary steps to immediately discharge patients for whom there is no legal basis to apply the procedures of involuntary psychiatric care;
- Develop and approve, by order of the Minister, a unified form of consent for placement in a psychiatric hospital, which will provide complete, accurate and detailed information on the essence of psychiatric care and patients' rights in an understandable form; In addition, the order should define the obligation of the psychiatric institution to provide the patient with a copy of the informed consent, as well as information on whom to apply if they do not want to stay in the hospital;
- Amend the order of the Minister,⁴⁷⁸ to make it mandatory to fill in the form approved by the order #108/n of the Minister of Labor, Health and Social Affairs of Georgia (N^oIV-300-12/a) at all stages of starting, continuing and changing the treatment scheme;
- Develop and approve by order of the Minister the obligation of the psychiatric institution to ensure introduction of oral and written information in a language that a patient understands about the hospital's internal regulations, patient rights and inpatient policy immediately after the patient is placed in the institution and then regularly afterwards;
- Develop and approve by order of the Minister mandatory, accessible, simple and confidential procedures for submitting applications/complaints outside the psychiatric institutions;
- Develop and approve by a mandatory order of the Minister accessible, easy and confidential procedures for submitting applications/complaints inside the psychiatric institutions;
- In accordance with the Law of Georgia on Mental Health, ensure the use by patients of telephones and other means of communication;
- In accordance with the Law of Georgia on Mental Health and in full compliance with the epidemiological requirements, ensure the possibility for patients to leave the hospital for a short period of time without being discharged from the hospital, taking into account the patient's mental condition

Therapeutic and safe environment

Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- Study in the psychiatric institutions the compliance of the minimum living space for patients with the rules and conditions of issuing a license for medical activities and a permit for an inpatient service
- Examine the adaptation of psychiatric infrastructure to the needs of people with mobility and sensory disabilities

⁴⁷⁸ Order of the Minister of Labor, Health and Social Affairs of Georgia on the approval of the rule of placement in a psychiatric hospital N^o87/n, March 20, 2007 Tbilisi.

- Develop and approve by order of the Minister, a common standard of nutrition in psychiatric institutions, which will ensure healthy and varied nutrition, the nutritional value of which corresponds to the age, health and cultural/religious characteristics of the person and include fruits in the daily ration.

Epidemiological conditions

- Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:
- Facilitate the management of psychiatric inpatients to ensure that there are at least two isolated wards in the facility with individual bathrooms, where it is possible to isolate the patient before the COVID-19 test results
- Examine the implementation by the institutions of the recommendations set by the Mental Health and COVID-19 Clinical Practice Recommendation (Guide)

Treatment with antipsychotic medications

Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- Instruct the appropriate authority to examine whether patients are provided with treatment information on a regular basis in a language they understand
- Order the Agency for Regulation of Medical and Pharmaceutical Activities to study the practice of using antipsychotic drugs in psychiatric institutions and managing side effects.

Psycho-social rehabilitation

Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- Study the existing needs in terms of providing psycho-social rehabilitation services in psychiatric institutions and ensure the introduction of such services in cooperation with psychiatric institutions
- Provide training for all social workers employed in psychiatric hospitals who do not have a bachelor's, master's/equal to master's, or doctoral degree in social work
- Amend the mental health program to make the psycho-social rehabilitation component available to patients on short-term treatment
- Provide an assessment of the needs of patients being placed in the institution for more than 6 months in order to discharge them from the facility and refer them to community based services

Somatic health

Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- Take all necessary measures to make scheduled medical care available to patients admitted to a psychiatric hospital, in the presence of somatic health problems
- Amend the mental health program and, in accordance with the guidelines in place in the country, consider the management of side effects of medications through appropriate examinations and consultations
- Provide timely and adequate dental services through timely transportation to the dentist.

5. Places of restraints caused by quarantine measures directed against New Coronavirus (COVID-19)

5.1. Introduction

The Government ordinance N164 of 28 January, 2020 "on Approval of the Measures to Prevent the Possible Spread of the New Coronavirus in Georgia and the Approval of the Operational Response Plan for Cases of the New Coronavirus Disease" determined the use of isolation measures for persons in contact with the confirmed case of the new coronavirus and for persons arriving in Georgia from foreign countries and placing individuals in quarantine areas. As a result, special quarantine spaces were created in hotels, where individuals had to stay during the quarantine period established by the existing regulations. The Ministry of Internal Affairs ensured the enforcement of quarantine measures and individuals were not allowed to leave the quarantine places on their will as any such attempt would be prevented by law enforcement.

The Public Defender believes that placing a person in a quarantine area to prevent the spread of the new coronavirus is a de facto restriction of human liberty. Although according to the approach of the Constitutional Court of Georgia the legislative definition of quarantine and isolation implies the separation of a person, the prohibition of leaving a particular place and not the interference with the freedom of their conduct using this or that mechanism and therefore this measure belongs to the restriction of movement,⁴⁷⁹ according to the international human rights instruments separating a person and banning them from leaving a particular place in order to prevent the spread infectious disease constitutes a de facto limitation of human liberty, and therefore effective guarantees of legal protection must be provided for.⁴⁸⁰ The case law of the European Court of Human Rights allows to determine based on the observation on certain circumstances whether a restriction of human liberty has taken place. In particular, the whole situation - its type, duration and the peculiarity of the implementation of the constraint measure is taken into account. The quality and intensity of these elements must be considered in this case.⁴⁸¹ Accordingly, the court considers the degree of coercion, including the degree of coercion used by the police to enforce the restriction measure. Therefore, a quarantine space where a person is placed for a certain period of time and which is under constant control by a law enforcement agency in order to prevent them leave this space should be considered as a restriction of liberty.

⁴⁷⁹ Decision of the Constitutional Court of Georgia 111/1/1505,1515,1516,1529 of 11 February 2021 on the case "Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili and Lika Sajaia v. Parliament and Government of Georgia", II-21.

⁴⁸⁰ UN High Commissioner for Human Rights Arbitrary Detention Group N11 Conclusion - Prevention of Arbitrary Restriction of Liberty during Emergency Public Health Measures, paragraphs 5 and 8, available at: <https://bit.ly/3dnWFWb> [last visited 16.02.2021]. UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Advice of March 25, 2020 to Member States and National Preventive Mechanisms on the Coronavirus Pandemic", para: 10 (5), available at: <https://bit.ly/2Mg8OjY> [Last visited: 16.02.2021].

⁴⁸¹ Decision of the European Court of Human Rights in Austin and Others v. United Kingdom (no. 39692/09) para: 57. See also decisions: Engel and Others, § 59; Guzzardi, §§ 92-93; Storck, § 71; Medvedyev and Others v. ..France [GC], no. 3394/03, § 73.

Therefore, since March 2020, the Special Preventive Group has been closely monitoring the legal aspects of placing individuals in a special quarantine area, the conditions in quarantine areas, access to healthcare services and the general state of protection of the rights of quarantined persons. For this purpose, in March-May, a special preventive group carried out remote monitoring of quarantine areas and published a special report.⁴⁸²

5.2. Legal protection guarantees

In the context of restriction of liberty, it is essential to provide legal safeguards against arbitrary restriction of liberty and ill-treatment.

5.2.1. Proportionality of the measure used and complaint mechanisms

When using a quarantine measure restricting human liberty, all possible alternative, less restrictive measures to achieve the same goal should be considered.⁴⁸³ In the beginning of the pandemic, the Government of Georgia by the ordinance No164 of January 28, 2020 determined that all persons traveling from high-risk countries to Georgia or in contact with an infected person were automatically subject to 14 days of isolation (in quarantine spaces or self-isolation).⁴⁸⁴ From August 2020, the easing of mandatory isolation measures began in stages. The duration of isolation was reduced to 12 days, and initially citizens of 5 countries and then other countries were offered a PCR test as an alternative to mandatory isolation when entering Georgia, and then in every 72 hours for the next 12 days, testing at their own expense.⁴⁸⁵ This rule did not apply to Georgian citizens and 12-day mandatory isolation (placement in quarantine space) remained without alternative for them.⁴⁸⁶ The existence of restrictive regulations for Georgian citizens raised questions not only in terms of discrimination,⁴⁸⁷ but also in terms of proportionality.⁴⁸⁸ From October 21, 2020, 8-day self-isolation became mandatory for Georgian citizens instead of being placed in quarantine space,⁴⁸⁹ Later, 3-day self-isolation and PCR testing on the 3rd day performed at its own expense was determined as an alternative to 8-day self-isolation.⁴⁹⁰

⁴⁸² The ombudsman's "Monitoring Report on Places of Detention Caused by Quarantine Measures Against New Coronavirus (COVID-19)" is available at: <https://bit.ly/3do0zRr> [last visited: 16.02.2021].

⁴⁸³ Judgment of the European Court of Human Rights in *Enhorn v. Sweden*, no. 56529/00, para: 44.

⁴⁸⁴ Ordinance N164 of the Government of Georgia of January 28, 2020 on the Measures to Prevent the Possible Spread of New Coronavirus in Georgia and the Plan for Operative Response to Cases of New Coronavirus Disease.

⁴⁸⁵ Ordinance N^o495 of the Government of Georgia of August 12, 2020, available at: <<https://bit.ly/3upP7Lg>>, [Last visited: 25.02.2021].

⁴⁸⁶ Self-isolation was permissible only in exceptional cases related to being under-age or health status..

⁴⁸⁷ UN High Commissioner for Human Rights Arbitrary Detention Group N11 Conclusion - "Prevention of Arbitrary Restriction of Liberty during Emergency Public Health Measures" Paragraph 26 explicitly states that measures taken to prevent a pandemic should not be based on discriminatory based on citizenship.

⁴⁸⁸ The Public Defender of Georgia, in the opinion of friend of the amicus curiae appealed to the Tbilisi City Court regarding the lawsuit filed by a citizen Tornike Kublashvili and called on the court to discuss whether it is useful it is to impose lighter or stricter regulations only on the basis of citizenship. Available: <https://bit.ly/2ZOPqRP> [Last visited: 18.02.2021].

⁴⁸⁹ Ordinance N637 of the Government of Georgia of October 21, 2020, available at: <https://bit.ly/2ZVAGjX> [Last visited: 23.02.2021].

⁴⁹⁰ Resolution N^o40 of the Government of Georgia of January 29, 2021, available: <https://bit.ly/3pUMA8k> [Last visited: 23.02.2021].

As of February 2021, only individuals with a history of travel to the United Kingdom are subject to 12-day quarantine.⁴⁹¹ Although currently the duration of mandatory isolation is reduced⁴⁹² and quarantine is only when used for those traveling from the United Kingdom, the possibility of self-isolation by 2020 was a rather problematic issue. From April 10, 2020 to June 2, 2020, persons subject to isolation were not allowed to self-isolate, although the existing regulations did not set any special preconditions for self-isolation other than isolated living space. From June 1, 2020, Ordinance⁴⁹³ N322 regulated the issue⁴⁹⁴ at the normative level and specified the criteria that a person had to meet in order to be transferred to self-isolation.⁴⁹⁵ In particular, special medical needs due to health condition, status of a person with disabilities, under-age and similar special circumstances were added. Nevertheless, the Public Defender's Office was still receiving reports that the above criteria had not been taken into account and that, for unknown reasons, individuals had not been allowed to move from quarantine to self-isolation. From October 21, 2020 the person subject to isolation makes a choice between being transferred to quarantine space or self-isolation, since individuals no longer need to meet the above special criteria to move to self-isolation. It is noteworthy, however, that for individuals with a history of travel to the UK placement in quarantine space has been determined as an only alternative, and the existence of special conditions at the normative level no longer allows for self-isolation. The Public Defender believes that any person subject to isolation should be able to request an alternative measure if the same goal is achieved through other measures such as self-isolation or PCR testing.

Frequent amendments to the regulations and the imposition of various conditions deals deficiently with the issues related to the placement of a person in the quarantine space, which makes even clearer the need for effective and timely appeals mechanisms for persons subject to isolation,⁴⁹⁶ through which individuals will be able to appeal not only the legality and justification of the measure used, but also the type of measure used or the replacement of isolation measures by alternative means (by PCR testing).

According to the Law of Georgia on Public Health, a natural person has the right to appeal against the decision made to place them in quarantine in accordance with the rules established by the legislation of Georgia,⁴⁹⁷ However, the law still does not provide for expedited complaints' review and decision-making procedures so that a person can quickly and efficiently appeal a decision and obtain a legal outcome before the isolation measure expires. The importance of timely and effective complaints mechanisms was

⁴⁹¹ Resolution №40 of the Government of Georgia of January 29, 2021, available at: <<https://bit.ly/3kqgHwO>>, [Last visited: 23.02.2021].

⁴⁹² Currently, in case of contact with the infected, 12 days of isolation is mandatory, and in case of entry into the country of Georgian citizens, 8 days of isolation or PCR testing in three days at their own expense is mandatory.

⁴⁹³ Ordinance of the Government of Georgia of June 1, 2020 №344, <<https://bit.ly/3pMSGI0>>, [last visited: 25.02.2021].

⁴⁹⁴ The Public Defender's Office received a number of letters regarding refusal for unknown reasons to transfer person to a self-isolation, as a result of which the Public Defender addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia with a written communication and recommendation and asked to, within its competence, properly inform the public about the possibility of transition to self-isolation. Letter N04-2/5350 of the Public Defender of Georgia of May 19, 2020 to the Minister of IDPs from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

⁴⁹⁵ Paragraphs 71 and 72 of Article 11 of the Ordinance N322 of the Government of Georgia of May 23, 2020.

⁴⁹⁶ Article 13 of the European Convention on Human Rights ensures the right to an effective remedy.

⁴⁹⁷ Law of Georgia on Public Health, Article 11 (2).

particularly evident in relation to vulnerable individuals. Thus, for example, the monitoring revealed that persons placed with young children, including families with children with autism spectrum disorders, were unable to obtain a legal result in a timely manner and move to self-isolation instead of quarantine space.

5.2.2. Guarantees of protection from ill-treatment

It is important that the persons whose liberty has been restricted is explained in a language which they understand, the grounds for the restriction and their rights; be given the opportunity to contact the person named by them and have immediate access to a lawyer/legal aid. A monitoring conducted by the Special Preventive Group in March-May 2020 revealed that persons placed in the quarantine area did not have information about their rights. On May 22, 2020, a temporary amendment was made to the Law of Georgia on Public Health, and in accordance with the Public Defender's recommendation, Article 45³ of the transitional provisions stipulated that in case of isolation and/or quarantine, the above guarantees must be clearly explained to the person. Notwithstanding this amendment, the Ordinance N322 did not reflect the obligation to explain rights in this way. Also, among the guaranteed rights there is no mentioning of protection from ill-treatment right such as the right of a person to seek independent medical advice.⁴⁹⁸

In view of all the above-mentioned, the Public Defender believes that these safeguards, including independent medical consultation, should be constantly strengthened in the Law of Georgia on Public Health instead of putting them in the transitional provisions. Even during possible epidemics. Integration of those guarantees into the law is important not only in terms of coronavirus pandemic, but also in case of other possible epidemics.

5.3. Placing a person in a quarantine space in decent conditions

The country is obliged to provide the persons placed in quarantine spaces with decent living conditions, including the quarantine area of the relevant space, safe and adequate food and water, hygiene items, sanitary conditions and opportunities of contact with the outside world.⁴⁹⁹ Adequate and decent conditions should be provided not only in quarantine areas, but also during transportation and in case of border crossing - in waiting areas. The results of the monitoring carried out by the Special Preventive Group show that the quarantine process was mostly well organized.⁵⁰⁰

Hotels in Georgia, which have a good reputation in the field of hospitality, were determined as quarantine spaces. Therefore, according to the results of remote monitoring conducted by a special preventive group

⁴⁹⁸ "Advice to the Member States and National Preventive Mechanisms on the Coronavirus Pandemic" of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment emphasizes the right to independent medical consultation, para: 16, <<http://bit.ly/2ZZxZiW>> [Last visited: 21.02.2021].

⁴⁹⁹ "Advice of March 25, 2020 to Member States and National Preventive Mechanisms on the Coronavirus Pandemic", para: 10(4), available at: <https://bit.ly/2Mg8OjY> [Last visited: 16.02.2021]. See also. The WHO Recommendation of 19 March 2020 on quarantine measures for individuals in the context of the coronavirus pandemic. Available: <https://bit.ly/3aOU9cy> [Last visited: 21.02.2021].

⁵⁰⁰ See National Preventive Mechanism "monitoring report on places of restriction of liberty caused by quarantine measures directed against new Coronavirus (COVID-19)". Pp.23-24. Available: <https://bit.ly/3sr91nj> [Last visited: 25.02.2021].

in March-May 2020, the respondents were mainly positive about the living and hygienic conditions in the quarantine areas. However, there were some cases when the respondents complained about the food,⁵⁰¹ daily activities⁵⁰² and hotel conditions, which were related to the arrangement of the room, poor sanitation, insufficient artificial lighting.⁵⁰³ The monitoring revealed that in several cases, special nutritional needs of children were not taken into account during food preparation. It should be noted that after the publication of the special report,⁵⁰⁴ the Public Defender's Office continued to receive complaints by October 19, 2020 regarding the unfavorable conditions in the quarantine areas, including the issues of non-compliance with the special needs of children's nutritional needs.⁵⁰⁵ With the involvement of the Public Defender and communication with the relevant agencies, the applicants' problems were resolved.⁵⁰⁶

5.4. Healthcare of persons placed in quarantine space

5.4.1. Somatic health

The right to health is a fundamental right and the country is obliged to ensure adequate protection of this right for every individual.⁵⁰⁷ Persons placed in quarantine spaces are under the effective control of state representatives and therefore the state is obliged to provide appropriate and timely medical services. The monitoring revealed that most of the respondents were informed about the presence of a doctor in the quarantine area and the possibility of contacting them if necessary. However, none of the respondents had information on what medical services they could receive. It should also be noted that most of the respondents received medical services (doctor's consultation, medications, medical referral) on time.⁵⁰⁸

5.4.2. Mental health

The UN Subcommittee on Prevention of Torture calls on member states to provide adequate psychological support to persons placed in quarantine facilities, both during and after quarantine. Studies

⁵⁰¹ Nutritional problems were related to food shortage, quality, dietary or non-provision of children's food.

⁵⁰² Out of the 112 people interviewed, 56 could use the balcony of their room. No other activities were provided for persons in quarantine areas.

⁵⁰³ See National Preventive Mechanism Report on Monitoring Locations Caused by Quarantine Measures Directed Against New Coronavirus (COVID-19). Pp.25-26, available: <https://bit.ly/3uvJ47U> [Last visited: 25.02.2021].

⁵⁰⁴ See National Preventive Mechanism Report on Monitoring Locations Caused by Quarantine Measures Directed Against New Coronavirus (COVID-19). Available: <https://bit.ly/3uvJ47U> [Last visited: 25.02.2021].

⁵⁰⁵ A total of 29 applications were made to the Public Defender's Office from June 30 to October 19, 2020. In 17 cases, citizens complained about the problem of food in quarantine hotels, in 9 cases natural and artificial ventilation in the bedrooms of quarantine rooms were problematic, and in 12 cases the sanitary-hygienic condition was unsatisfactory.

⁵⁰⁶ In 12 out of 29 cases, with the assistance of the National Tourism Administration, the applicants resolved the problems in the quarantine areas. In 1 case the applicant's problem was not solved, in 3 cases the applicants solved the problems without the intervention of the National Tourism Agency. In 13 cases it was not possible to verify whether the applicants' problems with the conditions had been resolved.

⁵⁰⁷ International Covenant on Economic, Social and Cultural Rights, 14th General Comment "the Highest Access to Health Standard" UN Doc. E/C.12/2000/4, para.1.

⁵⁰⁸ See National Preventive Mechanism Report on Monitoring Locations Caused by Quarantine Measures Directed Against New Coronavirus (COVID-19). Pp.28-30, available at: <https://bit.ly/3uvJ47U> [Last visited: 25.02.2021].

show that fear of infection, social isolation, and other pandemic-related problems create a highly stressful environment for the vast majority of the population. Consequently, symptoms of anxiety disorder and depression appear in a large part of the population.⁵⁰⁹ Particular attention should be paid to quarantine spaces where most individuals are placed in solitary. The monitoring revealed that the persons placed in the quarantine area were not offered any activities during the day, did not have the opportunity to leave the room and in some cases did not even have a balcony. Such a condition, along with the general anxiety associated with the pandemic, caused stress in persons placed in quarantine spaces and thus, it was extremely important for them to have access to appropriate psychological assistance. Unfortunately, during the interview, only one respondent mentioned that they were provided with the written information about the possibility of using the psychological assistance service. According to other respondents, they were not provided with information about the psychological assistance service when they were placed in the quarantine area.

The Public Defender considers it important to provide the person placed in the quarantine area with information about the available psychological assistance services so that the person can use this service if necessary. During the interviews with the respondents, it became clear that if they were informed about the existence of such a service, they would definitely use this service.

The study identified two notable cases of child rights. In both cases there is a clear indication of the damage that can be inflicted to the child by placing him or her in a quarantine area and by neglecting their special needs. In one case, a woman was placed in a quarantine area in one room with two children, one of whom was constantly irritated, afraid of being in an unknown place, and cried constantly, causing additional stress to the other child. In the second case, the woman was placed in a quarantine area in one room with two children and another family member. One child had an autistic spectrum disorder, which made it difficult to be indoors, was often noisy, and caused another child to have a trouble with sleeping. In the first case, a family member was brought into the quarantine area to assist the mother, and in the second case, after the Public Defender's representative provided the information to the National Tourism Administration, the hotel provided the family with an additional room. Both families were refused to move to self-isolation, which, if satisfied, would have a positive impact on the condition of the children.

The Public Defender believes that timely and adequate psycho-social services should be provided for parents placed in the quarantine area and their accompanying children with autism spectrum disorders, other behavioral disorders and certain psychological problems.

Proposal to the Parliament of Georgia

- By amending the Law of Georgia on Public Health, ensure the introduction of a mechanism for prompt and effective appeal of a decision on the use of a quarantine measure to a higher decision-making body or directly to the court by proposing an alternative appeal mechanism.

⁵⁰⁹ See the research essay COVID-19 and Mental Health in Georgia. <https://bit.ly/2NPG9pS>, [Last visited: 23.02.2021].

After appealing to a higher administrative body and the court, the time limit for hearing the case and making a decision should not exceed 72 hours.

- Article 11 of the Law of Georgia on Public Health should stipulate legal protection guarantees for a person to be transferred to isolation/quarantine, such as: informing the person on the grounds of transfer to isolation/quarantine; the right to a lawyer; the right to inform the person named by him/her; the right to call and consult a doctor independently and the use complaint mechanisms. The above-mentioned rights should be explained to a person immediately after the restriction of liberty

Recommendations

To the Government of Georgia

- The Resolution N322 of the Government of Georgia of May 23, 2020 should provide for alternatives to transfer to quarantine space for all persons subject to mandatory isolation

To the Minister of Economy and Sustainable Development:

- Ensure proactive monitoring of quarantine conditions; develop a monitoring sample to respond quickly and effectively to complaints from quarantined persons

To the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- Provide information to quarantined persons about the medical services available to them, including the development and distribution of information booklets
- Provide information to quarantined persons about the psychological services available to them, including the development and distribution of information booklets.

6. Opinion of the Public Defender on the Action Plan for Combating Torture 2021-2022

In this chapter, we present the views of the Office of the Public Defender of Georgia on the 2021-2022 Action Plan against Torture, Inhuman or Degrading Treatment or Punishment approved by the Interagency Coordination Council implementing the Measures against Torture, Inhuman, Degrading Treatment or Punishment.

The Action Plan 2021-2022 on Combating Torture is of great importance in the process of improving existing legislation and practices on combating torture in the country and harmonizing it with international standards. When developing an action plan, of great importance is the inclusiveness of the process, the content of the plan and the strengthening of accountability mechanisms. This document is a set of actions of the state to address all the problems that exist in the direction of the prohibition of torture. Therefore, it is important that this document responds accurately to the real challenges and that the activities envisaged are aimed at effectively addressing the shortcomings.

In the context of the inclusiveness of the process, it is important to ensure stakeholder engagement in the working format and constructive dialogue when developing the plan. For this purpose, sufficient time must be allocated. It is unfortunate that work on the plan was hasty and limited to only a few formal stages. The Office of the Public Defender had to formulate its opinion regarding the action plan in writing in a short period of time. In particular, on January 25, 2020, the Secretariat of the Interagency Coordination Council sent us a draft action plan, which already reflected a number of recommendations of the Public Defender, and asked us to submit our views by January 28, 2020. It is true that this term was extended to 10 days after the request of the Public Defender's Office, but it would be important for the Public Defender to be involved in the process from the very beginning.

Despite the tight deadlines, the Public Defender still took the opportunity to submit additional opinion and provided up to 40 important, systemic recommendations to the secretariat. It is unfortunate that out of the recommendations submitted by the Public Defender, only 2 recommendations were taken into account in the final draft of the plan.⁵¹⁰ It is unfortunate that the Public Defender's office did not receive an answer as to why most of the ombudsman's recommendations were not accepted by the agencies (except for a few arguments presented at the council meeting). In addition, in the process of working on the plan, no joint working groups were set up, where the Public Defender, together with representatives of various agencies, international and non-governmental organizations, would have the opportunity to discuss in detail both the recommendations and international standards for prevention of torture.

Activities of the Plan should respond as much as possible to the challenges existing in the country. It is important that the action plan is based on reports, research, resolutions, recommendations and other documents from international organizations, the Public Defender and local organizations. The Public

⁵¹⁰ 1) The proportion of long-term inpatients and patients with mental disabilities who have been placed in psychiatric institutions for more than 6 months and who have been transferred to a shelter has increased by 10%; 2) Introduction of a sample confirming the receipt-delivery of a letter from the accused/convict by the social worker in the penitentiary system.

Defender welcomes the reflection of a number of recommendations made by the National Preventive Mechanism in the Action Plan, however, it is unfortunate that a number of important, systematic recommendations have not been taken into account, including the recommendations adopted in accordance with the recommendations issued by the UN, Council of Europe and other international and regional treaties organizations.

The Deputy Public Defender, at a remote meeting of the Interagency Coordination Council held for the approval of the Action Plan, assessed some of the activities included in the plan as progressive and expressed his desire to work closely with the Secretariat. Nevertheless, the Deputy Public Defender refrained from supporting the action plan because a number of important recommendations of the ombudsman had not been taken into account by the council. Below are some of the recommendations that were of the utmost importance, unfortunately, were not reflected in the plan.

In the context of strengthening accountability mechanisms it is important to present an evaluation report on the implementation of the previous plan and introduce it to the members of the Interagency Coordination Council before developing a new action plan. This mechanism is important both in the context of accountability and in assessing the extent to which recommendations for the previous action plan have been taken into account, deficiencies corrected and improved.

We also note that some of the objectives and activities envisaged by the plan are identical or otherwise formulated to the activities imposed on the relevant state agencies under the action plans of previous years. The 2021-2022 Action Plan repeats a number of activities of the 2019-2020 Action Plan to Combat Torture, Inhuman, Cruel or Inhuman or Degrading Treatment or Punishment. So for example: the 2019-2020 plan provided activity - on the obligations to report signs of ill-treatment, on further refinement of existing internal regulations and monitoring mechanisms. This activity is also included in the 2020-2021 Action Plan. This means that the country has not been able to fulfill the objectives set out in the action plan of previous years. Also, a number of activities that have not been implemented according to the information of the Public Defender have been removed from the 2020-2021 Action Plan or simplified, for example: according to the 2019-2020 plan, the Ministry of Internal Affairs should have developed a rule for the use of a body video camera by the patrol police in order to prevent and respond to violations. In the Action Plan for 2021-2020, the Ministry of Internal Affairs is responsible only for studying international practice in this regard. Therefore, in order for the current Action Plan for 2021-2022 to be realistic and feasible, it is necessary for the Coordination Council to examine why the commitments made in the Action Plans of previous years have not been fulfilled and to consider the results of the study in the Action Plan for 2021-2022. With this approach, it is possible to identify the circumstances that hindered the implementation of activities planned in previous years, and therefore, the current action plan should reflect the activities that will be aimed at eliminating the obstacles.

6.1. Penitentiary system

One of the activities of the Action Plan was to support the activities of the National Preventive Mechanism and to strengthen existing cooperation. In the opinion of the Public Defender, it would be better if the

issue of relations and dialogue with the National Preventive Mechanism of the Special Penitentiary Service of the Ministry of Justice was mentioned in the content of the plan, as in recent years the Ministry of Justice has not conducted constructive dialogue, which is a violation of the obligation under the Optional Protocol to the Convention against Torture, Inhuman or Degrading Treatment or Punishment⁵¹¹. It is unfortunate that this issue was not included in the action plan.

One of the activities of the Action Plan was to strengthen measures to prevent violence among persons placed in detention facilities, although no specific actions were given on how to strengthen measures to prevent violence. In the opinion of the Public Defender, it would be important to put the recommendations in the Action Plan, such as: developing a strategy to tackle the criminal subculture and informal ruling in penitentiary institutions and protecting victims of violence, including by transferring to other institutions or avoiding contact with inmates of criminal subcultures. The above recommendations are also given in the report of the European Committee for the Prevention of Torture following its visit to Georgia in 2018.⁵¹² In addition, they are reflected in the 2020 Parliament resolution.⁵¹³ It is regrettable that these recommendations and the task given by the Parliament were not included in the Action Plan.

One of the activities of the action plan was to strengthen measures to ensure the rehabilitation of persons in the penitentiary institution, activities outside the cell and contact with the outside world. In the opinion of the Public Defender, in order to strengthen the rehabilitation component in penitentiary institutions, it would be important to include in the plan recommendations №2, №8, №14 and №15 to by increasing their number, balance the number of social workers and psychologists in penitentiary institutions with the number of prisoners. In addition, the Public Defender demanded to include the activity reflecting the recommendation to allow prisoners in closed and special-risk facilities to stay in the fresh air for more than 1 hour. The above recommendations are also reflected in the 2020 Parliament resolution and the relevant task has been issued. It is unfortunate that these issues were not included in the action plan.

In general, it can be said that the activities given in the Action Plan, as well as the indicators of the results of the activities are quite general, so it would be important to at least define the recommendations of the Public Defender as the output indicators of the activities, which would more accurately determine what measures would have to be taken by special penitentiary service to achieve the objectives and it would also make it possible to evaluate the performance later on.

6.2. Psychiatric institutions

One of the activities of the Action Plan was to further improve existing internal regulatory and monitoring mechanisms for detecting, documenting and reporting of ill-treatment. In the opinion of the Public Defender, it would be important to include the following recommendations as the activities of the plan:

⁵¹¹ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 22.

⁵¹² Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT/Inf (2019)16), para. 100, September 10-21, 2018, available in English at: <https://rm.coe.int/1680945eca> [Last visited: 20.01.21].

⁵¹³ Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2019.

In order to effectively identify and document the facts of ill-treatment, the Ministry should develop and implement the Rules for reporting to independent investigative and monitoring bodies the actions referred to in Articles 15 and 16 of the Convention on the Rights of Persons with Disabilities (torture or cruel, inhuman, degrading treatment or punishment, exploitation, violence and abuse).

For years the Public Defender has been recommending that in order to prevent cases of violence in psychiatric institutions, the Ministry should develop and implement a strategy for conflict prevention between patients and response on it, which will also include documenting the cases of violence in a special journal and assistance to victims of violence; also, in order to prevent critical situations in psychiatric institutions, it is important to develop and implement a mandatory internal crisis prevention and management guideline document for psychiatric institutions so that institutions minimize the risks of escalation of the situation and therefore no longer need to take extreme measures. In addition, in order to reduce and eliminate the use of restraints in psychiatric institutions, it is important to update the instructions on the rules and procedures for the use of methods of physical restraint in consultation with the Public Defender's Office and organizations of persons with disabilities. It is unfortunate that these issues were not included in the action plan.

One of the activities of the plan was to provide quality medical services in psychiatric institutions in accordance with the international human rights standard. According to the Public Defender, it would be important to include in the plan as the activity a recommendation to provide planned medical care to patients admitted to a psychiatric hospital in the presence of somatic health problems. The above recommendations are also reflected in the 2020 Parliament Resolution. It is unfortunate that this issue was not included in the action plan.

6.3. System of the Ministry of Internal Affairs

It is unfortunate that instead of incorporating the recommendations issued by the Public Defender, the plan identified the need to study international practice in relation to safeguards for the protection of detainees from ill-treatment. In view of the Public Defender, it would be important for the plan to directly reflect guarantees for the protection of detainees, such as: the obligation to register all detainees transferred to police stations, production of audio and video recordings, including the interrogation of detainees, etc. In addition, the issue of developing and introducing a mechanism for recording the request of a lawyer and the time of contacting a lawyer was completely removed from the plan activities.