



**Commissioner for Human
Rights (Ombudsman) of the
Republic of Azerbaijan**

REPORT

ON THE ACTIVITY OF

**THE NATIONAL PREVENTIVE MECHANISM
AGAINST TORTURE**

(2011)

**THE COMMISSIONER FOR HUMAN RIGHTS
(OMBUDSMAN) OF THE REPUBLIC OF AZERBAIJAN**

R E P O R T

**ON THE ACTIVITY OF
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MECHANISM
AGAINST TORTURE**

(2011)

Baku – 2012

The report covers the establishment, mandate and essence of the National Preventive Mechanism against Torture in the Republic of Azerbaijan, as well as the actions taken in 2011 and the relevant proposals and recommendations.

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Foreword

No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This provision is enshrined in Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights and Fundamental Freedoms.

Along with the aforementioned, Article 46 of the Constitution of the Republic of Azerbaijan stipulates that everyone has the right to defend his/her honour and dignity. The dignity of a person is protected by the State. Nothing can lead to humiliation of dignity of a human being. No one shall be exposed to torture or suffering or be subjected to degrading treatment or punishment.

Honour and dignity are ensured and safeguarded by the rights to freedom, privacy, life in safety, inviolability of residence, protection of honour and dignity and several other rights. The actual legal protection of a person's honour and dignity are additionally safeguarded by a number of social and economic rights such as the right to labour which prohibits forced labour, or the right to social security which guarantees decent living, as well as by the criminal law provisions which define defamation and insult as a crime.

This right prohibits a person's exposure to influence or coercion or degradation of his/her personality by the State or its official bodies.

The State, having a positive obligation to protect human honour and dignity, shall protect everyone from any intimidation and persecution.

Everyone has a fundamental right to respect for himself/herself and no derogations are allowed even in time of emergency.

It should be mentioned that government officials at all levels carry responsibility for not preventing torture or not taking appropriate steps. At the same time an order from a high ranked official or a state body cannot justify torture and any person, even acting under an order, shall be kept liable for his/her actions.

Both national and international laws, when prohibiting degradation of human honour and dignity, not only prevent the government from degrading human honour and dignity, but also puts a positive obligation on the government to protect persons from such attacks by others.

Our state ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) in 1996 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) in 2001.

The accession of the Republic of Azerbaijan to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has predetermined the review of the report submitted by the

country at the supervisory mechanism created pursuant to the Convention - the Committee against Torture, and based on the recommendations made by the Committee against Torture with regard to Azerbaijan, a number of legal reforms have been undertaken in the country.

Our country signed the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 15 September 2005 and ratified it with the Law of the Republic of Azerbaijan of 2 December 2008.

By Order No. 112 of the President of the Republic of Azerbaijan of 13 January 2009 the Commissioner has been designated as the institution to perform the functions of the national preventive mechanism as constituted in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The mentioned provision was specified in the Constitutional Law on “the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan” by Constitutional Law No 163-IVKQD of 24 June 2011 and this has contributed towards the improvement of the Commissioner’s independence and expansion of her mandate and powers.

Definitions and abbreviations used in the text

CAO- the Code of Administrative Offences of the Republic of Azerbaijan

Commissioner- the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

Constitutional Law-the Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

CPD-a city police department

CPO-a city police office

Deprivation of liberty-any form of detention or imprisonment or the placement of a person in a public or private custodial setting, which that person is not permitted to leave at will by order of any judicial, administrative or other authority

Detainee- a person deprived of his/her liberty

DPD-a district police department

DPO-a district police office

MD-the Ministry of Defence of the Republic of Azerbaijan

ME-the Ministry of Education of the Republic of Azerbaijan

MH-the Ministry of Health of the Republic of Azerbaijan

MI- the Medical Institution of the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan

MIA- the Ministry of Internal Affairs of the Republic of Azerbaijan

MJ- the Ministry of Justice of the Republic of Azerbaijan

MLSPP- the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan

MNS- the Ministry of National Security of the Republic of Azerbaijan

NAP-the National Action Plan for Protection of Human Rights

NPM-the national preventive mechanism provided for by the Optional protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

OSCE-ODIHR- the Office for Democratic Institutions and Human Rights of the Organizations for Security and Co-operation in Europe

Office- the Office of the Commissioner for Human Rights (Ombudsman) of the Republic

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

OSCE- the Organisation for Security and Co-operation in Europe

PCS- a penal colony settlement

Person deprived of his/her liberty-a person in whose respect deprivation of liberty has been applied

PI- a penitentiary institution

Place of detention-any place where a person is detained or may be detained without permission to leave at will

PS- the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan

SMI- the Specialized Medical Institution of the Penitentiary Service of the Ministry of Justice

TDP- a temporary detention place

Torture- torture and other cruel, inhuman or degrading treatment or punishment

UN-the United Nations

Chapter I.

Development of the National Preventive Mechanism in Azerbaijan

1.1. The mandate and essence of the national preventive mechanism

The adoption of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has intended to reaffirm that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights. Thus, it has aimed to highlight the importance of taking further measures to protect persons deprived of their liberty from torture by non-judicial means of a preventive nature based on regular visits to places of detention, as well as to recall that states are obliged to take effective measures to prevent acts of torture and have the primary responsibility for implementing this obligation, and that the full respect for the human rights of persons deprived of their liberty is a common responsibility shared by all and that international bodies' activities complement national measures to serve to this process.

The Optional Protocol, the main requirement of which is to establish a system of regular visits undertaken by independent international and national bodies to places of detention in order to prevent torture, as an innovative treaty, embracing international and national efforts to prevent torture and emphasizing the importance of a constructive dialogue, specifies that not a reactive approach – an approach based on reaction, but a preventive approach – an approach aimed at preventing shall be applied to the regulated relations. In other words, the Protocol envisages no new rights or restoration of infringed rights but the prevention of the violation of the right not to be subjected to torture.

In accordance with the Optional Protocol, **the Subcommittee on Prevention at the international level and national preventive mechanisms at the national level** are set up. The Subcommittee established at the international level being a subcommittee of the UN Committee against Torture, is a new generation treaty body.

As already mentioned, the Optional Protocol, being an effective tool for combating torture, sets out the requirement to establish or designate a national preventive mechanism for the prevention of torture. Thus, in accordance with Article 17 of the Protocol, each State Party shall maintain, designate or establish, at the latest one year after its entry into force or of its ratification or

accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level.

Torture has been defined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to Article 1 of the mentioned Convention, for the purposes thereof, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The definition of torture encompasses three elements:

- intentionally inflicting physical or mental suffering;
- inflicting suffering by an official, whether directly or indirectly;
- inflicting suffering with a concrete purpose.

Based on international, regional and national laws a broader definition of torture can be applied. When a broader definition is applied, the Convention cannot be invoked to limit the definition.

It should be mentioned that, in the Inter-American Convention to Prevent and Punish Torture the definition of torture is broadly defined as it does not require pain or suffering to be severe, or specific purposes by including "or for any other purpose", also it was broadly defined as a use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

According to international law, there is no lacuna in the documents prohibiting inhuman or degrading treatment or punishment. In international law this kind of treatment is prohibited in all cases. This also relates to international human rights law and humanitarian law which prohibit ill-treatment of detained or imprisoned persons.

One should bear in mind that the definition of torture as given in Article 1 of the UN Convention against Torture encompasses three elements:

- torture is prohibited in international law and can never be justified;
- the prohibition of torture is absolute and not subject to any conditions;
- the prohibition of cruel, inhuman or degrading treatment and punishment is also absolute and not subject to any conditions.

1.2. Improvement of the Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

In order to improve the effectiveness of the national preventive mechanism, the Commissioner made suggestions on making additions and amendments to the Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan.

With the approval of Constitutional Law No 163- IVKQD of 24 June 2011, the provision on designating the Commissioner as the institution to perform the functions of the national preventive mechanism by the country president has been defined in the Constitutional Law on “the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan”

In the new edition of Article 1.2 of the Constitutional Law, which was enacted with the Order of the President of the Republic of Azerbaijan dated 8 August 2011 and entered into force on 10 August 2011, it is indicated that the Commissioner performs the functions of the national preventive mechanism constituted in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In order to prevent torture and other cruel, inhuman or degrading treatment or punishment, she undertakes regular or whenever necessary ad-hoc visits to places which detainees are not permitted to leave at will.

Article 4 of the Protocol constitutes visits to places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

The same provision of the Protocol has been reflected in Article 12.1.1 of the Constitutional Law.

Thus, according to the amendment, the Commissioner has the right to have access, at any time, without hindrance and prior notification, to any governmental and municipal bodies, military units, police stations, temporary detention places, investigation isolators, penitentiary institutions, military detention places, psychiatric institutions and other places which detained persons cannot leave at will; meet and interview detained persons, as well as any other persons who may provide relevant information, in private or when deemed necessary with participation of a specialist or interpreter; get acquainted with and obtain copies of all documents confirming the lawfulness of detention, as well as relating to treatment of detainees or detention conditions; draw up reports, and protocols to document the flow and results of the actions undertaken by her; and make recommendations to relevant

authorities and receive responses to those recommendations within the specified time limit .

In newly added Article 18-1 (National Preventive Group) of the Constitutional Law it is stated that “for the implementation of the functions of the national preventive mechanism as provided for in Article 1.2 hereof a National Preventive Group is established under the Commissioner's Office. A person at the age of not below 25, with higher education and experience in the field of protection of human rights, as well as having high ethics, is appointed as a member of the National Preventive Group. The National Preventive Group members are appointed by the Commissioner for 3 years through transparent procedures.”

According to the mentioned Article, the National Preventive Group has the right to have access, at anytime, without hindrance and prior notification, to police stations, temporary detention places, investigation isolators, penitentiary institutions, military detention places, psychiatric institutions and other places which detainees are not permitted to leave at will, meet and interview detained persons as well as any other persons who may provide relevant information, in private or when deemed necessary with participation of a specialist or interpreter; get acquainted with and obtain copies of all documents confirming the lawfulness of detention, as well as relating to treatment of detainees or detention conditions; draw up acts, and minutes to document the flow and results of undertaken actions; and be received, without delay, by management of police stations, temporary detention places, investigation isolators, penitentiary institutions, military detention places, psychiatric institutions and other places which detainees are not permitted to leave at will.

One of the important aspects of the provision specified in the Constitutional Law is that “a member of the National Preventive Group cannot be forced to testify or reveal facts in any other way with regard to the information become known to him/her while performing his/her functions. This guarantee remains effective even after the member leaves the National Preventive Group.” Also, the members of the National Preventive Group cannot be arrested, detained, searched or examined while performing their functions in places where detainees are not permitted to leave at will. It is not permitted to arrest, check or seize postage, telegraphs or other correspondence of a member of the National Preventive Group.”

As it is visible, in order to more effectively ensure the Commissioner’s independence defined by the Constitutional Law, her independence has been increased, and her mandate and powers have been expanded.

1.3. Organizational issues

According to Article 18.3 of the Optional Protocol “The State Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

The Commissioner’s suggestion on the establishment of a new unit in the Office and approval of the staff list, made with the purpose of ensuring the functioning of the National Preventive Mechanism in accordance with the Optional Protocol and the Constitutional Law, has been approved by the Cabinet of Ministers of the Republic of Azerbaijan and an instruction has been given to the Ministry of Finance to facilitate the issue and allocate funds in 2012.

In the information sent by the Minister of Finance of the Republic of Azerbaijan to the Prime Minister of the Republic of Azerbaijan on 21 September 2011, it is stated that a separate chapter in the draft State Budget for 2012 provides for relevant funds for increasing the number of the staff of the Commissioner’s Office and allocating additional funds next year. However, it should be mentioned that, since in 2011 the Cabinet of Ministers and the Ministry of Finance did not assign specific staff and allocate relevant funds for the National Preventive Group, all the visits conducted by the Group were realized at the expense of the internal resources of the Commissioner’s Office and approved budget. The mentioned issue has not found its solution yet.

The costs associated with the involvement of qualified and experienced experts in the work of the unit to be established should be covered as well.

The National Preventive Group established by the Commissioner to effectively ensure the work of the National Preventive Mechanism and comprised of 17 employees of the Office continued its successful operation last year as well.

In order to expand and improve the Group’s scope of activities, along with the staff of the Central Office, 2 employees from each of the Commissioner’s 4 regional centres have been included in the Group.

As a result of the performed organizational work, the list of the places of deprivation or restriction of liberty operating in the territory of the country, including penitentiary institutions, temporary detention places, as well as social institutes, homes and boarding houses for elderly and disabled, and psychiatric institutions has been prepared and agreed with the relevant state agencies.

II Chapter.

The National Preventive Mechanism Related Activities

In 2011, the Commissioner paid particular attention to the issues related to combating and preventing torture, organizing preventive measures, as well as carrying out awareness raising activities.

Last year the Commissioner further improved her activity as the NPM.

The Commissioner's activity as the NMP consisted of visits, scientific and analytical work, legal awareness and international cooperation. The activities carried out in the above mentioned directions were also coordinated with the Commissioner's activity related to the investigation of appeals and communications.

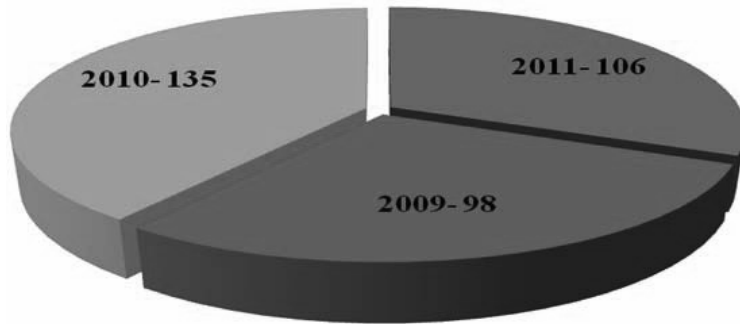
The Commissioner fought against the current or possible violations of citizens' right to protection of their honour and dignity by the competent authorities having enforcing power, including the officials of law enforcement bodies.

The facts gathered and information obtained during the onsite investigation of received applications and other information, including information received from human rights defenders and mass media, directly on-site or by assigning the governmental body concerned to examine the case, as well as substance and quantity indicators of complaints were used during visits carried out within the NPM function.

The NPM group has prepared reports, protocols and service information on undertaken visits, including interviews conducted with persons deprived of their liberty and staff of those institutions and depending on their peculiarities, has taken necessary measures for each of them.

It should be mentioned that both national and international communities have been regularly informed of the activities carried out by the Commissioner as the NPM. As such, in 2011, along with the reports delivered at national, regional or international events, the Information and Public Relations Department of the Office issued 105 official press-releases on the Commissioner's activity aimed at combating torture in the Azerbaijani and English languages, 66 out of which were about visits, 25 – about investigations, 14 – of awareness raising nature.

Press releases –comparison



In addition to this, a special page dedicated to the NPM has been created on the Commissioner’s website. Along with the relevant UN Convention, the Optional Protocol, relevant national law, the list of the 17 NPM Group members and other relevant information, the Commissioner’s Report on the Activity of the National Preventive Mechanism for the Prevention of Torture for 2009-2010 has been posted both in Azerbaijani and English.

To the point, the Commissioner’s Report on her activity as the NPM, as mentioned above, has been translated into English and published with the support of the OSCE Office in Baku.

The Report has been sent to the UN Subcommittee on Prevention of Torture (SPT), the European Committee for the Prevention of Torture (CPT), the Association for the Prevention of Torture (APT), contact persons of the member countries of the NPM network, various experts working in this sphere, and relevant state bodies.

2.1. Visits

As it was last year, in 2011 the Commissioner and the National Preventive Group regularly carried out scheduled or immediate, unannounced visits to places of detention.

During visits of the NPM Group, along with national legislation, international legal documents, including International Conventions, the European Standards for Prevention Torture, the Istanbul Protocol for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Standard Minimum Rules, the European Penitentiary Rules, and other documents were invoked.

Before starting visits as the NPM, in accordance with Article 20 subparagraph “a” of the OPCAT, the accuracy of the information submitted by the relevant bodies about the places of detention under their authority had been

checked. Based on the submitted information, the list of the establishments falling under the jurisdiction of the NPM had been drawn up (*see Appendix 1, table 1*).

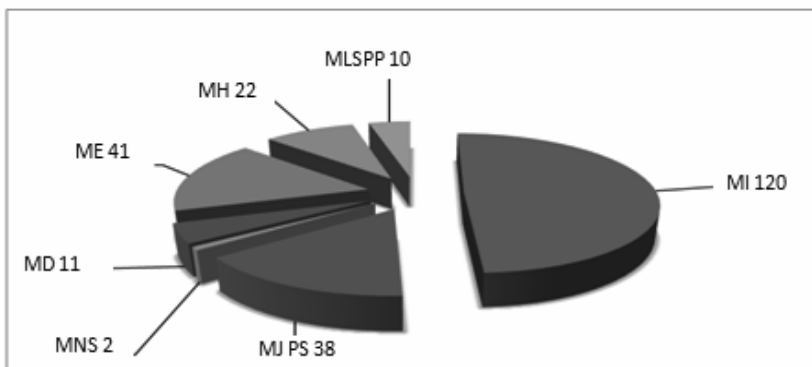
In 2010 there were 254 places of partial or full deprivation of liberty, but in 2011 this number was decreased to 244 by the cancellation of some establishments, including the special institutions of the Penitentiary Service of the Ministry of Justice. This also embraces relevant establishments of the Ministries of Interior, Justice, National Security, Defence, Education, Health, and Labour and Social Protection of Population.

During visits the issues like treatment, detention conditions, documentation, state of medical services, food ration, food quality, as well as reformatory means applied to inmates, organization of their leisure time were primarily focused on and a preference was given to private and confidential meetings with detainees.

During visits the heads of the visited establishments and other relevant officials created appropriate conditions for the Commissioner and the members of the Group and made efforts to implement given recommendations and eliminate violations.

During visits, along with positive developments, some shortcomings were observed. Thus, shortcomings related both to the conditions and treatment were discovered, appeals were sent to the relevant bodies in each case, as well as to the Prosecutor General of the Republic of Azerbaijan if necessary. The recommendations made by the Commissioner were aimed at the protection of honour and dignity of detainees, elimination of violations, improvement of conditions, and approximation of legal acts to international legal documents, rules and standards.

Number of establishments falling under the jurisdiction of the NPM



In addition to the submitted list of establishments, during NPM visits new institutions were identified and included in the list as well. Meanwhile, some institutions suggested by the relevant ministries were taken out of the list as they did not meet the requirements of the Optional Protocol.

Based on the list, the plan of visits was prepared and scheduled and ad-hoc visits were carried out.

Ad-hoc visits. These visits were undertaken for checking the state of implementation of the recommendations given during previous visits, preventing prosecution against the persons who have communicated some information to the NPM group in this or another form, investigating information given by interviewed detainees about the establishments they were previously held at, as well as on the Commissioner's own initiative. Ad hoc visits were also conducted with regard to the information received from the mass media and human rights defenders.

Scheduled visits. Scheduled visits were undertaken according to the monthly schedule prepared by the NPM group. Each of the scheduled visits took 1-3 working days depending on the size of the establishment and the number of persons held there. Before such visits special preparations were undertaken within several days. Thus, applications, complaints and appeals received by the Commissioner from different sources in respect of the institution to be visited, information obtained from the mass media or submitted or disseminated by NGOs, as well as facts revealed during previous visits are analyzed on merits, the scope of issues to be focused on is defined and a list of questions is drawn up.

It should be mentioned that, as some establishments were small and the number of detained persons were comparatively few, visits to those places took shorter time. For instance, in case when during visits to the police units of the Ministry of Interior no detainees were found held therein at that moment, only relevant official recording books were reviewed, operators' rooms, as well as rooms with the probability of having detained persons there, were checked and the conditions were evaluated, and police officers were informed of relevant rules and were given recommendations. This kind of visits lasted several hours.

During visits to places of detention, the NPM Group first met with the head of the given establishment.

Conversations in the form of dialogue conducted with authorities served the following purposes:

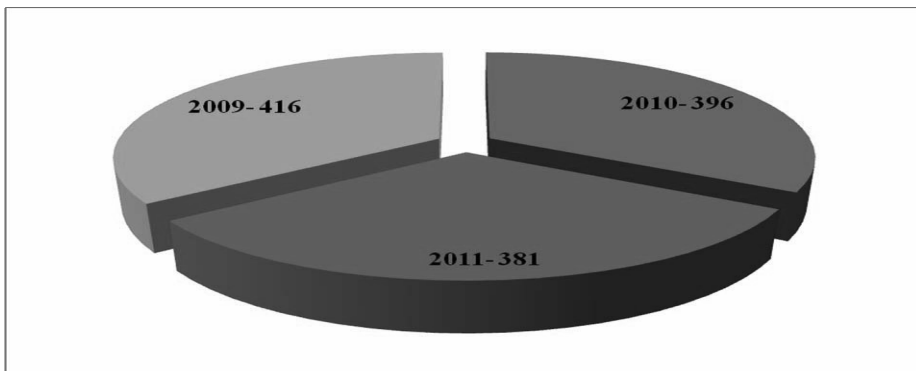
- introducing the NPM Group members;
- explaining the aim and objectives of the visit;

- explaining the methods to be used;
- informing that private talks with officials were necessary;
- revealing the ways of the use of the collected information;
- informing about the format and time of the visit;
- inquiring about the state of implementation of the recommendations made for eliminating shortcomings discovered during previous visits;
- obtaining information from the head of the establishment on the detention conditions and challenges;
- other issues.

During visits the first issue to be reviewed is the treatment of detainees. Thus, the fact that detention conditions meet required standards does not eliminate the probability of ill treatment of detained persons there. In this regard, private talks, without presence of any witnesses, were conducted with from 8 to 10 percent of detainees, depending on the overall number of detainees.

In 2011 there were conducted 381 visits to the establishments falling under the jurisdiction of the NPM, out of which 310 were scheduled and 71 were ad-hoc visits. Out of the mentioned visits, 276 visits were carried out to the establishments under the Ministry of Interior, 86 to the establishments under the Ministry of Justice Penitentiary Service, 3 to the establishments under the Ministry of Defence, 5 to the establishments under the Ministry of Education, 3 to the establishments of the Ministry of Labour and Social Protection of Population, 6 to the establishments under the Ministry of Health, 2 to the Investigation Isolators of the Ministry of National Security.

NPM visits in comparison (by years)



During visits carried out to any of such establishments the NPM group members primarily focused on the issues like treatment of detainees, detention

conditions, documentation, reformatory means applied to inmates, organization of their leisure time, state of medical services, food ration, and food quality.

During talks the NPM group members got acquainted with the problems or complaints of the persons whose liberty was fully or partially restricted, and tried to solve them, as much as possible, on-site. With this aim in mind, the management of the establishment was given relevant recommendations for the elimination of deficiencies and shortcomings revealed during the visit and, if necessary, the corresponding authorities were appealed to, and thus, in most cases this or another shortcoming was eliminated.

During visits private talks were conducted with up to 1000 detainees in temporary detention places, up to 830 detainees in investigation isolators and penitentiary institutions, up to 400 persons in places that detainees were not permitted to leave at will, as well as with 200 staff members of those establishments.

During visits interviewed detainees mostly complained of the biasness of investigations, groundless arrests, various pressures exerted during investigations, and court decisions. Moreover, during visits to some establishments complaints about detention conditions or ill treatment were received and investigated.

Relevant proposals and recommendations were submitted to the administration of the establishments concerned, as well as to the corresponding agencies for the elimination of the deficiencies and shortcomings revealed during visits, as well as the improvement of detention conditions.

The Commissioner was informed about appropriate measures taken by the state bodies with regard to each recommendation given by her. Information about the conducted visits was reflected in the mass media.

Along with the other problems revealed during the visits to places of detention, it has been determined that the daily food ration provided for detainees, which is the same for all establishments, and the amount of the funds allocated for that purpose partially meet the real demand.

According to the UN Standard Minimum Rules for the Treatment of Prisoners every prisoner shall be provided by the administration with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

Although, the Commissioner has appealed to the relevant agency with the suggestion to increase the size of the daily food portion and the amount of funds allocated for that, this issue has not found its solution to date.

The Commissioner, *reiterating her request to improve nutrition and medical services for detainees kept in investigation isolators or temporary*

detention places, submitted a proposal to Milli Mejlis for increasing the respective costs in the State Budget for 2012.

In addition to this, the Commissioner suggested to review the standards defined with Decision No.154 of the Cabinet of Ministers of the Republic of Azerbaijan “On Approval of Nutrition and Material-Living Norms for Detainees” of 25 September 2001, and to establish separate daily nutrition norms for detained persons kept in temporary detention places of police stations or in administrative detention places, also for children kept in temporary isolators for juveniles.

2.1.1. Establishments of the Ministry of Interior

In the Republic of Azerbaijan deprivation of liberty as a law enforcement activity is applied under criminal or administrative procedures.

The rules and regulations for detention of suspected or accused persons under criminal prosecution in police custody and detainees’ rights and obligations are prescribed in the Criminal Procedure Code and “Internal Disciplinary Rules of Temporary Detention Places of Police Bodies” approved with the Interior Minister’s Order No. 428 of 6 November 2001.

In accordance with Articles 148.4 and 150.3 of the Criminal Procedure Code, a person suspected in the commitment of a crime may be detained for 48 hours by the police.

In the Criminal Procedure Code, it is established that the detained person shall be promptly taken to a detention place of police or another law-enforcement body, his/her detention shall be recorded there and documented by a protocol, and the protocol shall be given to the detained person for his/her acquaintance. The head of the agency which carried out the arrest, as well as the prosecutor shall be informed of the arrest within 12 hours. Within 24 hours from the arrest, the preliminary investigator or the investigator of the relevant agency either shall initiate a criminal case or release the person. In general, the detained person shall be brought before a judge within 48 hours from his arrest, and the judge shall hear his case without any delay and issue a decision on his detention on remand or his release.

According to the Criminal Procedure Code, the accused shall be taken to an investigation isolator, i.e. handed over to the Penitentiary Service within 24 hours.

Thus, the person cannot be kept in police custody - TDP for more than 72 hours from his arrest.

Criminal Procedure Code –

Article 153. Safeguarding of detainee’s rights

153.2.2. take the detainee without delay to the police or other preliminary investigating authority’s temporary detention facility, register the detention, draw up a record and acquaint him/her with the detention record;

153.2.3. report each instance of detention, immediately after registration in the temporary detention facility, to the head of the appropriate preliminary investigating authority and to the prosecutor in charge of the procedural aspects of the investigation (this information shall be given in writing within 12 hours of detention);

Article 157. Arrest

157.3. A person arrested on the ground of a court decision may not be held in a temporary detention facility for longer than 24 hours, and before the expiry of this period, he/she shall be transferred to an investigation isolator (this period does not include the time spent for transporting the arrested person to the investigation isolator).

Grounds for administrative detention have been set in the Code of Administrative Offences. According to Article 399 of the mentioned Code the person who is suspected of committing an offence (administrative violation) can be detained by the police up to three hours. Persons who have committed an offence to be punished by administrative arrest, who have illegally crossed the border, or whose identity cannot be determined may be arrested for the period of up to 24 hours. It shall be mentioned that the time runs from the moment the administrative arrest record is drawn up. In general, the administratively arrested person can be kept in administrative detention places under police control or TDPs up to 15 days in accordance with a court decision.

It should be mentioned that according to national law, detention in police custody shall be conducted in the abovementioned way only. Moreover, detention of administratively arrested persons is regulated with the Interior Minister’s Order No 480 of 30 October 2006 on approval of the “Regulations of a Detention Place of Police Bodies for Administratively Arrested Persons” and “Internal Disciplinary Rules of the Detention Places of Police Bodies for Administratively Arrested Persons”.

During visits several violations of the mentioned regulations were discovered and the relevant facts are described further in this Report.

Information regarding detention places. According to the information submitted by the Ministry of Interior to the Commissioner regarding the year 2011, necessary actions for the improvement of suspected and accused persons' conditions were taken in the temporary detention places of police bodies, detention places were provided with bedding, beds and other furniture, and relevant conditions were created for ensuring detained persons' rights, including provision of medical assistance. Moreover, since 2000 up to date new TDPs were built in line with modern requirements in 28 police bodies and TDPs in 39 police bodies were entirely renovated. At the same time, in order to timely prevent illegal actions as well as ill treatment against detained persons and to improve security system in general, the alarm systems were renewed in 64 isolators, and 61 modern video surveillance systems were installed.

It should be mentioned that 120 temporary detention places of the Ministry of Interior fall under the NPM's jurisdiction. These places include the Office for Combating Trafficking in Human Beings, Head Office for Combating Organized Crime, Head Transport Police Office, Baku City Head Police Office Detention Facility for Administrative Offenders, Baku City Head Police Office Isolation Centre for Minors, Investigation Centre of the Department for Combating Illegal Migration of the Head Office for Passport, Registration and Migration, detention place of the Airport, district (city) police departments (stations, units) and temporary detention places (See: Appendix 1, Table 1).

Majority of the establishments under the Ministry of Interior meet modern standards. It is commended that the modernization of these establishments is being continued.

In 2011 capital renovation and reconstruction works were conducted in temporary detention isolators of city (district) police departments (units), as well as in detention places of police stations, buildings which were not in conformity with international norms and standards were rebuilt, a number of TDPs were provided with medical, worship, and meeting rooms, and detention conditions in those places were organized in compliance with European standards.

As it is known, in previous years, temporary detention places in the Republic of Azerbaijan consisted of old buildings and the detainees kept there suffered from unbearable detention conditions. The detention in such places in itself could be evaluated as inhuman treatment. Therefore, the NPM commends the adjustment of the conditions to nowadays standards.

Along with the abovementioned, though some buildings of police departments and units have been newly put into operation, during the NPM

group members' visits inadequacies of detention conditions were observed as compared to standards. For instance, during the visit to the newly opened administrative building of Sabayil DPD, it was observed that because of the lack of outdoor facilities, persons detained there were deprived of their right to daily walking. Besides, as the windows of the cells in the same TDP were closed with iron plates, the cells lacked natural light. Regarding this, the officials provided explanation that since the cells were located in semi-basement, there was a risk that someone from outdoor could provide a detainee with any prohibited item through the windows. The NPM group was not satisfied with this explanation.

The Commissioner appealed to the Ministry of Interior regarding the issue and the question raised was positively solved within a short time. Thus, at the backyard of the TDP an outdoor walking facility has been constructed and iron plates which were on the windows have been dismantled.

During the visits to the TDPs of some newly built administrative buildings of police bodies it was observed that persons detained there were kept, in violation of the modern standards, in places smaller than 4 square meter per person. Thus, during the visit to the newly operated Tovuz DPD TDP in 2011, it was found out that though in cell No1 for administratively arrested persons four beds were put, the cell's overall size (including WC) was only 12 square meters. In order to investigate the issue and for its solution the Commissioner has appealed to the Ministry of Interior and according to the received response letter the issue will be resolved in near future.

In the visit to Khazar DPD TDP conducted in 2010, deficiency in the number of chairs compared to the numbers of the beds in the cells was observed and the MI was appealed with regard to this issue. During next visit to the TDP in 2011, it was found out that the issue was resolved.

During the visit to the TDP of the Office for Combating Trafficking in Human Beings, the absence of outdoor exercise facility for detainees was reported as a shortcoming to the management of the Ministry of Interior. This recommendation was taken into consideration when a new administrative building was constructed and thus, found its positive solution.

Standards of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

2nd General Report (CPT/Inf (92) 3). – Para 43

The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum

standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling.

12th General Report CPT/Inf (2002, 15) - Para 47

Police custody is (or at least should be) of relatively short duration. Nevertheless, conditions of detention in police cells must meet certain basic requirements.

All police cells should be clean and of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded); preferably cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets. Persons in police custody should have access to a proper toilet facility under decent conditions, and be offered adequate means to wash themselves. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held in police custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.

Many police detention facilities visited by CPT delegations do not comply with these minimal standards. This is particularly detrimental for persons who subsequently appear before a judicial authority; all too frequently persons are brought before a judge after spending one or more days in substandard and filthy cells, without having been offered appropriate rest and food and an opportunity to wash.

Article 2.4 of Regulations No 130 “On the Norms for Providing Police Bodies with Specifically Equipped Buildings” as approved with the decision of the Cabinet of Ministers of 30 July 2001 provides for an outdoor exercise facility in a TDP in the places for locating buildings, installations and yards on the area allocated for raising building complexes for city (district) police bodies (including police bodies with specific functions)

By the decision of the Cabinet of Ministers of 30 July 2001, Article 2.4 of Regulations No 130 “On the Norms for Providing Police Bodies with Specifically Equipped Buildings” was approved. The said article provides for an outdoor exercise facility in a TDP in the places for locating buildings,

installations and yards on the area allocated for raising building complexes for city (district) police bodies (including police bodies with specific functions)

Besides, according to Article 4.3 of the Regulations approved with Order No 428 of the Minister of Interior of the Republic of Azerbaijan, suspected or accused persons are entitled to one hour outdoor exercise per day, and according to Article 9.1 of the same Regulations, the management of the establishment is responsible to ensure that persons detained in a TDP are kept in cells which have natural light and not less than 4-square meter room per person, also pregnant women and women with children are kept in cells with better illumination.

Among the priority issues which the NPM Group focused on during the visits to detention facilities of police bodies there also were such issues as notification of the family members of the detained persons about the detention, and provision of the detainee with a lawyer and a doctor.

Standards

According to Para 36 of the 2nd General Report of the European Committee for the Prevention of Torture (CPT/Inf (92) 3) the police attaches particular importance to three rights for persons detained: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities). They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc).

It shall be mentioned that during the interviews with suspected or accused persons they stated that the mentioned rights were not provided in some cases or they were not even aware of the existence of such rights in several cases.

Access to a doctor.

It was found out that in TDPs an emergency doctor is called only when the detained person complains of his health. With regard to this issue the Commissioner appealed to the MI and the response received read that according to Articles 2.9, 2.10 and 9.12 of the Regulations approved with Order No 428, when needed, healthcare establishments of the public health

system are requested to provide medical services for detained persons, and every person undergoes medical examination on arrival to and before the transfer from an isolator. At the same time, detainees' requests to consult a doctor or their rejection of such services are registered in the relevant record-book.

According to the relevant opinion of medical personnel, when a detained person is not fit for being kept in a TDP and is in need of medical treatment, the detainee is transferred to a healthcare institution, and arrested and imprisoned persons are transferred through investigation isolators to medical institutions of the Ministry of Justice. Besides, a safeguard for medical and hygienic care of detained persons has been stipulated in Article 24 of the Draft Law "On Safeguarding Rights and Freedoms of Persons Held in Detention Places" (at the second reading). After the adoption of this Draft Law, corresponding amendments will be made to the legal normative acts regulating service in temporary detention places. In the response letter, it is also mentioned that the Baku City Police Department has been assigned to improve healthcare service for detainees held in TDPs operating in Baku.

As it is seen from the reply, a detainee's right to request medical examination by a doctor of his choice has not been considered in the respective legal acts.

The Commissioner considers that a person, when detained, shall receive qualified legal assistance and pass preliminary medical examination. As it is seen, when these two requirements are observed, the probability of the detained person's exposure to violence by police is reduced or eliminated.

During the NPM Group's visit to Tovuz DPD, 4 persons detained in the TDP reported to the Group that they were illegally kept in police custody for some period and were subject to physical violence by the Senior Police Investigator of the Criminal Investigation Department, Javad Safaraliyev. During the examination of their bodies numeral slash marks were noticed on two of them. Both persons informed that they inflicted the injuries themselves with the purpose of preventing violence against them.

During the examination of all three persons' files, it was found out that there was no seal in the detention record and though an emergency doctor had visited the TDP and provided medical assistance to the detainees for several times and recorded those visits in the special healthcare register, the injuries and slashes observed on the detainees' bodies had not been documented anywhere.

During the interview with one of the detainee's he showed the drilling object fixed on a wooden piece he was keeping in his pocket and told the NPM

Group members that if he is beaten again he would injure himself with that object.

The Commissioner thinks that it should be investigated how the prohibited object was brought to the TDP and in what way the examination of the accused person was conducted on his arrival by the responsible staff.

During the investigation it was also found out that though the distance between Tovuz District Police Department and Investigation Isolator No2 located in Ganja is 75 km, in 2011 all suspected and accused persons were held in the TDP of the mentioned Department for 10 days, in violation of CPC requirements.

The Commissioner appealed to the Ministry of Interior with a request to investigate the cases happened in Tovuz DPD, take necessary legal measures with regard to the persons who had committed illegal actions, and start a special investigation in respect of Javad Safaraliyev, Senior Police Investigator of the same Department.

In the response letter it is stated that the ill-treatment of the two persons by Javad Safaraliyev, Senior Police Investigator of the Criminal Investigation Department of Tovuz DPD, their illegal detention in police custody and other issues mentioned previously have proved right. Because of the mistakes made, Senior Police Investigator of Tovuz DPD Javad Safaraliyev has been discharged from the service in the bodies of the Ministry of Interior, Chief of the DPD Vagif Ismayilov has received a reprimand, Deputy Chief Zafar Zeynalov has received a warning of unfitness for service, Deputy Chief Oruj Amiraslanov has received a severe reprimand, as well as the management of the DPD has been tasked to take disciplinary measures in respect of the Chief of the TDP – Elmar Asgarov. The management of Tovuz DPD have also been required to eliminate, within a short period, all shortcomings existing in the service of the temporary detention place.

In the letter it is also mentioned that the temporary detention place of Tovuz DPD has been brought in line with modern standards and accordingly adjusted to international norms and necessary measures have been taken to eliminate the discovered shortcomings.

During the visits of the members of the NPM Group from Shaki Regional Centre it was discovered that there were no tables and chairs in all cells of the TDP of Gakh DPD and in 3 cells of the TDP of Shaki DPD. It should be mentioned that during previous visits the mentioned fixings existed in the cells concerned.

In the response letter received from the MI, it is stated that the TDPs of those DPDs have been renovated and the missing equipment has been re-installed.

The Commissioner, commending renovation works, considers that the rights of persons detained in TDPs shall be respected and they should be transferred to neighbouring TDPs during renovation.

During the visit to Salyan DPD TDP, it was observed that because all 8 cells lacked chairs, detainees were eating standing on their feet and that though one of the cells was 6 square meters, 2 persons were held there.

While reviewing the files of the detainees held in the TDP, it was discovered that the records of detention of 5 five persons had not been duly sealed.

In M.A.'s personal file two detention records were discovered. They were written by different investigators on the same date and time.

In the response letter received from the MI regarding the issue it is stated that the persons concerned were detained by the officials of Salyan DPD due to the crime committed by them and arrested as suspected persons by the Investigation Unit's Investigator Nizami Maharramov. After a short period of time another Investigator of the Investigation Unit, Emil Tahirov received M.A.'s case to his execution and by demonstrating negligence, prepared a new detention record on the same date and time notwithstanding that such a record already existed, and submitted it to Ilham Shahverdiyev, Chief of the TDP. The latter, committing negligence and inattentiveness, added both records to M. A.'s file.

The shortcomings discovered in Salyan DPD TDP have been eliminated, as well as chairs have been installed in the cells and the second bed has been removed from the cell of 6 square meters.

Salyan DPD's Investigation Unit's Investigator Emil Tahirov has received a severe warning, Salyan DPD's Chief has been tasked to take disciplinary measures in respect of TDP's Chief Ilham Shahverdiyev and the management of the DPD has been instructed to take further necessary measures for adjusting the work of TDP to the relevant regulations and protecting human rights in a better way. In the next information given on the mentioned issue it has been stated that the TDP's Chief Shahverdiyev received a severe reprimand.

It should be mentioned that there were shortcomings in Salyan DPD TDP in the past as well and those were eliminated only after the NPM's visit.

After the NPM's visit to Police Station No. 14 of Sabunchu District Police Department, the detention room of the on-duty section has been equipped with a table and chairs, and the management of the Capital Construction Office of the Ministry of Interior has been requested to eliminate similar shortcomings in other police bodies in the country and strictly adhere to the norms approved by Order No. 130 of 30 July 2001 of the Cabinet of

Ministers of the Republic of Azerbaijan during construction of new administrative buildings for police bodies in the future.

The Commissioner considers that detention of every person in a detention place shall be documented immediately in accordance with the requirements of law. In this case, detention of the person in a place with inadequate conditions for a period of 2 hours 35 minutes without documenting the detention is unacceptable.

In the interview with 6 accused persons held in Goychay DPD TDP, the detainees complained of the treatment by the personnel. After conducting investigation the NPM Group came into conclusion that the TDP failed to fully meet the standards. Thus, the TDP lacked medical service and worshipping rooms, bathing facilities had poor hygiene, the number of chairs in the cells were not equal to the number of beds, the temperature in the cells was +30°C because of hot weather outside (on the day of the visit the temperature under the direct sunlight was +32°C), and the walls of the cells were not even. At the same time, it was found out that the registration book of the persons detained in the TDP were not filled in accordingly, and in some cases doctors did not record preliminary medical care in the “Healthcare Book”.

During the visit to Aghsu DPD TDP similar situation was observed.

Regarding the both cases, the Commissioner, appealing to the MI, has stated that though Article 9.2 of the Regulations approved by Order No. 428 of the Minister of Interior of the Republic of Azerbaijan requires to maintain the temperature in TDP buildings at not less than +18°C in cold seasons, there is not any provision establishing a permitted temperature in cells on hot summer days, at the same time the provision prohibiting suspected or accused persons from possessing electric devices in their cells has resulted in denial of ventilators in summer time, the detention of persons in excessively hot cells is not in line with the Minimum Standards and the European Penitentiary Regulations and the Regulations therefore need to be amended.

In the response letter received from the MI, it is stated that after the visits paid by the NPM to temporary detention places of Goychay and Aghsu police departments, appropriate conditions have been created for detainees to receive healthcare and worship, sanitary and cleaning measures have been undertaken, the operation of installation of a ventilation system in the buildings and additional chairs in cells has been started, F. Huseynov, Chief of the TDP of Goychay DPD, Police Sergeant Major has been subjected to disciplinary measures for the distortions in the registry books and records of the TDP, and has received a severe reprimand.

During the NPM Group’s visit to the TDP of Ismayilli DPD, the lack of seats in the cells and of a table in a cell for administratively detained persons,

as well as heating system in the cold weather condition, and existence of only one gas heater in the corridor were observed.

During the review of the cells of the TDP of the Transport Police Office, it was identified that the premises needed renovation, because of the location of windows in three meters distance from the floor, the windows were not opened properly. It resulted in its turn in improper ventilation of cells, and in some cells the floors were decayed.

Both issues have been brought to the MI's attention and the mentioned issues have been resolved.

During the visits to Sabunchu DPD TDP, Police Stations No. 13 and 15, Surakhani DPD and its Police Station No. 31 the NPM Group observed a number of violations. While reviewing the documentation with regard to the detention of 3 suspected persons held in the TDP, it was determined that at the moment of detention Q.M, as well as minors C.R., born in 1995, and A.K, born in 1994, were not provided with a lawyer, and they were not notified of the rights of a suspect in writing.

In general, it was determined that the TDP did not meet the established standards. The TDP lacked medical service, worshipping, meeting rooms and kitchen.

At the same time, during the visit to Polis Station No. 13 of the Sabunchu DPD, it was observed that the 3 cells located at the backyard of the duty post were completely unsuitable for the intended purpose, the information in a number of rows of the recording book for registration of persons brought to the police station was not complete, particularly the information in the columns of "what measures have been undertaken" was missing.

During the onsite observation of Police Station No. 31 of Surakhani DPD it was found out that two persons were kept in the corridor of the station and one person was held in the backyard of the duty post. The persons informed that they had been there for one day. The officials of the station, particularly the acting policeman on duty of the station and his assistant confirmed the fact. It was also determined that there were no documents to verify the lawfulness of the detention of those persons.

In the reply letter received from the MI it is stated that after the visit the mentioned shortcomings have been eliminated in the TDP of Sabunchu DPD, the detention room of Police Station No. 15 has been renovated and equipped accordingly, renovation of the detention room at Police Station No. 13 has been started, and necessary instructions have been given for maintaining accurate and complete documentation at the on-duty section.

Because of the mistakes made with regard to the registration of the person brought to Police Station No. 31, Policeman On Duty of the station Rashad Abdullayev and Chief of the Area Police Mayor Rasim Baxshaliyev

received severe reprimands, Chief of the station Iman Mehdiyev received a strict warning not to repeat such mistakes in future.

It should be mentioned that both stations have been revisited and it has been determined that the mentioned deficiencies were eliminated.

The Commissioner considers that lengthy detention in police custody is in conflict with Article 157.3 of the CPC and Order No. 428 of the MI.

The Report on the Visit to Azerbaijan Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 November to 6 December 2002 condemns lengthy detention in police custody.

With the Commissioner's participation the NPM Group members visited Guba, Shabran and Siyazan DPDs and discovered numerous shortcomings.

It was observed that all 5 cells of Shabran DPD TDP lacked tables and seats, and detainees ate whilst standing, also while reviewing the documents of 5 persons detained in the TDP it was determined that the detention records of 2 of them and a detainee held in Siyazan DPD TDP had not been duly sealed.

Moreover, the NPM Group members have identified that though the Investigation Centre of the Office for Combating Illegal Migration of the Head Office for Passport, Registration and Migration of the Ministry of Interior meet standards, it lacks an outdoor exercise facility.

The Commissioner is of the opinion that, taking into consideration the fact that illegal migrants are held in the Centre until they leave the country, the absence of a space for an outdoor exercise is in breach of international and national requirements.

In the response given by the MI to the Commissioner's appeal with regard to both issues it is stated that the Heads of Shabran and Siyazan DPD TDPs, Chief Police Sergeants J.Gadirov and A.Aliyev have received reprimands for having violated the relevant rules on the admission to TDP, other officials who are in charge of this issue have received warnings.

The Procurement Office of the Ministry of Interior has been requested to install tables and chairs in the cells of Shabran DPD TDP.

It has been determined that after the Commissioner's request necessary steps have been taken for creating an outdoor exercise facility for detainees of the Investigation Centre and during the next visit undertaken to Shabran DPD it was noticed that chairs had been installed in the cells of the TDP.

It was found out that in some cases an administratively arrested person was held in the same cell with a suspect. For example, during the visit to Samukh DPD TDP it was discovered that administratively arrested A.X was kept together with a suspected person and the situation was immediately

resolved. It should be noted that placing of detained persons in this way breaches Order No. 428 of the MI.

The Commissioner considers that though recent construction of TDPs, which meets modern standards, has created appropriate conditions for detainees, the working conditions of the personnel serving in those places cannot be considered satisfactory. As such, though the floors of cells are wooden, the floors of the rooms intended for the use of personnel and the corridors where they serve are concrete, which negatively affects their health.

One more issue raised the Commissioner's concern. Thus, sometimes an arrested person, against his/her will, is taped and shown on TV before his/her guilt is proved. For example, on TV channels an arrested person was introduced as a sexual maniac by the officials of a DPD. But at a later stage during investigation his guilt was not proved. However, the principle of presumption of innocence was violated and he was introduced to the public in relation to a crime he had not committed.

The Commissioner thinks that a special attention shall be attached to this kind of sensitive issues.

2.1.2. Establishments of the Penitentiary Service of the Ministry of Justice

The Penitentiary Service has 38 establishments that fall under the jurisdiction of the NPM. These establishments include the Prison, Specialized Medical Institution (SMI), Medical Institution (MI), Correctional Institution for Minors, investigation isolators, penitentiary institutions, penal colony settlements (PCS) (See: Appendix 1, Table 1).

It should be mentioned that last year the number of these establishments was 50, but 13 establishments which were under jurisdiction of the PS were closed down in 2011 and the punishments of the inmates held in those establishments were replaced with punishments in the form of fine. At the same time one PI operating in Nakhchivan AR was added to the list.

Accused persons who are under investigation, persons deprived of their liberty or persons whose liberty has been restricted by a court decision can be detained in the establishments under the jurisdiction of the PS. The rules of detention of those persons, their rights and obligations are regulated by the CPC, Execution of Punishment Code, Internal Disciplinary Rules of Penitentiary Institutions and other normative legal acts.

In general, it should be mentioned that the MJ has undertaken a number of actions to improve the conditions in the establishments of the PS and to humanize the rules related to the enforcement and serving of punishments.

In December 2010, new “Internal Disciplinary Rules” were approved and a number of new rules were reflected therein. Thus, in order to guarantee the right of inmates to express their opinions with regard to decisions on application of disciplinary measures or to file a grievance against them, when the chief of a penitentiary institution or a person replacing him/her issues such a decision, inmates, being explained their rights to voice an opinion on or file a grievance against it, are invited to sign the decision in the place specially allocated for that purpose. In case the convict refuses to sign, a corresponding report is drawn up and added to the personal file of the convict.

Besides, according to the new rules, prohibition of smoking during the period of detention in the punishment isolator has been cancelled. Thus, before they were kept in the punishment isolator for 1-15 days and were allowed to smoke only once a day when they were taken out for walking.

One of other positive amendments is the provision of dietary food to diabetic inmates in the Republic of Azerbaijan effective from 2011. A number of international organizations have made recommendations to the PS for providing nutrition to diabetic inmates and accused persons in accordance with the relevant rules. In accordance with the Order of the Chief of the PS from 1 May 2011 different dietary meals are prepared for diabetic inmates pursuant to dieticians’ recommendations. Appropriate arrangements have been created in the canteens of penitentiary institutions for such inmates’ nutrition.

Though the staff lists of PIs provide for a position of psychologist, in many establishments these positions are vacant, therefore the members of the Psychologists Group of the Correctional Work Organization Office of the PS provides psychological support for inmates.

Another difficulty is the shortage of healthcare personnel in establishments. In some establishments 2-3 doctors provide medical treatment to more than thousand inmates. The MJ Head Medical Office clarifying the issue, has stated that doctor positions are vacant but few persons are willing to hold these positions .

The construction of a new Investigation Isolator in Zabrat Settlement , a new prison in Umbaku Settlement, PI complexes of mixed regime in Shaki and Lankaran and PI of mixed regime in Ganja continued in 2011.

During the CPT’s 6th periodic visit to our country, the delegation visited a number of establishments of the PS. In the information provided by the MJ to the Commissioner, it is said that at the conclusion of the visit the members of the CPT delegation met with the Minister of Justice, noted that detention conditions of inmates and healthcare service provided to them had improved,

and no concerns had been raised regarding torture and ill-treatment in PIs and made relevant recommendations for improving the work of the penitentiary system.

It should be noted that though the PS have taken several measures for improving inmates' conditions, during the NPM's visits a number of shortcomings were observed.

As it is mentioned above, the NPM conducted 86 visits to the PS's places of deprivation of liberty in 2011. According to the conclusions made based on the findings of these visits it can be mentioned that general situation in these establishments, detention conditions, and treatment of inmates (with the exception of some cases) are satisfactory and some of these establishments meet the standards.

During the NPM Group's visits several cases were revealed and relevant recommendations on required actions were made to the corresponding bodies. With this purpose, after each visit the Commissioner appealed to the MJ and the issues raised by her were resolved in most cases.

Appeals have been addressed to the MJ with regards to the density of inmates and overcrowding in cells in Investigation Isolator No. 3 of the PS located in Shuvalan Settlement, as well as inadequacy of organized medical service. During the follow up visit it was found out that women who were under investigation had been transferred to Baku Investigation Isolator and thus the overcrowding in the cells had been eliminated. Unfortunately, medical treatment provided to the inmates in Investigation Isolator No. 3 is still problematic. Unlike in other establishments, in-patient treatment is not provided there. The inmates are sent to the MI only when it is absolutely necessary.

It shall also be mentioned that in 2011 the composition of the management of the MJ PS was changed. Thus, a new Chief has been appointed to the PS and as a result of the staff reform, the chiefs of the 10 PIs and Prison have been dismissed. Among those chiefs are the persons named in the Commissioner's NPM report for 2009-2010.

The NPM Group's visit to Medical Unit of PI No. 5 was short. As such, the Medical Unit's building is in an emergency situation, which is dangerous for the life of patients and doctors. In winter seasons patients are not held there. During the observation of the Dentist's room, it was found out that though there was only old dental equipment, the room lacked even a water tap and the overall condition did not meet hygienic requirements, the Dentist pulled out the teeth of 55-60% of patients out of 155 patients who sought medical care there within 4 months of 2011. During the observation of the bandage room, it was found that the medical assistant left used syringes on the table.

It should particularly be mentioned that when the equipment in the barber's shop is not sterilized appropriately, standards of hygiene are not followed in the medical unit, used syringes are not destroyed, there is a good opportunity for AIDS and hepatitis to spread among inmates.

Deeming the results of the NPM Group's visit to PI No5 unsatisfactory, the Commissioner has appealed to the MJ and requested to take immediate measures to eliminate the shortcomings, take blood samples from all the inmates, further investigate the issue and keep the situation under strict control.

In the response received it is stated that due to the shortcomings discovered by the NPM disciplinary actions have been taken with respect to several officials, as such, by Order No. 165K of 25 May 2011 of the Minister of Justice the Chief of the establishment, Justice Colonel Faig Gulaliyev has been discharged from justice service due to the serious violations he committed while executing his job duties, mismanagement and non-compliance with the regulations on punishment execution work, Deputy Chief (responsible for investigation and regime issues), Justice Lieutenant Colonel Hatem Asgerov has been dismissed from his position due to his failure to perform his main duties as established by law, and by Order No. 50 of 19 May 2011 issued by the Chief of the PS Senior Inspector (Investigator) of the Investigation Department, Justice Major Chingizkhan Babayev has been discharged from justice service also due to failure to perform his main duties as established by law.

By the way, a criminal case based on Article 178 of CC was initiated in respect of F. Gulaliyev, former Chief of PI No 5 and he was detained on remand.

Moreover, the acting Chief of the establishment was instructed to eliminate the existing shortcomings. At the same time it has also been stated that the repair works in the establishment and its logistical supply will be carried out step-by-step as per the allocation of necessary funding. The construction of a new medical-sanitary unit was included in the list of projects to be implemented with capital funding in 2011.

The Prison located in Gobustan Settlement was visited twice in the reported year. One of the visits lasted for a long time, the other was related to the investigation of the information received.

It should be mentioned that, the PS has only one prison in its jurisdiction and convicts who have been sentenced to serve in a prison by court, or who have violated regime rules in other penitentiaries for many times and transferred to the prison with a court decision, as well as who have been sentenced to life imprisonment are held in this Prison. This establishment differs from others by the strictness of the regime.

The purpose of the NPM Group's long-term visit to the Prison was the investigation of the execution of the recommendations (ill-treatment of the inmates by the chief of the establishment and its officials, lack of a general ventilation system in cells under hot weather conditions, bread of low quality, deficiency of meeting rooms as compared to the number of inmates which was 700, low-level of healthcare service, non-delivery of appeals sent by the inmates to various addresses) given in 2010.

During the NPM group's last visit it was determined that at the entrance to the Prison a meeting room consisting of 5 tables was built and put into exploitation, and proper conditions were provided to ensure that visitors could wait in queue.

Requirements of legislation: Article 78 of the Execution of Punishment Code specifies: "Security measures (physical force, special means, service dogs and firearms) may be applied to the inmates that do not obey lawful requirements of the staff of penitentiary institutions, demonstrate resistance, take part in mass riots, seize people hostage, attack citizens, or commit other acts that pose public threat, as well as with the intention to prevent illegal acts attempted during escape of inmates from a penitentiary institution or detention of escapers, as well as inmates' harming others or themselves, and crimes being or to be committed.

According to Article 78.2, handcuffs may be applied to inmates who cause a scandal in penitentiary institutions, and physical force, special means, and service dogs may be applied to those that put up physical resistance against staff or commit other violent acts, as well as attempts to escape from custody.

United Nations Standard Minimum Rules for the Treatment of Prisoners stipulates that collective punishments, corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment shall be completely prohibited as punishments for disciplinary offences, and moreover, those standards specify that the use of chains and irons are prohibited, handcuffs, restraint-jackets and other body restraints shall never be applied as a punishment and use of the instruments of restraint shall be applied only when it is strictly necessary.

Detention conditions in the Prison, conditions of the cells and healthcare

Conditions in the cells. The cells intended for the inmates sentenced to life imprisonment consist of one room. In these cells 1, 2 or 4 persons are held.

A sanitary facility and water tap are inside the cells and curtained with a separator. The windows of the cells are partially in line with the standards, floors are made of stone. Because of the shortage of place in the Prison, the cells previously used as punishment 1 isolators, their conditions being improved, are now used as a usual cell. The cells have 2 layered beds. The inmates can access TV for four hours a day and radio all day long. They are entitled to 1-hour (sick inmates up to 3 hours) outdoor exercise during a day. Each building has 4 outdoor exercise facilities and one bathroom. The inmates are entitled to use bathroom once a week. In the bathroom there is one shower. However, efforts are made to improve inmates' access to bathroom facilities.

Organization of healthcare service.

The Medical Unit has 11 wards. Each ward is designed for 4 persons and in total 44 patients can be treated there. There are a surgery, laboratory, dental, dressing and psychotherapy rooms in the Unit. 7 doctors – 1 physician, 1 dentist, 1 physiotherapist, 1 laboratory doctor, 1 psychiatrist-narcologist, 1 radiologist, and 1 doctor's assistant work in the MU. They work from Monday to Saturday from 9:00 to 18:00. Doctors do not stay after working hours. When needed, an emergency doctor is called from the area (the emergency hospital is located in the neighbouring settlement). There is a pharmacy in the medical unit and medicines are provided by the chief of the unit according to the doctor's prescription.

**Healthcare Services in Prisons (Standards).
3rd General Report (cf. CPT/Inf (93) 12)**

30. Healthcare services for persons deprived of their liberty is a subject of direct relevance to the CPT's mandate. An inadequate level of healthcare can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the healthcare service in a given establishment can potentially play an important role in combating the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates.

32. The considerations which have guided the CPT during its visits to prison healthcare services can be set out under the following headings:

- a. Access to a doctor
- b. Equivalence of care
- c. Patient's consent and confidentiality
- d. Preventive healthcare

- e. Humanitarian assistance
- f. Professional independence
- g. Professional competence.

Access to a doctor

33. When entering prison, all prisoners should without delay be seen by a member of the establishment's healthcare service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.

It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the healthcare service and reminding them of basic measures of hygiene.

34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime (as regards more particularly access to a doctor for prisoners held in solitary confinement, see paragraph 56 of the CPT's 2nd General Report: CPT/Inf (92) 3). The healthcare service should be so organised as to enable requests to consult a doctor to be met without undue delay.

Prisoners should be able to approach the healthcare service on a confidential basis, for example, by means of a message in a sealed envelope. Further, prison officers should not seek to screen requests to consult a doctor.

35. A prison's healthcare service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds). The services of a qualified dentist should be available to every prisoner. Further, prison doctors should be able to call upon the services of specialists.

As regards emergency treatment, a doctor should always be on call. Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification.

Out-patient treatment should be supervised, as appropriate, by healthcare staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.

The Commissioner appealing to the MJ, has requested to eliminate the shortcomings mentioned in the findings of the visit, investigate the cases referred to in the appeal, and take necessary measures for preventing these cases in the future.

In the response received it is stated that the allegations of inmates' exposure to violence have proved wrong, handcuffs and rubber baton were used in compliance with law when investigating the breaches of the regime by the inmates as they did not want to follow the lawful requirements of the management and resisted the staff, and the bread and food given to inmates have been found of appropriate quality.

It is also mentioned that though the conditions of the 7 former punishment isolators of Buildings No 2 and 3 were not satisfactory, they were used as cells for detention of inmates which is an indication of inappropriate execution of job duties by the management of the establishment and some staff of it. The requirements of the effective normative-legal acts governing the application of special means to inmates, their placement in punishment isolators, registration and dispatch of correspondence have been seriously violated. The findings of the conducted investigation have been reported to the management of the Penitentiary Service with the participation of the relevant officials of the Prison.

Due to the failure to properly perform his duties in the establishment given under his supervision and observed shortcomings, the Chief of the Prison, Justice Colonel Lieutenant Kazim Abdullayev has received a severe reprimand pursuant to Order 15/i of 24 February 2011. He has been required to immediately take necessary measures to eliminate the shortcomings and violations. Taking into consideration the short period of their service, as well as sincere confession and promise to improve their performance, some staff of the establishment received a strict warning for the shortcomings observed in the fulfilment of their job duties. At the same time, the inmates held in the mentioned 7 cells have been transferred to other cells and the renovation works have started in those cells. The management of the prison has received concrete tasks to ensure the receipt and delivery of inmates' correspondence as specified by law, and eliminate deficiencies in the documentation of the application of special means and placement in the punishment isolator.

The Chiefs of the relevant service areas of the Head Office have been tasked to take necessary measures for eliminating deficiencies and shortcomings in the Prison's operation, resolving problems related to inmates' material-living conditions and accommodation, as well as to keep under strict control the operation of the Prison in the future.

It should be mentioned that during the NPM Group's next visit it was determined that some shortcomings had already been eliminated, and the prisoners who had complained about the conditions during previous visits were not exposed to violence for disclosing information.

Besides, it appeared that several officials of the Prison, including 2 Deputy Chiefs of the Prison and Acting Head of the Investigation Unit E. Dovlatzade have been dismissed from their posts, and a criminal case has been initiated in respect of Chief of the Prison K. Abdullayev.

The Commissioner is in the opinion that despite the measures undertaken, the Prison should be kept under a regular control and healthcare issues should be given special attention.

The purpose of the short visit made to PI No. 14 was to review the execution of the recommendations given during the previous visits, investigate the information about the ill-treatment of the persons kept in the punishment isolators, examine the detention conditions, and interview some inmates of the PI.

Though during the examination of the execution of the previous recommendations it was observed that some issues had been resolved (such as establishment of a dental office, approval of the budget for renovation, and replacement of roofs in some buildings), the situation in some other fields had worsened. It was not possible to review the journal for recording application of special means during the investigation in PI No. 14. Thus, the Chief informed that the journal was in the responsible official's safe and he was on an annual leave.

During the investigation conducted with regard to the detention conditions in the punishment isolator, it was found out that the cells were not provided with drinkable water, and only tea was given 3 times during a day, the inmates, with the exception of 3 of them, did not possess any items of hygiene, inmates did not have any pillows and sheets, floors of the cells were made of stone, the beds were secured to the walls with locks and were opened only from 17:30 till 06:00 by prison guards.

The Chief of the establishment tried to persuade the NPM Group that they did not provide items of hygiene and bedding in order to protect the inmates from self injury. Beds' availability only at certain hours during a day leaves inmates dependent on guards, which is in breach of the European Prison Rules, Execution of Punishment Code and Internal Disciplinary Rules.

As the explanation provided by the Chief of the establishment was not satisfactory for the NPM Group members and considering that the inmate complained of exposure to violence by the personnel and the doctor had relevant records and the inmate's detention in degrading conditions may be tantamount to ill-treatment, it should therefore be investigated thoroughly.

In the response received from the MJ it is stated that during the NPM's visit it was a cleaning day, linens had therefore been collected and beds had been closed-up temporarily in the cells of the penalty isolator and that since Cell No.10 lacked necessary conditions it was only used for investigation-search measures, inmates were not subject to any restrictions in accessing drinkable water, and some inmates were provided with items of hygiene (toothpaste, toothbrush and towel) under control with the intention to prevent self injury cases.

It has been confirmed that as the Chief of the Regime-Control Department, Justice Major Elzamin Guliyev had not handed over the book for recording special means before going on an annual leave from 4 August – to 3 September 2011, the establishment was not able to provide the mentioned record book to the NPM Group members.

Inmate H.B's allegations that he was exposed to insult, pressure and physical violence by the Chief of the establishment A.Hasanov and Chief of the RCD Elzamin Guliyev and was discriminated have proved wrong. The interviews with the inmates of the establishment revealed that they, in accordance with Article 98 of the Execution of Punishment Code, were involved in renovation work and supplementary work to improve living conditions on shifting bases without compensation for such a job. In the response letter it is stated that assessing the involvement of inmates in such kind of activities as a useless job or an additional punishment measures is not in line with the requirements of law.

The establishment has not put any restrictions on worshipping, the inmates have not been requested to provide any references.

It has also been stated that in the future it is planned to cover the floors of the cells of the punishment isolator with wood surface as soon as necessary funding is available.

Through the investigation conducted it has been determined that some officials allowed certain shortcomings and deficiencies during the fulfilment of their job duties. In this regard, disciplinary measures have been taken in respect of the Chief of the Regime-Control Department of PI No.14, Justice Major Elzamin Guliyev and Deputy Chief of the establishment (responsible for investigation and regime issues) Justice Colonel Lieutenant Nazim Kangarli, and the Chief of the establishment Justice Colonel Arshad Hasanov has received a severe warning. At the same time the management of the establishment has been assigned certain tasks to ensure inmates' rights and freedoms and comply with the requirements of law in providing necessary conditions for the implementation of the right to freedom of conscience. After the NPM's visit, the members of the Public Committee under the Ministry of Justice, which is comprised of NGO representatives and has been established according to the Regulations on ensuring the involvement of the community in

the rehabilitation of convicts and exercising public control over the operation of penitentiary institutions, visited PI No. 14 and released information to the mass media on the above mentioned violations.

As a result of the investigation of the issue of compulsory labour in most establishments it has been discovered that the relevant articles of the Execution of Punishment Code and Internal Disciplinary Rules contradict the Constitution.

The Constitution of the Republic of Azerbaijan

Article 35. Right to work

II. Everyone has the right to choose independently, based on his/her abilities, kind of activity, profession, occupation and place of work.

III. Nobody might be forced to work.

V. Involving in forced labour pursuant to a court decision, terms and conditions of such being specified by legislation, making work based on orders of authorized persons during military service, having citizens perform necessary works at times of emergency or martial law are permissible.

VI. Everyone has the right to work in safe and healthy conditions and get remuneration for his/her work without any discrimination in the amount of not less than minimum wage rate as established by the state.

Execution of Punishment Code

Article 95. Involvement in labour of persons sentenced to deprivation of liberty for certain period of time or life imprisonment

95.1. Every inmate shall be involved in labour performing the works in the places as determined by the management of the penitentiary institution. The management of the penitentiary institution shall involve inmates in useful labour considering their gender, age, capability, health condition, and when possible qualifications. As a rule, inmates, by being duly protected and isolated, are involved in labour in production sites of penitentiary institutions, maintenance and household works necessary for ensuring normal functioning of such establishments, as well as other production sites outside penitentiary institutions.

Internal Disciplinary Rules of PIs

228. Each inmate can work in the places and at work as determined by the management of the penitentiary institution. The management of the penitentiary institution shall involve inmates in useful labour considering their gender, age, capability, health condition, and when possible qualifications.

The Commissioner considers that the mentioned provisions of the Execution of Punishment Code and Internal Disciplinary Rules shall be brought into compliance with Article 35 of the Constitution.

Another issue which was discovered during the visits and concerns the NPM is inmates' access to legal assistance.

Thus, this issue was observed in PIs No. 8, 11, 12 and 13. During the investigation it was also determined that in the penitentiaries not in all cases necessary conditions were created for ensuring the confidentiality of meetings between the lawyer and the inmate.

With the order of the PS in several establishments the rooms intended for lawyers have been divided with a separator into two parts and thus, a lawyer may get in touch with his defendant by phone from behind a glass separator. He needs to approach a prison guard for handing a certain paper to the defendant for getting his signature. In the Commissioner's opinion this breaches confidentiality and puts the inmate dependent on the prison guard. Besides, there is no guarantee that the phone conversation between the lawyer and his defendant is not listened to.

“Supply of Meeting Rooms and List of Inventory in those Rooms” as stipulated in Annex 1 of the “Internal Disciplinary Rules of Penitentiary Institutions”

“Cabins with 80 cm width and 100 cm length and separated with glass separators from the floor to ceiling are installed in the room. The separators are covered with plastic trimmed woods till the height of 85cm and the upper parts consist of double glass of 6mm thickness. The cabins are provided with plastic shelves equipped with communication devices (dynamics or telephone devices). 2-3 cabins are of 140 cm width. Supervisor's desk is provided with interception equipment for listening to the cabins and is placed in a separate 6-square-meter room behind the glass separator standing perpendicularly to the middle separator dividing the cabins. There shall be chairs for visitors on one side and seats locked to the floor for inmates on the other side of the cabins.”

Even if Annex No. 1 does not apply to lawyer rooms, this is in breach of international and national human rights provisions. I would also like to mention that the application of this rule in respect of the people who have come for a short meeting and the interception of their conversation can be assessed as the violation of their privacy.

The Constitution of the Republic of Azerbaijan

Article 32. Right to personal immunity

“Everyone has the right for confidentiality concerning personal and family life. Except cases envisaged by legislation interference in personal life is prohibited. Everyone has the right to protect his/her personal and family life from illegal interference. Collecting, storing, using and spreading information about anyone’s private life without his/her consent is not permitted. Except for cases as provided by law, no-one can be traced, subjected to video recording, photo taking, audio recording and other similar actions without being notified or when objecting.”

Article 153.2.5 of the Criminal Procedure Code provides for: “the provision of opportunities for a person, from the moment of detention, to meet in private and in confidence with his lawyer and legal representative under decent conditions and under supervision”;

Besides, Article 7 of the Law on Advocates and Advocacy specifies: “necessary conditions shall be created for holding private meetings and consultations between the advocate and the detained, arrested or convicted person for provision of legal assistance and confidentiality shall be ensured.”

One of the main elements of the right to receive qualified legal assistance, which is among main human rights enshrined in international legal provisions, is provision of confidentiality between the defendant and his lawyer.

The Code of Conduct for Lawyers in the European Union adopted by the Council of the Bars and Law Societies of the European Union in Strasbourg on 28 October 1988 states that confidentiality is a significant component in advocacy and it is of the essence of a lawyer's function that he should be freely told by his client things which the client would not tell to others. Only the confidentiality of such information may create such conditions . Without the certainty of confidentiality there cannot be trust in lawyer.

According to the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana, Cuba on 7 September 1990, Governments shall recognize and respect that all communications and consultations between

lawyers and their clients within their professional relationship are confidential. Thus, in order to ensure the constitutional right to receive qualified legal assistance, confidential information received during the provision of qualified legal assistance shall not be revealed notwithstanding how they were obtained.

The Standard Minimum Rules for the Treatment of Prisoners stipulate the provision of legal assistance to inmates guaranteeing its confidentiality. All arrested or imprisoned persons shall be provided with adequate opportunities, time and necessary facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.

The Commissioner considers that the above mentioned negative cases should be prevented, confidentiality of the meetings between the defendant and the lawyer should be ensured, and Annex 1 of the Internal Disciplinary Rules of Penitentiary Institutions should be adjusted to the law. The Commissioner has appealed to the MJ in this regard.

In the response received from the PS of the MJ it is stated that the right to receive legal assistance is enshrined as one of the basic rights of citizens in the legislation of the Republic of Azerbaijan and the management of the PS has issued relevant Order to the chiefs of the investigation isolators and penitentiary institutions to ensure that meetings with lawyers or other persons entitled to provide legal assistance are hold in a separate room by guaranteeing confidentiality in accordance with the national law and international documents on the treatment of prisoners, relevant tasks have been assigned to arrange meetings with lawyers in separate rooms following confidentiality requirements, and the issue has been taken under special control.

The Commissioner is satisfied with the response received from the PS as it does not attempt to justify existing situation referring to national or international provisions and considers that a prisoner's meeting with his/her lawyer shall be arranged in a confidential manner, by respecting human dignity.

In the response letter it is also mentioned that it is a requirement of law, i.e. Article 81.2 of the Execution of Punishment Code, that prisoners have short meetings with their relatives or other persons with the participation of the establishment's management, and just referring to this provision, Annex 1 of the Internal Disciplinary Rules of Penitentiary Institutions gives the description of meeting rooms. Besides, it is stated that the participation of the representatives of the management at short meetings is connected with safeguarding security of prisoners and visitors. The response letter also states that this issue is approached differently in various documents related to the treatment of prisoners, thus according to Article 24.2 of the European Prison Rules, which deals with prisoners' contact with the outside world, visits may

be subject to monitoring necessary for maintenance of good order, safety and security and prevention of criminal offences.

The Commissioner considers that the inmate and his/her visitor are thoroughly checked before entering the establishment and then let into the meeting room. Here monitoring should be conducted from a distance and security should be ensured. The word “necessary” mentioned in Article 24.2 of the European Prison Rules cannot be applied to all prisoners.

Several shortcomings were discovered during the special investigation conducted in the punishment Isolator of PI No. 17. For the investigation of this issue an appeal was sent to the MJ and as a result Acting Chief of PI No 17 Colonel Lieutenant Elshad Guliyev received a severe warning being informed of serious claims in his respect. Later it was learned that E. Guliyev was released from fulfilling the functions of the Chief of the PI.

During the long-time visit to PI No 13 serious violations were discovered as well.

It should be mentioned that this was the NPM Group’s first visit to PI No 13. The size of the cells in the punishment isolator of the PI does not meet the standards. Thus, though the cells are of 12 square meters each, they are used for 4 inmates. The chairs in the cells do not correspond to the numbers of the inmates and in some cells they have been replaced with wooden boards fixed to beds.

It was found out that bedding sets were unfit, and blankets and mattress sheets were not provided in the punishment isolator. It was also observed that the windows of three cells lacked glasses, there was a need to adjust the size of the windows to the standards, conditions of hygiene in the kitchen were not satisfactory, floors of the dormitories, with the exception of one, were of stone, natural lighting was weak, the number of showers (which was 13) did not correspond to the number of the inmates, and the meeting rooms were few.

Besides, it was not possible to examine the two rooms located behind the self-service kitchen as they were locked. Food meant for inmates was prepared and sold in one of those rooms as stated by the inmates.

The Commissioner, appealing to the MJ, has requested to eliminate the mentioned shortcomings and take immediate measures for implementing the recommendations given. In the response received it is stated that some of the shortcomings observed during the visits have proved right and necessary measures have been taken for remedying the deficiencies. As such, for meeting the standard of relevant living space in the punishment isolator of the establishment, the number of the beds was decreased in some cells, tables have been re-constructed to adjust their height to sufficient norms, the cells have been provided with chairs and clean and proper bedding sets according to the numbers of the inmates, the heating system in the cells has been adjusted,

the windows of the mentioned 3 cells have been re-framed, and the rooms which were not used for their intended purpose have been emptied and given for the use of inmates accordingly. The findings of the conducted investigation have been discussed at the PS and for the detected deficiencies and shortcomings in the fulfilment of their duties, Chief of the establishment Bahram Asgarov, Chief of the Investigation Department Mirzali Mehdiyev, Chief Inspector of the same Department Jeyhun Aslanov have received a severe reprimand, Chief of the Regime-Control Department Hafiz Guliyev received a warning of unfitness for service, Inspectors of the same Department Ilgar Ramazanov, Fariz Aliyev, as well as the establishment's personnel Rashad Sultanov and Samir Garayev received a severe warning, and the respective officials of the PS have been tasked to keep under control the detention conditions of inmates, the use of the auxiliary rooms designated for the inmates according to their purpose, as well as the assignment of the maintenance and household works to inmates.

In addition to the mentioned establishments, the Commissioner thinks, there is a need for serious change in the conditions of penal colony settlements. As a result of investigations it has been discovered that these establishments do not meet the standards.

Along with the mentioned shortcomings, a number of improvements have been observed in PIs. Thus, considerable construction works have been performed in PI No. 8, the floors of the cells have been covered with wood. In the reported year a new boiling house was built for heating the dormitories of inmates, and refrigerators, desktop computers, washing machines and a tennis table were bought for improving the living conditions of the persons detained there.

Satisfactory implementation of the recommendations given in 2010 and improvement in the treatment of inmates were observed during the visit made to PI No 12. Thus, the issue of the treatment of inmates is already regulated accordingly, renovation works have been undertaken, problems with heating of the dormitories, which caused a special concern, have been resolved. In the information given with respect to the recommendations from the last visit it is stated that one bed has been removed from each of 7 cells and 4 cell-type rooms of the punishment isolator and thus, the living space for each inmate has been ensured to be 4 square meters. Besides, one living room has been opened for inmates and a new staff member has been hired for the vacant position of psychiatrist-narcologist since 30 December 2011.

During the visit to PI No. 4, it was observed that the new management of the establishment took a number of measures to improve the situation and with this gained convicted women's trust.

In PI N10, the sewerage system and water lines have been re-installed, a toilet facility has been built in every dormitory, the medical unit and meeting rooms have been renovated, and for improving inmates' communication with their family members the quantity of phones has been increased to 6 pieces. During private interviews with 50 inmates (including 23 from the punishment isolator) serving their term in the establishment, they did not complain of the detention conditions and treatment by the establishment's personnel. During reviewing the documentation on the application of special means and disciplinary punishment of inmates, it was observed that application of these means decreased to the minimum level in 2011.

During the visit paid to PI No. 7, the implementation status of the recommendations given with respect to the shortcomings discovered in 2010 was investigated. A change to the positive direction was observed. During interviews with the inmates (22 persons from the punishment isolator, 32 persons from general living area) they stressed that the treatment of prisoners and healthcare service had significantly improved. Besides, it was observed that renovation work had been conducted in the establishment, cleanness was maintained, and some parts had been refurbished. However, overcrowding in the living areas raised a concern. In the response letter received it is stated that the issue has already been resolved and in the nearest future (presumably in the I quarter of 2012) a number of inmates from PI No. 7 and from several other PIs of strict regime will be transferred to PI No. 12. It should be mentioned that PI No. 12 has been changed from a general regime colony to a strict regime penitentiary.

During the visit to PI No. 11, a special investigation was conducted with respect to the inmates kept in the punishment isolator and the decrease in the application of special means to inmates was highly appreciated. In comparison with the previous visits, other positive developments, such as capital renovation of the punishment isolator, meeting room, club, library, canteen and bathing facility was noticed. This kind of positive developments were also observed in PIs No. 2, 6 and 15.

2.1.3. Investigation Isolator of the Ministry of National Security

It should be mentioned that there are two Investigation Isolators – one is under the jurisdiction of the Ministry of National Security and the other is under the Ministry of National Security of Nakhchivan Autonomous Republic. Those isolators are meant for the detention of suspected and accused persons. The rights and obligations of the persons detained in those establishments are regulated by the Criminal Procedure Code.

As mentioned in the previous report, the Commissioner, appealing to the MNS, has informed that with the President's relevant Order the Commissioner has been designated as the institution to perform the functions of the National Preventive Mechanism under the Optional Protocol, for the implementation of this function an NPM Group has been formed. The Commissioner submitted the list of the members of the NPM Group to MNS and requesting the MNS to provide the NPM Group with an unrestricted access to the Investigation Isolator of the MNS for allowing them to implement the functions envisaged in their mandate.

The Commissioner carried out 2 visits to the Investigation Isolator of the MNS in 2011. The Commissioner and NPM Group members when conducting these visits, inquired about the current situation, as well as met with and talked to accused persons detained there. The detainees noted that they did not have any complaints about the conditions of detention and they had not been subjected to any illegal treatment in the Isolator and stated that they were satisfied with nutrition and medical services.

In the current year practical actions aimed at the improvement of the detention regime, material and social welfare of detainees, and medical services provided to them and protection of their rights in the Investigation Isolator of the MNS continued.

It has been identified that all detained persons are immediately examined upon arrival to the **Investigation Isolator** of the MNS by the members of the medical-sanitary assistance service of the Isolator. The work of the medical assistance service of the isolator is not limited to just medical treatment of the sick, they also undertake social and preventive measures. All the specialists of the polyclinic of the MNS are involved in, as well as the in-patient medical institutions of the MJ are used for the examination and treatment of detainees when needed and necessary actions are regularly undertaken to enhance the work done in this field and provide free-of-charge medicines to the sick.

In the information provided by the MNS on the measures taken in 2011 it is stated that the Constitutional rights and freedoms of the persons' involved in criminal prosecution conducted by the MNS were fully ensured and cases of the violation of their rights were not reported. Detained or arrested persons are examined by the onsite medical staff when entering the **Investigation Isolator** and a personal medical file is opened for each person. In accordance with the law, detainees are provided with access to a lawyer, as well as the right to approach state bodies, the Commissioner, public organizations and other officials through applications, complaints and letters. It has also been mentioned that the rights of the Commissioner, NPM and representatives of international and national non-governmental organizations working in this field to have access, regularly, without hindrance and prior notification, to the

Investigator Isolator, and meet and interview detainees in private or get acquainted with the documents confirming the lawfulness of their detention have been properly ensured.

In 2011, besides the NPM, the representatives of local NGOs and the representatives of the International Red Cross visited the Investigation Isolator 10 times and 4 times respectively and interviewed persons detained there. The persons who carried out these visits did not record any complaints about the conditions of detention, material, social welfare and medical services provided to detainees, and reported that no facts of torture, cruel, inhuman or degrading treatment against detained persons had been observed.

The Commissioner is of the opinion that, the situation, detention conditions, as well as treatment of detainees in the **Investigation Isolator** of the MNS have been at a satisfactory level and meet modern standards.

2.1.4. Establishments of the Ministry of Defence

11 establishments of the MD fall under the jurisdiction of the NPM. This includes the Disciplinary Military Unit No. N and 10 guardrooms of the military police department.

As a result of the research conducted it has been determined that currently only 3 guardrooms operate. Others' operation has been temporarily suspended. The operating guardrooms belong to Ganja, Sumgayit and Barda garrisons, whereas guardrooms functioning of which has been suspended belong to Baku, Yevlakh, Kurdamir, Gazakh, Lankaran, Beylagan and other military police departments.

3 visits were conducted to the above mentioned establishments of the MD in 2011. One visit was made to the military unit, other two were made to an operating guardroom and a temporarily suspended guardroom respectively. The visits were undertaken by the NPM group specialists with military experience and a lawyer.

The Disciplinary Military Unit's operation is regulated by the Execution of Punishment Code, whereas the military police guardrooms' operation is regulated by Annex 4 of the Regulations of the Garrisons and Guard Services of the Armed Forces of the Republic of Azerbaijan.

During the visit undertaken by the NPM Group to the Disciplinary Military Unit the current situation, conditions of detention of military men serving their sentences, their treatment, level of the performance of preventive measures and other issues were examined.

During the last visit, compared with the previous visits, positive developments, especially the realization of necessary actions derived from the

recommendations made on 13 October 2010 were observed. Thus capital renovation of the medical point of the military unit and improvement of emergency healthcare service provided to soldiers were among the positive actions taken.

During the interviews with more than 30 military men serving their sentences in the Disciplinary Military Unit complaints about ill-treatment by the staff of the facility were not recorded.

Along with the positive points described above, some shortcomings were revealed as well. Thus, the clothes of the inmates held in the Disciplinary Military Unit were of poor quality and they were washed by the inmates in the open-air while it was cold outside.

It was found out that 6 counter-accused persons (as victim and defendant) on the same case were kept in the same establishment, which is unacceptable from a security standpoint of those persons and is against the requirements of Article 12 “Prisoners right to security” of the Execution of Punishment Code. It was also observed that 9 persons had been transferred to the Military Unit No. N from other military units until the court decisions issued in respect of them would become effective, which is in violation of Article 171.1 of the Criminal Procedure Code.

Criminal Procedure Code –

Article 171. Military observation

171.1. Military observation as a restrictive measure shall entail making the commander of the military unit where the suspect or accused is serving or undergoing officer training, or the head of the military establishment concerned, responsible for ensuring that the person does not breach the public order, attends as required by the prosecuting authority and performs other duties.

These persons continue serving together with the personnel of the same military unit until the court decisions issued in their respect enter into force. It should be taken into account that such cases may negatively affect their rehabilitation under the supervision of the military men of Military Unit No. N when afterwards they are transferred to the facility where they will serve their punishment.

It should be mentioned that the convicts' dormitories and other buildings were still heated by the heaters operating with diesel fuel in a manner defined for the winter season.

During the long-term visit undertaken to the Guardroom of Military Police of Sumgayit Garrison all buildings of the establishment were examined, detention conditions and treatment of convicts or military men detained according to disciplinary procedures were examined.

The findings of the visit undertaken to the Guardroom reveal that the conditions of the establishment do not comply with the standards. Thus, the floors of all cells are made of concrete, the size of the windows does not correspond to the norms and natural lighting is inadequate.

During the interviews conducted with 24 persons in the Guardroom of Military Police of Sumgayit Garrison complaints about the treatment were not reported.

Negative cases with regard to the placement of detained persons in some cells were revealed during the visits. Though in the Guardroom there are 6 soldier cells meant for holding 4 soldiers each, 5 persons were held in the first cell whereas one person was held in the fifth cell. The sanitary facilities of the Guardroom meant for officers were unfit for use.

In general, the Administrative Building, as well as the Guardroom of the Military Unit of Sumgayit Garrison are in need of capital repair.

It should be mentioned that the findings of the visits conducted by the NPM Group to the both establishments have been discussed with the Chief of the Republic Military Police Office and the Commissioner appealing to the MD, has recommended to take relevant measures for eliminating the mentioned shortcomings.

In the response received it is informed that some of the deficiencies mentioned by the Commissioner have already been corrected.

2.1.5. Establishments of the Ministry of Education

41 establishments of the ME fall under the jurisdiction of the NPM. These establishments include the Open Special Correctional Institution for Boys, Guba Special Trade School, other boarding schools and child homes.

During the investigation it was identified that out of 39 establishments of the ME 15 are general education boarding schools, and currently in two of those establishments children do not stay overnight at all. Only 997 children out of 3910 pupils studying in those 13 establishments stay overnight on week-days and leave for their home on the weekends.

2324 children out of 3843 pupils studying in 14 boarding schools for children with restricted health go home after classes. These children have been placed at the boarding schools because of their need to specialized education and also of their parents' poor financial situation. Majority of the 1519 children staying overnight at the boarding schools go home during weekends. 447 children study in boarding schools for the children who have lost their parents or have been deprived of parental care, and 436 children out of them stay overnight in those establishments.

The NPM Group carried out 5 visits in 2011 to the relevant establishments of the ME, including Child Homes No. 1, 2, and 3, and other special boarding schools. conditions provided in those establishments, children's education and nutrition, medical services provided to them and the state of organization of their leisure activities were the focus of attention. During the visits undertaken to this type of establishments, the NPM group specialists were accompanied by a psychologist.

Given its mandate, the NPM's first task is to identify the cases of ill-treatment against children as well as check children's living conditions, nutrition, education and healthcare as existence of deficiencies in the mentioned spheres may be equal to inhuman and degrading treatment.

Residents' living conditions. The heating and security systems, bedrooms and living rooms, sports, music, labour and physiotherapy rooms, kitchens and canteens as well as the courtyards of Child Homes No 1 and 2 have been renovated and equipped according to European standards. Both child homes have large, tidy and green yards. It has been observed that accommodation capacity of the both establishments is in accordance with the norms and hygiene requirements are fulfilled. The rooms' illumination and ventilation are of satisfactory level. However, the placement of Child Home 3 in the building of a kindergarten creates some difficulties. Thus, because bedrooms lack enough space, some of the beds are placed in the exercise room creating overcrowding.

In general, because in child homes one group consists of 25 children and there are not enough personnel to provide service, the quality of service is low.

During the visit undertaken to Child Home No. 3, the Management informed visitors that 110 children were held in the establishment, however after the review it was found out that there were 60 children in the establishment.

Some rooms of the mentioned establishment suffered from humidity. The management of the establishment explained the situation with the existence of water in the basement of the building.

Clerical work and documentation. At present, child homes function according to the "Sample Regulations for Child Homes" approved with

Decision No. 339 of 19 September 1994 issued by the Cabinet of Ministers of the Republic of Azerbaijan.

During the acquaintance with boarding schools' records and documentation work, it was found out that there was not any register book to record the name, surname, father's name, and the date and place of birth of a child, the cause of entering child home, information about his/her parents, and the date of arrival and departure from the boarding school. To get acquainted with general situation, there is a book for registering orders, folder with documents belonging to a child (personal file) and groups' journals. And this is not enough for obtaining the entire information.

The Commissioner considers that recording the information about children, including the cause of entering child home, the date of arrival and departure from the boarding school in a specific register book or electronic database can improve the quality of documentation.

Treatment. During the interviews conducted with children they informed that they were not subject to any maltreatment by the management of the establishment, teachers or instructors.

Cases of apathy, loss of appetite, desperation, or internal aggression were observed in some interviewed children. Some children needed communication, being listened to, being understood, and moral support. This type of children need individual approach by professionals, and if these measures are not undertaken timely there can be deficiencies in the child's development, education and formation of his/her personal identity.

The Commissioner thinks that during the recruitment to child homes, especially when recruiting senior managers, their competence, professional and personal merits should be taken into consideration, positions of lawyer and psychotherapist should be opened, access to lawyers for protection of children's right should be ensured, and in order to meet spiritual needs of children, public organizations, educated theologians, professional social workers should be invited to child homes.

Healthcare. The investigation of children's examination and treatment has revealed that there are not any problems in this field, and that they are treated in private hospitals free of charge and there is not any shortage of medicines.

However, the NPM Group members discovered some medicines the expiry dates of which had passed, and the case was reported to the management of the establishment. As a result the medicines were disposed. The management of the establishment informed that before provision of medicine to the patient its expiry date was always checked, and a special attention was paid to the children's health condition and their medical examination.

Provision of drinkable water. Children are provided with clean drinkable water during a day. However, for 25 children there are only a few cups. This does not correspond to hygienic norms.

The Commissioner considers that every child should possess a personal cup or disposable cups for drinking water.

Education and training. Children's living conditions are satisfactory, in the rooms there are TV sets and toys are tidily set on shelves. During review of the rooms it was observed that toys were not used, instead TV was watched. It was found out that the course and results of the sessions conducted with children, as well as activities carried out in teams or groups were not recorded.

Correspondence and visitors. It was found out that none of child homes possesses a phone set which would ensure children's communication with relatives and school friends, as well as their access to the Ministry of Education or the Commissioner when the rights of the child are violated. This can be estimated as the restriction of children's rights and freedoms.

The Commissioner thinks that a child should have an opportunity, without any restriction and obstacles, to communicate with a person of his/her choice through the post, phone or e-mail.

The capital renovation work undertaken in all three establishments visited, as well as enhancement of the logistics, and increase of the budget, especially increase of the expenses for food and medical items have been evaluated as a positive development, at the same time detected deficiencies have been reported to the ME.

In the response letter received from the ME it is stated that investigations have been conducted with regard to each recommendation made and as a result of the investigations, it has been determined that the absence of relevant personnel is connected with the lack of the corresponding positions in the staff list. It has also been reported that a phone device for communication of children has been installed in the medical unit, and every child has been provided with personal plastic cups.

2.1.6. Establishments of the Ministry of Health

The MH has 22 establishments that fall under the jurisdiction of the NPM. These establishments include psychiatric hospitals, mental dispensaries, Psychoneurological Child Home and other child and baby homes (see Appendix 1, Table 1).

As already mentioned, the NPM conducted 6 visits to the relevant establishments of the MH in 2011. It should be mentioned that the Chief Psychiatrist of the Ministry of Health Garay Garaybeyli, as well as

representatives of the local executive committees participated in some visits conducted by the Commissioner.

During the visit carried out to the Republic Psychiatric Hospital No. 1, along with some positive changes and innovations observed, several serious deficiencies, shortcomings, and breaches of law were noted as well.

It should be noted that the implementation of the recommendations made during the visit conducted by the Commissioner and NPM Group members to this establishment in 2010, including the construction of new buildings and completion of renovation work were observed. The compliance of the conditions in the newly renovated buildings with modern standards, inclusion of the capital refurbishment of the hospital into the refurbishment programme by the MH, consideration of the full renovation of departments No. 7, 8, and 13, including clinics for infectious diseases and drug addicted, provision of water supply for 24 hours a day and installation of a heating-system in all buildings of the hospital within 3 years is estimated as a positive development.

During the examination of the departments it was observed that there was overcrowding in all departments, and the number of shelves in bedrooms did not correspond to the number of beds. The Head Doctor informed that because of the renovation work, 300 patients had been placed to other departments and 365 patients lived in the establishment permanently because they did not have relatives.

During the visit it was observed that the process of land improvement in the hospital areas designated for recreation of the patients was in progress, however some patients were involved in the improvement works under direct sunlight without having a proper hat to cover their heads.

The NPM group members drew the Head Doctor's attention to the importance of the control over the cases which could cause harm to the health of patients.

According to the management there was no problem in provision of medicines and food to the patients. Observations showed that medicines were stored in the closets in unregulated room temperature which affected the quality of medicines.

Absence of social workers and shortage of psychologists cause difficulties in undertaking measures necessary for patients' social and psychological rehabilitation. Besides, it has been observed that the majority of the medical personnel is comprised of young specialists, for instance, the psychiatrist working in the teenagers' department had just one-year experience. According to the Head Doctor of the establishment, he has dismissed 346 persons out of 636 persons from their positions during a year as they were not able to perform their job functions.

The Commissioner is of the opinion that, the shortage of personnel (psychiatrists and nurses) qualified to provide treatment to mentally ill persons, adversely affects the quality of the service provided.

It is appreciated that medical personnel undergo professional training courses and are sent to duty trips. For instance a young psychiatrist participated at the training conducted in Turkey and started to apply in his job the knowledge on labour therapy gained from the training. Also, an expert from Germany was invited to the establishment for increasing personnel's knowledge and skills in the relevant field.

During the visit to unrenovated Department No 7 overcrowding, unsatisfactory conditions for living and treatment, insanitation, weak illumination, and unsatisfactory ventilation were observed in the buildings of the hospital. Thus, patients were lying on the beds put in the corridors of the hospital, the sanitary facilities were completely unfit. More miserable conditions were observed in the isolating rooms of those units. Those rooms lacked windows for lighting and ventilation, and strong unpleasant smell was felt there.

The Commissioner thinks that the application of restraining measures derives from doctors' incompetence and patients' unawareness of their rights. Regular application of restraining or isolating measures does not only derive from some doctors' incompetence and shortage of experience, patients' diagnosis and the situation in a ward, but also from the "ethics and attitude" of the hospital's personnel.

During the investigation conducted in Women's Unit No. 4, it was found out that F. who was 15 years old was brought here from Child home No. 3 and received stationary treatment from social anxiety disorder. When inquired about her placement with women of an older age, it was explained that the hospital did not have a special room for teenage girls.

Placement of the certain boxes hanging in each unit of the hospital for proposals and complaints and installation of radio and TV sets in most units may be identified as a positive step. However, patients were not able to use the phone device independently and needed to approach personnel for this purpose and hospital attendants for getting drinkable water. But in fact, drinkable water should be accessible at anytime, especially during hot weather. From the interviews with patients it appeared that they were drinking water from the water-tap in the toilet using their hands as a cup.

It was of concern that no conditions had been provided for leisure activities of persons receiving treatment in the establishment, except for the units for children and teenagers.

It was observed that a workshop was conducted with children in the exercise room of the child unit, which was full of toys. In the similar room for

teenagers there were only 3 seats and a TV set, and there were no other activities. Though sleeping hours were over, all the teenagers and youth located there were in bed.

The Child Isolator was in good state, whereas in the Teenagers' Isolator the airway was closed, strong unpleasant smell was present, and there was no closet basin. During the visit the NPM observed that patient F.M., born in 1994, was held in the Isolator and after the NPM intervened (it was already after several minutes from his release time), he was released, but while being transferred to the ward, the patient sat in the corridor because of powerlessness. After medical personnel's enduring communication with the patient it was possible to transfer him to the ward.

The Commissioner considers:

- with regard to the revealed facts, necessary actions should be taken to improve conditions to ensure the rights of persons with mental illness to receive psychiatric assistance under such conditions that satisfy sanitary and hygiene requirements;

- in order to ensure that persons held in the establishments are not degraded, not only seminars but requalification and refresher courses on the application of restraining methods should be arranged;

- a specific register book shall be created for recording restraining measures (the time at which the measure began and ended, as well as of the circumstances of the case and the reasons for resorting to such means, also the name of the ordering doctor, as well as information about the injuries caused to patients or personnel should be recorded in the book)

- the hospital should have comprehensive and precise regulations for the application of restraints, in the preparation of which personnel and administration should participate (these regulations will define in which circumstances a specific restraint should be resorted to, their application in practice and control over this. Resort to instruments of physical restraint should only very rarely be justified and must always be either expressly ordered by a medical doctor or immediately brought to the attention of such a doctor with a view of seeking his approval);

- Instruments of physical restraint can be used for the shortest time only in exceptional cases and they should never be applied as a punishment;

- for ensuring appropriate therapeutic conditions, each patient should have enough living space, a bedside table and be allowed to keep personal items (pictures, books and etc);

- the number and composition of the personnel should correspond to the real need (social workers, psychologists, specialist of physical therapy, etc.) and they, particularly the ones working with children and teenagers should possess sufficient experience;

- patients' communication through post or phone should be ensured;
- to reduce the application of restraining or separating methods to the minimal level, attitude towards and communication with the patients should be changed, alternative methods should be offered to the personnel;
- practice of locking patients should be abolished and psychological or social methods of treatment should be developed and professional qualification courses on healthcare for mentally-ill persons should be conducted and preference should be given to social therapy;
- booklets containing the hospital's regulations, patient's rights should be distributed to each patient and his/her family;
- a specialist on physiotherapy should control patients' involvement in voluntary labour;
- a unit for treatment of teenage girls should be established in the hospital, or a separate room should be allocated for teenage girls in women's unit.

The Commissioner has appealed to the MH with regard to the mentioned shortcomings and recommendations and in the response received it is stated that the overcrowding in the units were results of the renovation work, certain work has been conducted to increase doctors' professional knowledge and skills, attestation of the doctors is conducted at the end of each year, experienced doctors constantly share their knowledge with young peers, restraints applied to the patients and their temporary placement in an isolator are recorded in a special registry, and that provision of patients with bedside tables can cause shortage of place because renovation works still continue.

The response received from the MH is not deemed satisfactory for the Commissioner and a long follow-up visit is planned to the establishment.

It should be mentioned that the Commissioner and NPM Group members, and in three investigations also Republic's Chief Psychiatrist and members of the working group of the Ministry of Health, visited Mingachevir Psychoneurology Dispensary, Shaki, Guba and Gazakh Inter-Regional Mental Hospitals, Republic Drug Addicts Treatment Hospital (for persons receiving compulsory treatment). During the investigation it was found that in some of these establishments certain works had been done, treated persons were provided with necessary medicines, and there were no complaints about the treatment and detention.

During the visit conducted to Shorsulu Inter-Regional Mental Hospital of Salyan District Central Hospital of the MH, the MNP Group observed some deficiencies and shortcomings.

Conditions: Glasses in the windows were broken in most wards of the hospital, bathrooms meant for the patients did not function and the equipment were dysfunctional (it was not possible to review the bathroom of Building

No.1, as the key from this room was in the administrator's apartment), bedside tables did not correspond to the patients' number, the sanitary facility was unfit, beds were broken, and bed sets were completely unfit, the buildings were not provided with tap water, patients had to drink boiled turbid water, there were no lamps, patients were also accommodated in the old part of Building No.1 designed for women, though the building was unfit (the floors and ceilings of the rooms where patients were held were broken), and the floor of the second room of Building No 2 were made of stone and the floor was additionally filled with small stones.

During the investigation it was found out that one of the renovated rooms in the establishment was used for administrative purposes and new beds and mattresses were kept there.

It was observed that the food served to patients there was little (during the visit paid to the establishment on 4 May 2011 it was observed that lunch for 114 patients was prepared in one pan and consisted of macaroni soup only), the ration did not include meat, bread was kept in insanitary conditions, and one of the cooks preparing the meal was without a gown.

Medical treatment. It was observed that patients' treatment was unsatisfactory, consisting of only giving a sedative injection when patients behaved aggressively. The absence of the record book for registering the use of specific restraining means was noted, too.

This recommendation is indicated in the report of the European Committee for the Prevention of Torture (CPT) covering the findings of its ad-hoc visit to Azerbaijan in December 2008.

Treatment of patients. In the CPT's report on the findings of its ad-hoc visit to Azerbaijan in December 2008, it is also noted that during the visits they received information from the patients on cruel treatment, and that cruel treatment occurs by non-medical personnel in the majority of cases and by nurses in some cases.

During the visit hospital attendant Mirsalim Aliyev treated mentally ill patients rudely and insulted them in front of the NPM Group members.

During the visit to Building No.1, which is meant for women patients, it was noted that used syringes had not been disposed and instead kept in an easily accessible place, and 3 patients were locked up by the hospital attendants. It should also be noted that during the initial talks with the establishment's personnel they denied the existence of such a room. The hospital attendant informed that the patients were kept here because of misbehaviour and there was not any recording regarding this action. It was observed that the patients were kept locked-up and they did not have access to drinkable water and facilities to provide their physical needs and they used a container located in the room for this purpose.

During the talks with the Head Doctor of the establishment, he also admitted that the conditions were not satisfactory, and his request for renovation made to the relevant agencies was left unresponded. It was also found out that only AZN 4500 was allocated for the renovation work of the establishment.

Based on the NPM's findings from the visit undertaken to the mentioned establishment, the conditions have been estimated as unsatisfactory.

In order to examine the mentioned cases on the spot, a follow-up visit was undertaken to the same establishment on 14 May 2011. Head Psychiatrist G.Garaybayli, Head of the Executive Power of Salyan District T. Karimov, as well as other officials of the district participated in the visit.

During the follow-up visit, it was revealed that the patients had been transferred from the unfit buildings to the building with appropriate conditions, the patients had been provided with pyjamas, beef meat was added to the food ration, women cooking meal was wearing a gown, as well as other small and artificial developments were observed.

Insincere attitude shown by the establishment's management to the issues raised during the visit, discovery of the fact that the unfit building was actually used and that it was only possible to enter the building after the Commissioner insisted on opening the doors of the mentioned building and other factors make one believe that some positive developments mentioned above only have served the purpose of making good impression during the visit. It should also be mentioned that constant praising of the establishment by some patients, along with the management's attempts to silence the patients criticizing conditions, create doubts about the credibility of the information received.

Along with the shortcomings discovered during the visit undertaken by the NPM Group on 4 May 2011, during the Commissioner's visit it was found out that without having any legal grounds patient N. was held in that establishment based on a letter sent from the local police station.

During the visit it was also found out that in the patients' medical reports their identity were not established, as well as they were not provided with certain medicines accordingly and there was not any registry to record that, the treatment works were not conducted appropriately, there were no proper conditions for dentist-doctor's service, bathroom facilities were unfit, the establishment did not possess a canteen, expiry dates of the chickens kept in the kitchen had already passed, butter used for preparation of meals was kept in an inappropriate plastic container, patients' regime consisted of sitting at the table put in the yard all day long and no activities were arranged to properly spend leisure time.

According to the establishment's personnel, there is not any normative act regulating the documentation of a patient's death and organization of his/her funeral. During conversations, it was also found out that there were serious problems in provision and distribution of medicines to the patients.

The abolition of auxiliary housekeeping section which could strengthen material and technical supply of the establishment is another concern. Currently, there are several old, destroyed or unused buildings in the area.

The Commissioner appealing to the MH, has stated that the detention of patients under the conditions observed during the visits undertaken, their nutrition and hygiene conditions do not correspond to the requirements set forth by the national and international legal norms and such conditions imply that they are subjected to inhuman treatment. She has also recommended to take immediate measures for creating conditions corresponding to the European Standard Minimum Rules at Shorsulu Inter-Regional Mental Hospital, punishing persons responsible for the current state of the establishment, as well as organizing special courses for increasing personnel's qualifications.

In the response letter sent by the MH with regard to the findings of the investigation, it is stated that the operation of psychiatric institutions under the MH are regulated with the Laws of the Republic of Azerbaijan "On Protection of the Population's Health", "Psychiatric Care" and other normative legal acts.

The Ministry of Health has increased its attention to all spheres of healthcare, including psychiatric healthcare, started reconstruction works, undertaken a number of important steps for strengthening the material and technical basis of the above mentioned institutions.

Recommendations provided by the CPT's delegation during their visits to the Republic of Azerbaijan as well as advice given by the NPM Group members have played a significant role in this. Thus, there have been noticeable changes in the provision of psychiatric services in recent years.

The old building of Baku City Psychiatric Hospital No. 2 has been capitally renovated and 2 new buildings have been constructed. The Hospital has been provided with modern furniture and equipment, and a boiling house. Taking into consideration the recommendations made by the CPT after their visit to Azerbaijan, the building of Baku City Psychiatric Hospital No. 1, which was in an emergency state, has been abolished.

A lot of work has been done for strengthening the material and technical basis of Republic Psychiatric Hospital No. 1, as well as for renovation of the establishment's yard and improving the provision of food and medicine to patients.

Taking into consideration the recommendations made by the CPT during the visit undertaken to Azerbaijan in 2008, a National Strategy for Mental Healthcare has been prepared and approved by the Ministry of Health.

Some inter-regional mental hospitals located in the jurisdiction of the Ministry of Health are still functioning in the buildings which do not meet sanitary-technical norms.

One of these establishments is Shorsulu Inter-Regional Mental Hospital located in the building built in the middle of the last century. The shortcomings discovered in this establishment have been discussed by the Ministry of Health and the Medical Council of Salyan District Central Hospital.

Salyan District Central Hospital has been tasked to eliminate the existing shortcomings within a short period of time, improve provision of food and medicines to patients, improve patients' detention conditions, and increase attention to personnel's qualifications. With the decision of the Medical Council, Head Doctor of Shorsulu Inter-Regional Mental Hospital Yashar Karimov has been dismissed from his position due to the errors made in the execution of his duties.

The Ministry of Health has informed that it has been decided to start the construction of a new building for Shorsulu Inter-Regional Hospital in the nearest future, and the possibility of transferring patients located in old buildings of inter-regional mental hospitals to buildings with more decent conditions is being explored.

2.1.7. Establishments of the Ministry of Labour and Social Protection of Population

The MLSP has 10 establishments that fall under the jurisdiction of the NPM. These establishments include homes and boarding houses for the elderly and disabled (see Appendix 1, Table 1).

The NPM carried out 3 visits to the relevant establishments of the MLSP in 2011.

The NMP Group members (including a psychologist) examined the living areas of the residents of the Home for the Mentally Ill, Disabled and Elderly No. 9 of the MLSP, which is located in Buzovna Settlement.

It should be mentioned that the Commissioner observed problems with lighting in the establishment during her visit in 2009 and addressed the relevant bodies and thus, the issue has already been solved.

During the visit it was determined that the living conditions and nutrition of the residents of the establishment were satisfactory. The residents did not report any case of ill-treatment by the staff of the boarding house.

As a result of the examination of the living conditions it has been determined that 2, 3 or 4 persons are staying in one room. But they do not have personal wardrobes to keep their personal belongings in. There are several canteens for ensuring comfort of the disabled. The nutrition cost

allocated for every patient is 4.30 AZN. The living conditions of the persons accommodated in the building are at satisfactory level. There are TV sets in most rooms.

The Commissioner believes that the number and composition of the personnel (physicians, nurses, psychologists, social workers) should be properly ensured. Necessary measures should be taken to ensure that the personnel of such establishments do not feel isolated. As motivation and support provided from outside positively affect the quality of work, it would be great to involve them in training courses and exchange programs and organize different meetings at the boarding house.

The NPM Group members also visited Home No. 7 for Retarded Children located in Saray Settlement.

Considering the mandate of the NPM, the purpose of the visit was to reveal cases of ill-treatment of children, as well as examine the living conditions and medical treatment of the residents.

The living conditions of the residents. The heating and security systems, sleeping and playing rooms, sports, music, labour, physiotherapy rooms, kitchen and canteens, as well as outdoor facilities of the newly renovated Home have been refurbished in compliance with European standards and equipped with modern devices.

It has been noticed that the density of the residents in the establishment is within the norm, the establishment is well maintained and standards of hygiene are followed. The lighting and ventilation of the rooms are at the required level. The establishment has a large, tidy green outdoor area.

The Director of the Home has stated that children are taken out only when it is warm outside. This, in fact, restricts their right to outdoor exercise.

During the visit the sports, music, and labour rooms were not in use and there were no records of activities held therein.

Clerical and documentation work. At present the Home functions on the basis of the Regulations on Home for Disabled Children as approved in the Russian language by the Social Protection Ministry of Azerbaijan SSR in 1978.

Clause 12 of the Regulations specifies (page 5): “Mentally ill patients requiring special supervision and hospital care, as well as children with continuous epileptic seizures, children suffering from infectious and other diseases, as well as mentally disabled children can not be admitted to homes for children.

Orphans, children of single mothers or mothers of many children, war and labour invalids, pensioners, as well as families capable of working but not having relevant conditions to bring up children are primarily admitted to homes for children.”

During the visit it was determined that there were 122 residents in the Home. Though the establishment is meant for retarded children at the age of 4 to 18, there were 52 residents at the age of 18-30, which breaches the established norms.

During the visit shortcomings were observed in the clerical and documentation work of the Home.

Treatment. During the visit the Director and Doctor treated children well. This is a positive observation and hints at those children's need for mental and psychological support.

As a result of the investigation it has been identified that mentally ill patients requiring special supervision and hospital care, as well as children suffering from autism and psycho-neurological patients have been placed in the Home.

The Constitution of the Republic of Azerbaijan

Article 46. Right to defend honour and dignity

I. Everyone has the right to defend his/her honour and dignity.

II. Dignity of a person is protected by state. Nothing can lead to humiliation of dignity of a human being.

III. No one shall be exposed to torture or suffering. No one shall be subjected to degrading treatment or punishment. Medical, scientific and other experiments shall not be carried out on any person without his/her consent.

Medical treatment. During the investigation it was determined that a separate medical file had not been provided for every child, instead a very simple record book of short notes was used.

Because the establishment lacks a psychiatrist, the children suffering from mental diseases can not receive regular medical assistance which worsens their condition. As per the Doctor, sedatives are not used.

Some rooms smelled excretion, which was attributed, by the management, to the shortage of pampers.

Though there are children suffering from neurological diseases, including cerebral palsy in the establishment, the staff list does not provide for a doctor – neurologist. Though there is a physiotherapy room equipped with modern devices, the staff list does not provide for a physiotherapist either, and the doctor works half-time. The management of the establishment has linked the fact to low salaries and indicated that as doctors work in other medical institutions as well, full-time work will not be suitable for them.

Nutrition. When the kitchen was examined during the visit it was observed that instead of pearl barley as indicated on the menu, vermicelli and as a side dish meat slices were being cooked, which would be difficult for neurological patients to eat.

There was no record confirming that the Doctor had checked the quality of the food and given a positive opinion. Latest records of the consent to serve the food to the Home residents were made a week ago.

The Commissioner considers that:

- *the respective Regulations should be replaced with new ones in line with international law and national legislation;*
- *the assignment by the Ministry to the homes intended for disabled children should be executed in compliance with the Regulations and profiles of those homes and adjusted to detention norms;*
- *documentation and registration should be properly and accurately arranged;*
- *the management and personnel of the establishment should follow inadmissibility of ill-treatment of children;*
- *children should be regularly examined and a personal medical file should be opened for each of them;*
- *every physical restraint should be recorded in a special registry;*
- *considering the importance of the application of physical restraint only by psychiatrist's instruction or upon his/her consent, a psychiatrist should be invited, meanwhile, children, being differentiated, should be held in different groups;*
- *control should be strengthened over provision of edible food to neurologically ill children with a weak masticator, at the same time dietary food corresponding to the peculiarities of their diseases should be provided;*
- *control over checking the quality of food on a daily basis should be strengthened.*

The Commissioner kept the situation in the given establishment in focus and the NPM Group members revisited the establishment on 5 December 2011.

During the visit it was observed that some issues had been resolved, as well as for the deficiencies in the fulfilment of his job functions Shukur Ahmadov, Director of Home No. 7 for Retarded Children located in Saray Settlement had been fired.

Along with improvements, a negative case was also observed. Thus, Kh.A, an invalid of the first group who had been temporarily transferred from the Home for the Disabled in Ramana Settlement to Home No. 7 in Saray Settlement, addressing the NPM Group informed that he had appealed to the

management of the Home with regard to the carelessness and violence demonstrated against the children by the personnel of the establishment he was temporarily staying at, but his appeal had not lead to any results except that he had been subjected to mental and physical insults and threats by a nanny called Sona and requested to take some measures in this regard.

During the investigation of the information the allegation that Kh.A. had been subjected to mental and physical insults and threats by his nanny Sona Isak Mursalova proved right.

As regards the results of the investigation, the Commissioner has addressed the MLSP and Sona Isak Mursalova, aid-woman of the establishment concerned, has been dismissed for the committed mistakes effective from 12 December 2011.

2.2. Improvement (Analysis) of the Law

The analysis of the information collected during the course of the activities undertaken by the NPM Group, preparation of proposals for amending effective legislative acts and their submission to the relevant bodies is one of the main responsibilities of the Commissioner.

In some cases it has been determined that existing legislative acts contradict the Constitution of the Republic of Azerbaijan or international standards. In order to attract the attention of governmental bodies to the problems and breaches of law and rights people face, prevent the violation of human rights, effectively guarantee these rights, and in case they are violated, restore them within the framework of law, a package of relevant proposals are regularly prepared by the Commissioner and submitted to the authorized bodies.

The Commissioner's Specialized Counsellor for Prevention of Torture also conducts scientific and analytical analysis of the national legislation and international legal acts related to the relevant fields, the current situation in the country, and the complaints and appeals received by the Commissioner.

As mentioned at the beginning of the Report, the Constitutional Law on "the Commissioner for Human Rights of the Republic of Azerbaijan" was amended in 2011 and Article 18-1 was incorporated into the Constitutional Law to govern the activity of the NPM.

Among the issues that raise a concern is that the notion of the infliction of torture as defined by Article 133 of the Criminal Code of the Republic of Azerbaijan does not fully comply with Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In contrast to Article 1 of the Convention, the words "for any reason based on discrimination of any kind" that characterize one of the existing motives of

torture are not reflected in the disposition of Article 133.3 of the Criminal Code and this is the circumstance that hampers the application of the requirements of the Convention. There is a need to bring the disposition of Article 133.3 of the CC in line with those requirements.

Taking into consideration the importance of bringing Article 133.3 of the Criminal Code, that specifies as an offender an official or a person acting at his/her instigation, in full conformity with the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it has been considered worthwhile to differentiate that article from Articles 133.1 and 133.2, which mostly deal with domestic violence, i.e. specify it as a separate norm. Thus, the Office of the Prosecutor General prepared relevant set of recommendations and already submitted them to the relevant authorities.

It should be mentioned that because of the peculiarities of assessing the offences specified in Article 133.3 of the Criminal Code as a crime of torture and the fact that such acts must have been committed regularly, a concrete person has not been brought to criminal responsibility under that article. Instead persons that have committed such acts are brought to responsibility by their offences being classified as inflicting serious harm on the rights and lawful interests of an individual or legal entity through excess of official powers or abuse of official powers.

After the above mentioned provisions of the Criminal Code are brought in line with Article 1 of the Convention, it will be ensured that the above mentioned persons are brought to responsibility under the article concerned.

There is a contradiction among Articles 148.4 and 150.3 and some other articles of the Criminal Procedure Code, Clause 1.2 of the Internal Disciplinary Rules of Temporary Detention Places of Police Bodies and Clause 1.3 of the Rules for Safeguarding and Escorting Persons Detained in Temporary Detention Places of Police Bodies. Thus, the CPC and Internal Disciplinary Rules specify that a person suspected or accused in the commission of a crime may be detained in total for 72 hours in a police body, however, Clause 1.3 of the Rules for Safeguarding and Escorting Persons Detained in Temporary Detention Places establishes: “In exceptional cases, persons brought from investigation isolators or penitentiary institutions to temporary detention places for participation in judicial proceedings or various investigative acts may be detained there up to 10 days.”

It should be mentioned that in the Report “On combating ill-treatment and impunity and effectively investigating allegations of ill-treatment in the Republic of Azerbaijan” within the framework of the Project of Combating Ill-Treatment and Impunity jointly funded by the European Union and Council of Europe, the long-term expert has indicated the above mentioned two cases as a

deficiency in the legislation related to combating torture. The NPM Group's opinion in this regard coincides with the expert's.

The Commissioner considers that it is necessary to facilitate the adoption of the Draft Law on Ensuring the Rights and Freedoms of the Individuals Held in Detention Facilities, which is at the second reading of the Parliament.

The other issues mentioned herein are elaborated in more details in the relevant parts of this Report. As such, discrepancies in Annex 1 to the Internal Disciplinary Rules as mentioned in the section devoted to the establishments of the Penitentiary Service of the Ministry of Justice (regarding meeting rooms), contradiction of Article 95.1 of the Execution of Punishment Code and Clause 228 of the Internal Disciplinary Rules of Penitentiary Institutions with Article 35 of the Constitution of the Republic of Azerbaijan (involvement of inmates in forced labour) can be mentioned. Besides, some provisions of the effective normative legal act governing the detention of detainees in military police bodies do not meet modern standards. For instance, Annex 4 of the Regulations of Garrison and Guard Services of the Armed Forces:

Clause 17: Soldiers (sailors) and sergeants arrested on a disciplinary ground sleep in mass or solitary cells and on empty beds.

Clause 19: Soldiers (sailors) detained on a disciplinary ground in mass cells in guardrooms are involved in labour for 10 hours during a day. (Note: it is inadmissible to make soldiers (sailors) work for 10 hours during a day).

Clause 21: Arrested officers and warrant officers (midshipmen) are allowed to keep their military books (Clause 31 of the Annex), money, writing and toilet belongings in cells. Officers and warrant officers (midshipmen) are provided with bedding (a blanket, 2 sheets, pillow, pillow cover, and mattress) before going to bed.

As seen, Clauses 17 and 21 provide for discrimination between soldiers and officers. It is understood from the respective provisions that soldiers have to sleep on wood, officers on mattress.

On 27 September 2011 the Commissioner presented the below proposals to the Ministry of Justice of the Republic of Azerbaijan with regard to the draft laws and decisions prepared to amend the relevant legislative acts to ensure the implementation of Clause 1.1 of Order No. 1674 of 8 August 2011 issued by the President of the Republic of Azerbaijan:

The words "without hindrance and prior notification" should be added after the words "at anytime" in Article 161.0.9-1 of the Draft Law of the Republic of Azerbaijan On Amending the Criminal Procedure Code of the Republic of Azerbaijan;

The word "Ombudsman" should be replaced with the word "to Ombudsman" in Article 161.0.9-1 to be added to the Criminal Procedure Code;

Articles 161.0.9-2 and 161.0.9-3 should be added to the Criminal Procedure Code in the following wording:

“161.0.9-2. A member of the National Preventive Group cannot be forced to testify about the facts that became known to him/her in connection with the execution of his/her duties or to disclose these facts by any other method. This guarantee shall remain in force even after a member of the National Preventive Group ceases his/her membership with the Group.”

161.0.9-3. A member of the National Preventive Group cannot be arrested or detained, subjected to search or personal examination while fulfilling his/her duties in places which detained persons cannot leave at will. No arrest, check or seizure can be undertaken in respect of postage, telegraphs or other correspondence of a member of the National Preventive Group.”

In Article 22.1 of the Draft Law of the Republic of Azerbaijan On Amending the Criminal Procedure Code of the Republic of Azerbaijan, the second sentence should include the words “without hindrance and prior notification” after the words “at anytime”, the words “disciplinary military units, as well as other places a person cannot leave at will” after the words “medical institutions”, moreover, third, fourth, and fifth sentences should be added to that provision in the following wording:

“22.1. The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan and an NPM Group member shall be received, without delay, by the heads of investigation isolators, penitentiary institutions, and other places which detained persons cannot leave at will. A member of the National Preventive Group cannot be forced to testify about the facts that became known to him/her in connection with the execution of his/her duties or to disclose these facts by any other method. This guarantee shall remain in force even after a member of the National Preventive Group ceases his/her membership with the Group. A member of the National Preventive Group cannot be arrested or detained, subjected to search or personal examination while fulfilling his/her duties in places which detained persons cannot leave at will. No arrest, check or seizure can be undertaken in respect of postage, telegraphs or other correspondence of a member of the National Preventive Group.”

The words “the NPM Group member” to be added to Article 83.5 of the Punishment Execution Code should be replaced with the words “the NPM Group”;

The word “Ombudsman” to be added to Article 30.0.3 of the Law of the Republic of Azerbaijan On Psychiatric Care should be replaced with the word “to Ombudsman”;

In Article 30.0.3-1 to be added to the Law of the Republic of Azerbaijan On Psychiatric Care the word “Ombudsman” should be replaced with the word

“to Ombudsman”, as well as the comma after the word “create conditions” should be replaced with semicolon and after the words “at anytime” the words “without hindrance and prior notification” should be added;

In Article 30.0.3-2 to be added to the Law of the Republic of Azerbaijan On Psychiatric Care the word “Ombudsman” should be replaced with the word “Ombudsman”, and in Article 30.0.3-3 the word “Ombudsman” should be replaced with the word “Ombudsman’s”;

Paragraph 18 to be added to the Law of the Republic of Azerbaijan On Amending the Regulations of Garrison and Guard Services of the Armed Forces of the Republic of Azerbaijan should include the words “at the same time in other places which he/she cannot leave at will” after the words “garrison guardrooms”. Besides, in paragraph 18 the word “Ombudsman” should be replaced with the word “to Ombudsman”, in paragraph 19 the word “Ombudsman” should be replaced with the word “Ombudsman”, and in paragraph 20 the word “Ombudsman” should be replaced with the word “Ombudsman’s”;

Moreover it has been suggested to make the following amendments to the Code of Administrative Offences of the Republic of Azerbaijan:

Article 310-1 should be given in the following wording:

“Article 310-1. Interference with the legitimate activities of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan and the National Preventive Group

310-1. Limiting or interfering with the legitimate activities of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan and the National Preventive Group, or exerting pressure on or persecuting an individual or organization for the information given to the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan and the National Preventive Group –

entails imposition of a penalty in the amount of 200 to 500 manats on individuals, and in the amount of 1000 to 3000 manats on officials”.

It has been proposed to add Article 310-1.2 to the Code in the following wording:

“Not responding to the inquiries of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan –

entails imposition of a penalty in the amount of 1000 to 2000 manats.”

As regards the above mentioned, relevant proposals have been developed and will be submitted to the relevant bodies.

Furthermore, with Decision of the Cabinet of Ministers of the Republic of Azerbaijan of 11 November 2011, the Sample Regulations of Open and Closed Special Correctional Institutions, approved by the Decision No. 65 of

the Cabinet of Ministers of the Republic of Azerbaijan on 13 May 2003, have been amended.

Clause 6.5 of the Decision specifies: “The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan and the National Preventive Group members are entitled to have access, at any time, without hindrance and prior notification, to closed correctional institutions, meet and interview persons detained there, as well as any other persons who may provide relevant information, in private or when deemed necessary with participation of a specialist or interpreter, get acquainted with and obtain copies of all documents confirming the lawfulness of detention, as well as relating to treatment of detainees or detention conditions; draw up reports, and protocols to document the flow and results of the actions undertaken.”

Meanwhile, it should be mentioned that with Law of the Republic of Azerbaijan No. 224 – IVQD of 25 November 2011, the words “the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan” have been added (“meet in private with his/her legal representative, the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, a lawyer, and a religious minister) to the Article 23.1.3 of the Law of the Republic of Azerbaijan On Psychiatric Care after the words “legal representative”

2.3. Legal education work

The Commissioner proposes to constantly arrange various education events for officials to prevent current or possible violations of citizens’ right to protection of honour and dignity by the staff of law enforcement authorities, particularly police bodies. Such education events strengthen citizens’ confidence in rule of law and justice and increase their trust to law-enforcement bodies.

As provided for by the Optional Protocol, legal education is of great importance in ensuring effective organization of the NPM activity, as well as prevention of torture or ill-treatment.

At modern times protection and promotion of human rights and freedoms are key factors affecting the development of society and state. Several events have been held to communicate the requirements of the effective legislation to the members of the NPM Group, as well as the personnel of the places of full or partial deprivation of liberty that fall under the jurisdiction of the NPM and detainees held there and enhance their experience and knowledge. The experience gained from year to year is continuously improving.

Training sessions, seminars and round tables of various topics dedicated to prevention of torture along with increasing attention to different groups of

people and highlighting problems, raise the quality of legal education work conducted for them.

The Commissioner's legal education activities aimed at enlightening various groups of population and increasing their knowledge of human rights are improved through mutual collaboration with state bodies, international organizations, NGOs, communities and mass media.

It should be mentioned that in order to continue the logical consequence of the reforms carried out to ensure more effective safeguarding of human rights and freedoms, taking into consideration the proposals made by the Commissioner, with Order of the President of 27 December 2011 the National Action Program for Increasing Effectiveness of Protection of Human Rights and Freedoms in the Republic of Azerbaijan has been approved and this document, being a logical continuation of the National Action Plan for Protection of Human Rights implemented since 2006, has defined new directions. One of those directions is prevention of acts of torture and violence and provision of relevant education.

During the events held in regions together with Chief Psychiatrist of the Ministry of Health within the framework of the Human Rights Month arranged on the Commissioner's initiative regional deliberations were conducted with the participation of the Head Doctors of inter-regional mental hospitals and dispensaries at the mental hospitals located in Salyan, Ganja, Gazakh, Mingachevir, and Shaki, which were dedicated to psychiatric problems and ensuring improvement in patients' conditions. At the events doctor-psychiatrists highlighted the problems and held discussions to find proper resolutions.

Along with the above mentioned, numerous round tables, seminars and conferences were conducted during the reported year to enlighten various groups of the population and highlight and resolve their problems with the participation of state bodies, international organizations, NGOs, mass media and communities.

The materials of the conducted round tables and conferences and legal education manuals have been published and presented to the general public and libraries.

3 books on "The Prevention of Torture in Europe", a practical guide "Monitoring Places of Detention", "Handbook on State Obligations under the UN Convention Against Torture", as well as other publications of the Institute and translated manuals about human rights have been presented to the relevant bodies and the general public.

The events constantly organized by the Commissioner and systematic regional public hearings contribute to effective collaboration with state bodies, NGOs and mass media for promotion of human rights, prevention of torture,

and restoration of violated rights, achievements and innovations in the formation of human rights culture and enhancement of legal culture of people and improve experience in the field of human rights.

The Head of the NPM and the members of the Group, as national experts, took part in education events organized for the personnel of state bodies at different times. The staff of the Ombudsman's Office, the NPM Group members delivered lectures on the Commissioner's activity as the NPM, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, international practice, Standards of the European Committee for the Prevention of Torture and other topics to the newly recruited of the Penitentiary Service, personnel of the Head Medical Office, justice workers involved in refresher courses at the Academy of the Ministry of Justice, newly recruited policemen, graduates of the Academy, and officers of the Head Security Police Office at the Police Academy of the Ministry of Interior, and answered the questions asked by the participants. It should be mentioned that the collaboration with both ministries continues.

At the training on the treatment of suspected and accused persons in places of detention held for the police and Penitentiary Service staff by the OSCE Office in Baku in the "Rule of Law" Legal Resource Centre in Ganja on 12-13 December 2011 V.Maharramov, Head of the NPM Group, took part as a national expert and delivered a lecture on the "NPM's mandate, work done and challenges". Besides, seminars on such topics as "Bringing the conditions in temporary detention places in conformity with international standards", "Main directions of mutual collaboration with governmental and non-governmental bodies and current challenges", "European Penitentiary Rules", "Rights and obligations of detainees and rules governing implementation of their rights", "Provision of a detainee with proper living conditions, medical and hygiene services", etc. have been held for police officers.

Along with national experts, an international expert and Rule of Law Officer of the Rule of Law Unit of the OSCE Office in Baku participated at the event.

Legal education work for persons temporarily detained and persons deprived of their liberty. The Commissioner's legal education work in this direction is rich as well. As previously mentioned, the Commissioner and specialized staff of her Office, performing the functions of the NPM, regularly visited temporary detention places, isolators and penitentiary institutions, got acquainted with the living conditions of detainees, gave them legal advice, and continued legal education work.

During the regularly held events and meetings with convicts serving their terms in penitentiary institutions, accused persons detained in investigation isolators, and suspected persons held in temporary detention places, visits to the penitentiary institutions and investigation isolators located in Baku and other regions of the Republic, temporary detention places of the city and district police departments and stations of the Ministry of Interior, along with checking the lawfulness of detention, legal education work was performed to promote human rights and explain detainees their rights.

As already stated, the Commissioner carries out wide legal education work among the staff of the law-enforcement bodies to prevent torture.

The Commissioner, while visiting this or another establishment, also meets with the staff and delivers speeches to explain them the requirements of new legislative acts and endorsed international documents, as well as the NPM's rights and obligations.

Because the NPM has recently been created, officials need to enhance their knowledge and experience in this field, and learn from international practice.

Within the framework of the 6-month Twinning Project on "Support to the enhancement of the capacity of the Ombudsman administration and to the development of the awareness on Human Rights and Discrimination" implemented in 2011 with the support of the European Union several experts, including Julia Kozma, Austrian member of the European Committee for the Prevention of Torture, and Wolfgang Heinz, German member of the CPT, delivered training courses for the NPM Group members, as well as training courses on the NPM strategy and methodology of visits, preparation of recommendations and reports, international and regional standards, CPT standards, European Court of Human Rights decisions on torture cases and other topics were organized and interactive sessions held. During the course of the Project visits were conducted to PS Penitentiary Institution No. 15 of strict regime and the TDP of the Absheron DPD under the supervision of the experts. All facilities of the PI were investigated and a number of inmates were interviewed in private. Other members of the NPM Group, under the expert's supervision from outside, visited the TDP of the Absheron DPD and demonstrated their knowledge and experience.

After the visits an exchange of opinions was held based on the notes taken by all members of the NPM Group and experts, and the experts stated that the visits were conducted professionally and gave some recommendations that could be used in the future.

The Commissioner, together with the Council of Europe Office in Baku, organized the presentation of "Fight against ill-treatment and impunity in Azerbaijan, and efficient investigation of the ill-treatment cases" Report,

prepared within the Project of Combating Ill-Treatment and Impunity in South Caucasus, Moldova and Ukraine jointly funded by the European Union and Council of Europe, for the officials of the law-enforcement bodies. The Head of the NPM Group and its members participated at the discussions held after the presentation and delivered speeches.

The NPM Group members have presented copies of the publications on “Combating ill-treatment and impunity – Rights of detainees and obligations of law-enforcement officials: (key questions and answers)” and “Effective investigation of ill-treatment: guidelines on European standards” prepared by Erik Svanidze, long-term expert of the Council of Europe, to the officials of the law-enforcement bodies. It should be noted that all three publications have contributed to prevention of torture and raising awareness.

The Commissioner, taking into consideration the fact that teaching about these rights and their comprehension, formation of legal culture and legal thinking are of the primary importance for the implementation of the NPM functions, has always paid special attention to legal education among other activities. It has undoubtedly been necessary to carry out legal education work among people, particularly vulnerable groups of the population, as well as the staff of the law-enforcement bodies and this work will be continued in the future as well.

2.4. International cooperation

As in other fields, the Commissioner’s activity for maintaining international cooperation was successful in 2011 as well.

The Commissioner, in line with the directions of her activity, continued cooperation with various international organizations, including the UN, its treaty bodies, Council of Europe, OSCE, International Committee of the Red Cross, and other prestigious organizations, embassies of foreign countries, as well as her foreign colleagues in 2011.

The Commissioner’s international relations and collaboration, exchange of views and experience at the international level have greatly contributed to the organization of the NPM work.

The Commissioner has organized her international cooperation in the following directions:

- cooperation with foreign peers;
- cooperation with international organizations;
- the participation of the Commissioner and the NPM Group members at international events;
- receiving representatives and experts of international organizations.

In the role of the NPM special attention has been attached to the improvement of international cooperation.

As an institute performing the functions of the National Preventive Mechanism, last year the Commissioner paid particular attention to establishing international cooperation in the relevant field and took necessary measures to enhance the theoretical and practical knowledge of the NPM Group members.

The Commissioner has presented the English version of her annual report to the relevant international bodies, including the UN Committee against Torture, Subcommittee on Prevention of Torture, European Committee for the Prevention of Torture, as well as Association for the Prevention of Torture. Moreover, numerous inquiries received from various international organizations and well-known international experts with regard to the Commissioner's activity as NPM have been thoroughly responded to.

It has been noted that the Commissioner is a member of the European NPM Network organized by the Council of Europe Directorate General of Human Rights and Legal Affairs and the Association for the Prevention of Torture and has attended several international events. At the same time, a member of the NPM Group has been appointed a contact person for this Network.

As a rule, along with other participants of the attended events, the Head of the Commissioner's NPM Group delivering speeches, gave information on the work done and informed that the Group regularly visited those establishments where people deprived of liberty and people whose liberty had been otherwise restricted were detained.

The NPM Group members, last year at different times, took part at several international events dedicated to the prevention of torture in order to share experience and improve performance.

Participation at training courses, seminars, and conferences held in Germany, Sweden, Italy, France, Canada, Slovenia, Lithuania, and other countries, as well as exchange programs at the bodies specialized in human rights played an important role in improving the performance of the NPM Group members and learning international experience.

A Global Forum to mark the fifth anniversary of the entry into force of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, being organized by the Association for the Prevention of Torture (APT), was held in Geneva with the participation of UN Special Rapporteur on torture, Head of Subcommittee on Prevention of Torture (SPT), Ministers of Foreign Affairs, Security, Policy and Environment of Switzerland, representatives of European Committee for the Prevention of Torture (CPT), Amnesty International, Penal Reform

International, several countries and prestigious international bodies, the Commissioner, and the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan.

The Head of the NPM Group delivered a presentation on the Commissioner's proposals and recommendations for improving the provision of human rights in temporary detention places of police bodies, penitentiary institutions, and other places of deprivation of liberty and enhancing international cooperation in this field at the international seminar held on the topic of "Security and Dignity in Places of Deprivation of Liberty" in Paris by the Council of Europe Directorate General of Human Rights and Legal Affairs and the Association for the Prevention of Torture.

The Head of the Commissioner's NPM Group, participating at the event and experience exchange organized by the Council of Europe in Ljubljana, Slovenia for the coordinators of the national preventive mechanisms against torture and national human rights institutes of the member countries, gave thorough information on the main directions of the Commissioner's activity as NPM, gained experience, and work done and brought the Commissioner's suggestions related to future cooperation to the participants' attention.

A staff member of the Commissioner's Office, a member of the Commissioner's NPM Group attended international seminar co-organized on the initiative of the Justice Chancellor of Estonia and international NGO Mental Disability Advocacy Centre and by the support of the Penal Reform International and Zennström Philanthropies in Tallinn, and gave detailed information on the Commissioner's focus on psychiatric institutions along with other places of deprivation of liberty, her activities in the concerned field, and enhancement of such activities after her designation as the NPM.

At the training on "International standards governing treatment of suspected and accused persons in places of detention" organized by the OSCE Office in Baku for the staff of Ganja City Police Department and Investigation Isolator No.2 of the Penitentiary Service of Ministry of Justice of the Republic of Azerbaijan the Head of the NPM Group, as a national expert, gave detailed information on the Commissioner's related activities, drew attention to the recommendations of the NPM given with regard to persons detained in temporary detention places and penitentiary institutions, and thoroughly answered the questions put by the participants.

The 6th thematic workshop of the Association for the Prevention of Torture (APT) was held in Baku in October 2011 with the support of the Council of Europe and European Union.

The workshop titled "Protection of persons belonging to particularly vulnerable groups in places of deprivation of liberty" lasted for 2 days. Mr.

Markus Jaeger, Head of Human Rights and Legal Affairs Department of the Council of Europe, Ms. Aisha Shujune Muhammad, Vice-President of the UN Subcommittee on Prevention of Torture (SPT), Mr. Anton Van Kalmthout, member of the European Committee for the Prevention of Torture (CPT), Ms. Silvia Casale, former President of SPT and CPT, the Commissioner, as well as Heads and Coordinators of the NPMs of about 20 countries attended the workshop.

Delivering a speech at the workshop, the Commissioner stressed that by Order of the President of the Republic of Azerbaijan of 13 January 2009 On Ensuring the Implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified on 2 December 2008, the Commissioner had been designated as the institution to perform the functions of the national preventive mechanism. She emphasized that by amending the relevant Constitutional Law accordingly, the regulation of the Commissioner's powers as the NPM had been ensured in compliance with the Optional Protocol to the UN Convention and an NPM had been established in the country.

The Commissioner met and exchanged views with the representatives of a number of international organizations in order to more professionally arrange her work with regard to the national preventive mechanism against torture, evaluate the conducted activities, and improve respective endeavours.

The Commissioner was in regular contact with the Head of the OSCE Office in Baku and its relevant officers.

Receiving Ms. Natalia Nozadze, Amnesty International's Researcher for Europe and Central Asia Program, on her request, the Commissioner provided thorough information on the regular visits conducted by the Commissioner and the NPM Group to places of deprivation or restriction of liberty operating in the country, including temporary detention places, penitentiary institutions, psychiatric institutions, homes for elderly and children with the intention to effectively organize relevant work after the designation as the NPM, as well as hotline functioning in the Institute, inter alia.

The Commissioner also met with the members of the European Committee for the Prevention of Torture (CPT) – Haritini Dipla, Head of the Delegation, Jean-Pierre Restellini, Head of the Swiss National Preventive Mechanism, and Julien Attuil-Kayser, officer of CPT's Secretariat, and updated the guests on the legal regulation of her powers as the NPM, undertaken activities, as well as the work done as a member of the European NPM Network, a number of proposals and recommendations made at several international events, as well as activities of the NPM Group.

As is known, human rights protection is among the priorities of the European Union. The contract signed between the Commissioner and Polish

Ombudsman within the Eastern Partnership Program launched in 2009 as part of the European Neighbourhood and Partnership Instrument is one of the first steps in this direction.

The Ministry of Foreign Affairs of the Republic of Poland has approved the allocation of funding for the Poland's Human Rights Institution to jointly conduct, together with the Commissioner's Office, the Project of Cooperation on "Partnership for Human Rights" within the Project of Co-operation between Ombudsmen from Eastern Partnership Countries for 2009-2013. The Program is implemented together with the Ombudsman Institution of the French Republic.

As agreed, the Project will cover several fields, including the NPM, assistance to crime victims, combating discrimination, human rights challenges in the context of the use of new technologies.

The first workshop dedicated to Human Rights Protection was held in Warsaw, Poland in April 2011 with the participation of 5 representatives from the NPM Group, as well as Polish institutions and NGOs specialized in human rights. During the visit the NPM Group members got acquainted with addressing problems related to the protection of human rights in the context of the development of new technologies, and the activities of Polish NPM, and exchanged experience with Polish NPM. Besides, they delivered presentations on conducted research works and carried out visits. Furthermore, the representatives of Azerbaijani and Polish NPMs visited an investigation isolator located in Warsaw and got acquainted with detention conditions in the establishment. At the end of the visit the NPM members met with the Chief of the isolator and received answers to the questions they had.

Later, the NPM members together with their Polish colleagues visited an interrogation centre for minors located in Warsaw and got acquainted with the working conditions there. At the end of the visit the NPM members met with Polish Ombudsman and it was decided to continue such exchange of experiences in the future as well.

At the second stage, in October 2011, the experts of Polish Ombudsman Institute and NPM members visited Azerbaijan. The visit lasted 4 days. Along with the NPM members, 10 Azerbaijani NGOs took part in the event and exchanged experience. Furthermore, the Polish NPM members, together with their Azerbaijani peers, visited Baku Investigation Isolator and Asylum for Victims of Human Trafficking. The detention conditions observed there left positive impression on the guests and they noted that in the visitors' book of the establishment.

As in several other countries, the European Union implements the Twinning projects in Azerbaijan as well, and along with the state bodies, the Commissioner's Office is also involved in those projects. It has been planned

to hold training courses on various topics within the Project for the employees of the Office, representatives of civil society and youth.

It should be noted that with the support of the European Union, a 6-month Twinning Project on “Support to the enhancement of the capacity of the Ombudsman administration and to the development of the awareness on Human Rights and Discrimination” was implemented in 2011.

Within this Project the Commissioner organized a closing conference called “UN Special Mechanisms” together with the European Union and German Institute for Human Rights.

Representatives of state bodies, international organizations, NGOs, civil society, and mass media, foreign country ambassadors, well-known international human rights experts attended the conference.

Ms. Frauke Seidensticker, Twinning Project Leader for Germany, provided detailed information on the Project, as well as the work done in the current year, numerous training sessions, workshops and exchange of views held to address human rights. It was highlighted that the Project had been useful for exchange of experiences and improvement of work with people.

Furthermore, as required by the Twinning procedures, a closing event was held in the Commissioner’s Office with the participation of the representatives of the state bodies and NGOs involved in the Project, and the achievements, current challenges and perspectives were discussed.

Within the framework of the Project some staff members of the Office – Head of the Office, as well as the NPM Group members exchanged experience with their peers in the Federal Republic of Germany on 1-7 May 2011. During that time our staff members visited penitentiary institutions operating in Germany and got acquainted with their conditions.

It should also be noted that the Commissioner has established long-term cooperation with German Institute for Human Rights and actively takes part in the Twinning projects of the European Union in the context of these relationships.

Besides, the Head of the Commissioner’s Office and Head of the NPM Group received the delegation of the Penal Reform International headed by Regional Director Tsira Chanturia, and discussed current NPM activities and future collaboration between the two organizations.

Also, the Head of the NPM Group taking part at the round table on “Life Imprisonment in the Republic of Azerbaijan” organized jointly by Penal Reform International and the Ministry of Justice, delivered a speech on the challenges encountered in this field. The event was attended by the judges of the Supreme Court of the Republic of Azerbaijan and Baku Court on Grave Crimes and the representatives of the Office of the Prosecutor General of the Republic of Azerbaijan, Ministry of Justice and NGOs.

A member of the NPM Group attended the workshop on **“Investigation of Cases of Torture and Ill-Treatment of Juveniles in Conflict with Law in the Detention Facilities”** arranged by UNICEF in Kiev, delivered a presentation on the work done, and provided several proposals.

The Commissioner’s activities in the field of combating torture, as well as her NPM activities and improvement endeavours are being continued.

The Commissioner’s designation as the NPM was supported as a right decision both at the meetings and exchange of views held with representatives of international organizations and at the international events dedicated to combating torture and her work in this direction was deemed effective.

The work done by the Commissioner to organize the NPM activity and improve it, and information provided at international events have been highly appreciated by representatives of international organizations, well-known experts, as well as the Commissioner’s peers in foreign countries.

Proposals and Recommendations

The analysis of the NPM activities carried out in 2011 indicates that dynamic work has been performed in this field, numerous accomplishments have been made, as well as a serious turnabout has been observed in the approach to the investigation of torture in the country.

The following proposals and recommendations are made as a result of the investigations and visits to institutions carried out by the Commissioner and NPM Group and the analysis of international standards and national law, as well as covering the previous proposals and recommendations included in the first report of the Commissioner as the NPM, but not addressed yet:

- Enhance the sanction provided by the Code of Administrative Offences for the interference with the legitimate activities of the Commissioner, as well as specify responsibility for the interference with the legitimate activities of the national preventive group of the Commissioner;
- Bring the definition of the offence of torture specified in the Criminal Code (Article 133) into compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Accelerate the adoption of the Law Ensuring the Rights and Freedoms of the Persons Held in Detention Facilities, which is at the second reading of the Parliament;
- Bring the Law of the Republic of Azerbaijan On Psychiatric Care of 19 April 2002 into compliance with the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare adopted by UN General Assembly resolution 46/119 of 17 December 1991;
- Bring Article 95 of the Punishment Execution Code and Clause 228 of the Internal Disciplinary Rules of Penitentiary Institutions (involvement in forced labour) in line with Article 35 of the Constitution of the Republic of Azerbaijan;
- Bring Annex 1 of the Internal Disciplinary Rules of Penitentiary Institutions (confidential meeting with the lawyer, violation of privacy) into compliance with the legislation;
- Bring Order No. 428 of the Ministry of Interior in line with the Criminal Procedure Code (keeping in police custody for a long time);
- Remove the provisions of discriminative and inhuman treatment from Annex 4 of the Regulations of the Garrisons and Guard Services of Armed Forces;
- Update, in line with modern standards, the Charter on Homes for Disabled Children approved by the Social Protection Ministry of Azerbaijan

SSR in 1978 and available in the Russian language regulating the homes for children under the MLSP;

- Bring the provisions of the Execution of Punishment Code and Internal Disciplinary Rules regulating involvement of inmates in forced labour into conformity with Article 35 of the Constitution of the Republic of Azerbaijan;

- Bring Annex 1 of the Internal Disciplinary Rules of Penitentiary Institutions in line with the legislation in order to ensure that a lawyer can meet the defendant in confidence (in private);

- Allocate appropriate funds and take other organizational measures for the establishment of a special structural unit which would organise and implement the activities of the Commissioner as the NPM;

- Allocate appropriate funds for the publication of the annual reports of the Commissioner, as well as reports reflecting the results of her activities as the NPM;

- Improve the work of registering and maintaining records of persons held under administrative detention, as well as suspected or accused persons in temporary detention places of the MI;

- Ensure that a person has immediate access to a lawyer of his choice or a lawyer provided by the state upon initial detention by police;

- Ensure a person's right to access his/her doctor upon entry to a police body;

- Ensure that detention is documented as required by law;

- Prevent dissemination in the mass media of information and video records about a detained person against that persons' will before his/her guilt is proved;

- Accelerate repair and reconstruction works in the establishments of the MI where detention conditions do not comply with modern standards;

- Enhance supervision to ensure that employees of places of detention apply laws correctly;

- Improve relevant prosecutors' control over temporary detention places;

- Speed up the construction of the Prison building in Umbaku Settlement;

- Soften the management's and staff's treatment of convicts at the Prison of the PS;

- Improve the work of Medical-Sanitary Units at the Prison and PIs of the PS;

- Provide for specific rooms in PIs under construction to ensure that convicts exercise their rights to have access to legal assistance, as well as ensure the resolution of the relevant legal regulation issues;

- Perform renovation works in the PCSs of the PS where the detention conditions do not meet the requirements of modern standards;

- Accelerate the construction of a new establishment for Investigation Isolator No.2 which does not meet the established standards;
- Renovate old buildings of Medical Institution of the PS;
- Improve social services provided for patients in the mental hospitals of the MH, ensure their involvement in labour pursuant to their health conditions and capabilities;
- Provide necessary conditions for patients to efficiently spend their leisure-time in the mental hospitals of the MH and ensure the provision of the right to outdoor exercise;
- Review nutrition norms in the mental hospitals of the MH and increase costs relevantly;
- Thoroughly audit placement in the mental hospitals of the MH;
- Involve doctors and supporting staff of the mental hospitals of the MH in training and qualification courses, promote the European Standard Minimum Rules;
- Enhance patients' contact with society and their families in the mental hospitals of the MH;
- Create necessary conditions for representatives of civil society to monitor the mental hospitals of the MH;
- Improve the organization of psychological work in the relevant institutions of the MLSPP, add a position of psychologist to the corresponding staff list;
- Irrespective of the form of subordination, eliminate deficiencies and shortcomings revealed in all establishments containing places of detention within the shortest possible period of time, bring the persons who have violated law to responsibility, and take immediate actions to improve the conditions of detention of persons deprived of their liberty;
- Intensify investigations carried out by law-enforcement bodies to reveal, investigate and prevent cases of torture, bring the persons who have infringed rights to responsibility as provided for by law, and enhance the control of the Office of the Prosecutor General of the Republic of Azerbaijan over that activity;
- In order to respect the rights of detainees held in TDPs, transfer them to neighbouring TDPs when the TDP they are held in is being renovated;
- Increase control over the observance of the norms specified by Decision No. 130 of the Cabinet of Ministers of 30 July 2001;
- Take measures to improve working conditions for the staff of TDPs in line with modern standards;
- Prevent imposing of more than one punishment, as well as a punishment not provided for by law on an inmate for a breach;

- Continue measures for adjusting detention conditions to international standards;
- Prevent involvement of inmates in useless, as well as harmful-for-their-health labour;
 - Increase jobs for inmates in penitentiary institutions;
 - Improve the work of the Guardianship Council operating under the correctional institutions for minors, improve the relevant Regulations;
 - Intensify attention to documentation work in respect of the children held in homes (boarding houses) for children, create an electronic database to cover more detailed information about children;
 - Strengthen control over the assessment of skills, qualifications, health conditions, psychological state of persons hired to work in homes (boarding houses) for children;
 - Open psychotherapist and lawyer positions in homes (boarding houses) for children;
 - Ensure that advocacy services to defend the interests of the children held in homes (boarding houses) for children are easily accessible;
 - Use the assistance of public organizations, educated theologians, qualified social workers to meet the mental needs of the children held in homes (boarding houses) for children;
 - Develop a program and work plan pursuant to children's age and personal characteristics, develop summaries on the course and results of team or group works in order to be able to follow the psychological and physical development of children and formation of their personality;
 - Enhance the skills and qualifications of the pedagogic staff working in homes (boarding houses) for children, increase control over the performance of pedagogic and supporting staff, stimulate employees who demonstrate responsibility and are honest, and take measures for motivation of staff;
 - Organize a personal file to collect information on child's personal development, achievements in education, correctional work, increase the number of staff, improve the quality of psychological service, including psycho-correction and psycho-consultation, code children's names in psychological cards to ensure confidentiality and keep these cards in a special iron container in the psychological service office;
 - Increase attention to the treatment of chronic patients;
 - Intensify attention to the examination and treatment of insane and mentally disabled patients;
 - Improve detention conditions and treatment of mental patients in compliance with the European Standard Minimum Rules, accelerate the construction of a new building for those hospitals in larger areas away from dwelling houses, create units corresponding to the severity of the disease,

organize isolators and rehabilitation units, arrange necessary medical transport and medicine in order to ensure effective treatment, rehabilitation and detention;

- Strengthen examination and treatment of tuberculosis, hepatitis, HIV/AIDS and other diseases;

- Continue legal education work to ensure that the staff of the Office of the Prosecutor General of the Republic of Azerbaijan, MI, MJ, MNS, MD, ME, MH and MLSPP properly follow the requirements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, OPCAT, Law No.724-IIIQ of the Republic of Azerbaijan On Approval of the Optional Protocol of 02 December 2008, as well as Order No.112 of the President of the Republic of Azerbaijan On Ensuring the Execution of the Optional Protocol of 13 January 2009;

- Ensure that the Office of the Prosecutor General of the Republic of Azerbaijan, the Office of the Military Prosecutor of the Republic of Azerbaijan, MI, MJ, MNS, MD, ME, MH and MLSPP together with the Commissioner initiate or support the organization of various legal awareness events – a series of meeting-seminars, lectures, as well as regional meetings, round tables, and conferences for employees, as well as for detainees, that would be devoted to human rights, including the right not to be subjected to torture;

- Improve collaboration with the UN Committee against Torture, Subcommittee on Prevention of Torture, European Committee for the Prevention of Torture, as well as Association for the Prevention of Torture;

- Arrange training, seminars and other awareness raising events for the members of the NPM group;

- Organize study tours, as well as invite experts specialized in this field to share experience.

STATISTICAL DATA

Table 1. Establishments falling under the jurisdiction of the NPM

Establishment	Number
Establishments of the Ministry of Interior of the Republic of Azerbaijan	120
including,	
Office for Combating Trafficking in Human Beings	1
Head Office for Combating Organized Crime	1
Head Transport Police Office	1
Baku City Head Police Office Detention Facility for Administrative Offenders	1
Baku City Head Police Office Isolation Centre for Minors	1
Investigation Centre of the Department for Combating Illegal Migration of the Head Office for Passport, Registration and Migration	1
District police departments	6
Police stations	44
Temporary detention places	64
Establishments of the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan	38
including,	
Prison	1
Specialized Medical Institution	1
Medical Institution	1
Correctional Institution	1
Investigation isolators	3
Penitentiary institutions	17
Penal colony settlements	14
Investigation Isolator of the Ministry of National Security of the Republic of Azerbaijan	2
Establishments of the Ministry of Defence of the Republic of Azerbaijan	11
including,	
Disciplinary Military Unit (Military Unit No.N)	1

Guardrooms	10
Establishments of the Ministry of Education of the Republic of Azerbaijan	41
including,	
Open Special Correctional Institution for Boys	1
Guba Special Vocational School	1
Other boarding (internat) schools and child homes	39
Establishments of the Ministry of Health of the Republic of Azerbaijan	22
including,	
Psychiatric hospitals	8
Mental dispensaries	11
Psychoneurological Child Home and other child and baby homes	3
Homes and boarding houses for the elderly and disabled under the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan	10
TOTAL: 244 establishments	

**Optional Protocol to the Convention against Torture and other
Cruel,
Inhuman or Degrading Treatment or Punishment¹**

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights, Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

¹ Signed by the Republic of Azerbaijan on 15 September 2005, ratified in accordance with the Law 724-IIIQ dated 02 December 2008. The abovementioned Law has entered into force in respect of the Republic of Azerbaijan from the date of its publication on 15 January 2009.

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I
General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as The Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of The Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the

mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article

5, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the

States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an

absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years.

They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the

strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level.

Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge.

They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with

the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

DECLARATION of the Republic of Azerbaijan in respect of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Protocol in the territories occupied by the Republic of Armenia until these territories are liberated from occupation

Constitutional Law of the Republic of Azerbaijan

On Making Additions and Amendments to the Constitutional Law of the Republic of Azerbaijan “On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan”

The Milli Majlis of the Republic of Azerbaijan hereby resolves:

The Constitutional Law of the Republic of Azerbaijan “On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan” (Collection of Legislative Acts of the Republic of Azerbaijan, 2002, No. 3, Article 115; 2004, No. 9, Article 665; 2006, No. 3, Article 207, No. 11, Article 909; 2007, No. 10, Article 928; 2009, No. 12, Article 944) shall be amended as follows:

1. In Article 1.1 the words “and to prevent human rights violations in cases as specified in this Constitutional Law” shall be added to the end of the paragraph.

2. Articles 1.2-1.7 shall be deemed as Articles 1.5-1.10 respectively and Articles 1.2, 1.3 and 1.4 shall be added in the following wording:

“1.2. The Commissioner shall perform the functions of a national preventive mechanism as specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. With the aim of preventing torture and other cruel, inhuman and degrading treatment or punishment, he/she shall, on a regular basis or as deemed necessary, visit the places which detained persons can not leave at will.

1.3. The Commissioner shall oversee the fulfillment of the duties arising out of the requirements of the Law of the Republic of Azerbaijan "On Access to Information" by governmental bodies, municipalities or officials that are owners of information.

1.4. The Commissioner shall cooperate with local, regional and international organizations in accordance with the directions of his/her activities.”

3. The name of Chapter II shall read as follows:

“Investigation of complaints of human rights violations and performance of the functions of the national preventive mechanism”.

4. In Article 12:

4.1. The name of the Article shall read as follows:

“Procedure of investigation of a complaint of violation of human rights and performance of the functions of the national preventive mechanism”;

4.2. In Article 12.2 after the word “violation” the words “and while performing the functions of the national preventive mechanism” shall be added;

4.3. Article 12.2.1 shall read as follows:

“12.2.1. have access, without hindrance and prior notification, to any governmental and municipal bodies, military units, as well as police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions and other places, which detained persons can not leave at will; meet with and talk to detained persons, as well as any other persons who may provide relevant information in private or when deemed necessary with the participation of an expert or interpreter; get acquainted with and obtain copies of the documents confirming the lawfulness of detention of detained persons and providing information on treatment and the conditions of detention of those persons; draw up a report, document the progress and the results of the actions undertaken; provide relevant recommendations to the competent authorities and receive responses to these recommendations within the defined period.”;

4.4. Article 12.2.7 shall read as follows:

“12.2.7. be received without delay by heads and other officials of governmental and municipal bodies, commanders of military units, and management of police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions, and other places which detained persons can not leave at will.”;

4.5. Articles 12.3-12.5 shall be deemed as Articles 12.4-12.6 respectively and Article 12.3 shall be added in the following wording:

“12.3. Pressure or prosecution against any person or organization for having communicated to the Commissioner any information is inadmissible.”.

5. Article 13-1 shall be added in the following wording:

“Article 13-1. Peculiarities of consideration of a complaint related to the violation of the right to obtain information

13-1.1. The Commissioner shall within 10 working days investigate the circumstances indicated in a complaint related to the violation of the right to obtain information. If the complaint requires specification or additional explanation and documents are needed for the investigation of the complaint, having notified the complainant accordingly, the Commissioner can extend the period of consideration of the complaint for another 10 working days.

13-1.2. The Commissioner shall not consider a complaint if:

13-1.2.1. the complaint is anonymous;

13-1.2.2. the complaint is not related to the activities of the concrete information owning governmental body, municipality or official;

13-1.2.3. the complaint is repetitive, unjustified or biased;

13-1.2.4. there is a final court decision in relation to the case;

13-1.2.5. the applicant has not used, effectively enough, the opportunities provided by the information owning governmental body, municipality or official for obtaining information.

13-1.3. While investigating the circumstances indicated in the complaint of the violation of the right to obtain information, the Commissioner shall clarify whether the information owning governmental body, municipality or official has observed the following provisions of the Law of the Republic of Azerbaijan "On Access to Information":

13-1.3.1. registration of the request for obtaining information (hereafter - information request);

13-1.3.2. satisfaction of the information request pursuant to the procedure, within the period and by the method as specified in the law;

13-1.3.3. conformity of the rejection to satisfy the information request with the requirements of the law;

13-1.3.4. accurate and full compliance with the obligation to disclose public information;

13-1.3.5. compliance with the obligation to create an Internet-based information resource.

13-1.4. With regard to a complaint of the violation of the right to obtain information, the Commissioner can require the information owning governmental body, municipality or official to remedy the violation.

13-1.5. The information owning governmental body, municipality or official shall report the undertaken measures to the Commissioner in writing within 10 days. In case of failure to provide information or fulfil the Commissioner's requirements, the Commissioner can address the relevant superior authority.”

6. Article 18-1 shall be added in the following wording:

“Article 18-1. National Preventive Group

18-1.1. The National Preventive Group shall be established within the Commissioner's Office for the purposes of performing the functions of the national preventive mechanism referred to in Article 1.2 of the present Law. A person who is at the age of above 25, is a university graduate, has experience in human rights protection and possesses high moral values can be appointed as a member of the National Preventive Group. The members of the National Preventive Group are appointed by the Commissioner based on transparent procedures for the period of 3 years.

18-1.2. The National Preventive Group has the rights to:

18-1.2.1. have access, at any time, without hindrance or prior notification, to police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions and other places which detained persons can not leave at will; meet with and talk to detained persons, as well as any other persons who may provide relevant information in private or when deemed necessary with the participation of an expert or interpreter; get acquainted with and obtain copies of the documents confirming the lawfulness of detention of detained persons and providing information on treatment and the conditions of detention of those persons; draw up a report, document the progress and the results of the actions undertaken;

18-1.2.2. be received without delay by the management of police stations, temporary detention places, investigatory isolators, penitentiary institutions, psychiatric institutions and other places which detained persons can not leave at will.

18-1.3. A member of the National Preventive Group can not be forced to testify about the facts that became known to him/her while performing his/her

duties or to disclose these facts by any other methods. This guarantee shall remain in force in respect of a member of the National Preventive Group even after he/she leaves the Group.

18-1.4. A member of the National Preventive Group can not be arrested or detained, subjected to search or personal examination while performing his/her duties in places which detained persons can not leave at will. No arrest, check or seizure can be undertaken in respect of the mails, telegraphic messages or other correspondence of a member of the National Preventive Group.”

7. Article 20 shall be added in the following wording:

“Article 20. Responsibility for interfering with the Commissioner’s activity

Persons guilty of interference with the Commissioner’s activity shall bear responsibility in accordance with the legislation of the Republic of Azerbaijan.”

Ilham ALIYEV
President of the Republic of Azerbaijan

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