

PUBLIC DEFENDER OF GEORGIA

National Preventive Mechanism

**SPECIAL REPORT ON THE MONITORING OF THE
PENITENTIARY ESTABLISHMENTS, TEMPORARY
DETENTION ISOLATORS AND MILITARY
DETENTION FACILITIES**

FIRST HALF OF 2010

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Introduction

The present report covers the findings of the monitoring carried out by NPM team at penitentiary establishments, temporary detention isolators and *hauptvakhts* during the first half of 2010. There were 36 planned and 170 *ad hoc* visits to penitentiary establishments undertaken during the reporting period. Approximately 500 inmates were visited. There were 43 planned and 25 *ad hoc* visits to temporary detention isolators under the Main Division of Human Rights Protection and Monitoring of the Ministry of Internal Affairs of Georgia and 10 planned visits to *hauptvakhts* of the Ministry of Defense of Georgia undertaken.

It shall be positively noted that the NPM team has not experienced any problem during the exercise of its authority prescribed by law. They were entering establishments without any impediments and had a possibility to hold confidential interviews with detainees/inmates. Administrations of all the establishments fully cooperated with the monitoring team and to the extent possible provided the requested information or the documentation as well as oral explanations regarding a variety of issues.

The monitoring revealed both - positive and negative trends. It shall be positively noted that infrastructure of all types of closed institutions is noticeably improved, penitentiary establishments were built and renovated, and a number of temporary detention isolators were refurbished. It shall nevertheless be also noted that the establishments which may not be suitable for any kind of restoration still continue functioning and persons placed therein, due to hard conditions in those establishments are subjected to inhuman and degrading treatment.

This does not refer to *hauptvakhts*, as only newly built *hauptvakhts* function, which more or less comply with standards. The *hauptvakhts* in Gori, Batumi and Akhaltsikhe stopped functioning in early 2010.

The facts of ill-treatment in penitentiary establishments were still revealed during the monitoring. There have not been facts of ill-treatment identified in the temporary detention

isolators throughout the last years. However, use of excessive force by police during detention is a problem. This is confirmed both - by detainees, as well as by the records of external visual examination of detainees made into the registers of temporary detention isolators and penitentiary establishments upon their placement in those establishments.

Investigations into those facts are still conducted without due diligence; investigative actions in most cases are undertaken formally, often no forensic medical examination is ordered or it is conducted with delay, when the injuries of a victim may not be traced any more.

I. Ill-treatment

The civilized world is trying to advance the mechanisms for eradication of torture and other cruel, inhuman and degrading treatment or punishment for quite a few decades.

There have been variety of steps made in Georgia as well to eliminate torture, inhuman and degrading treatment and punishment: a number of international instruments were signed, following the signature of the Convention against Torture the definition of a crime of torture in the national criminal legislation was altered and approximated to the definition as provided in the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. National Preventive Mechanism was designated and established, etc. It may already be stated that torture of a person is not a systemic problem, though a lot remains to be done in order to completely eradicate facts of torture, inhuman or degrading treatment and punishment.

One of the most important international instruments from the perspective of eradication of torture is the Optional Protocol to the Convention against Torture. The Protocol was the first document to synchronize the international and national mechanisms.

National Preventive Mechanism was already established based on the above mentioned Protocol in a number of countries. The functions of the National Preventive Mechanism in Georgia were assigned to the Public Defender of Georgia from 16 July, 2009, following the changes introduced into the Organic Law of Georgia on Public Defender. The above-

mentioned mechanism is one of the most viable and efficient system with a view to prevention and eradication of torture, inhuman and degrading treatment and punishment.

The most efficient means at the disposal of the Public Defender for fighting against torture, inhuman or degrading treatment and punishment is the meticulous monitoring of institutions considered by the Optional Protocol to the Convention against Torture. This first and foremost aims at prevention of torture, inhuman and degrading treatment and punishment, and not reacting over the fact which has already taken place. However, there are also frequent cases when the Public Defender and the Special Preventive Group happen to react over the occurred fact and submit the information on facts of torture or inhuman treatment to law enforcement bodies.

Investigation, as well as among others legal reaction over the facts of torture and inhuman treatment, is a prerogative of the Prosecution Service. The scope of functions of the Public Defender in this respect is limited to provision or acquiring the information, as well as, in cases of such a need, provision of recommendations of procedural nature. The Public Defender is devoid of a possibility to influence over the qualification of facts and essential aspects of investigation into a case.

It shall be nevertheless mentioned that one of the main problems related to investigation of facts of ill-treatment is exactly their incorrect qualification: often investigation commences not based on the article prohibiting torture or degrading or inhuman treatment, but based on the article prohibiting abuse of power, which is a malfeasance and committing it envisages considerably less strict sanction.

The European Court of Human Rights in the case *Ribitsch v Austria*¹ noted, that in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. The Court also stated that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime can not justify placing limits on the protection to be afforded in respect of the physical integrity of individuals.

The problem of inefficient investigation of facts of ill-treatment is also still enduring. This hampers eradication of torture most of all, as it creates the syndrome of escaping punishment within law enforcement officials and generates a risk of similar actions be repeated. It is exactly to this end that the European Court of Human Rights not once, including in cases

1. Judgment of 4 December, 1995

against Georgia, elucidated that inefficient, protracted and inadequate investigation does already in itself represent a violation of procedural requirements of Article 3 of the European Convention, despite the fact whether the applicant has submitted sufficient arguments and evidence proving the very fact of torture.²

The information collected by us recently, as well as an analysis of variety of materials and individual facts make it clear that the Prosecution Service often deals with the investigation of facts encompassing torture or ill-treatment of detainees and criminal cases including such acts superficially. As it was already noted, often such facts are qualified not as criminal acts of torture and degrading or inhuman treatment but rather abuse of power or beating. In almost all cases investigation of such cases bears a formalistic nature and is investigation into a case is often discontinued or protracted throughout years. It is most noteworthy to mention that investigation is discontinued based on the testimonies of representatives of law enforcement bodies and in some cases a victim withdraws the account submitted to the Public Defender and testifies in favour of law enforcement representatives. In some cases, forensic medical examination is ordered at a point when the injuries suffered by a victim may not be traced any more - that is with a delay of some weeks.

According to the case law of the European Court of Human Rights, whenever a person was injured during imprisonment or at any other point of being under the police custody, any of such injuries provoke a strong presumption, that a person concerned was ill-treated.³ It is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention.⁴

On 21 September, 2010, the report on the visit to Georgian carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was published. The Report reflects the results of a visit of the Committee from 5 to 15 February, 2010.

The last Report of CPT mentions that Committee welcomes the determined actions taken by the Georgian authorities to prevent ill-treatment by police. It is also mentioned that considerable progress has been made in reducing the risk of ill-treatment at the hands of police officers; nevertheless, the persistence of some allegations clearly indicate that the authorities must remain vigilant.⁵

2. Case of Danelia v. Georgia, Judgment of 17 October, 2006; Case of Davtyan v. Georgia, Judgment of 27 July, 2006; Case of Gharibashvili v. Georgia, Judgment of 29 July, 2008
3. Case of Bursuc v Romania, Judgment of 12 October, 2004
4. Case of Selmouni v. France, Judgment of 28 July, 1999
5. <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm> para. 16

The CPT Report does extensively consider a case of an inmate Ushangi G., who passed away in September, 2009. This does indicate the particular interest of the Committee to the case. On the very day of his admission to Prison No. 7, on 19 September, U.G., being unconscious, was transferred first to Medical Establishment for Convicted and Indicted Persons, and than to “Gudushauri” National Medical Center. U.G. passed away in that establishment on 21 September.

According to the forensic medical examination conclusion, the cause of U.G.’s death was *“massive cerebral hemorrhage due to blunt injury. The following life-time injuries were noticed on the corps of U.G.: massive subdural extravasation, subarachnoid and intraventricular hemorrhage. Notches: on the right forearm, right wrist joints, joints of both knees, left shank, and area of both ankles; bruises: in the areas of right wrist, right arm, on the front and the left side of the abdomen, left thigh, left forearm, left shank, and the area of main phalanx of the fourth finger on the right hand. The injuries are caused by some solid, blunt subject; belong to heavy injury, are dangerous for life, 3-4 days old”*.

On 21 September, 2009, investigation into the fact commenced based on the article of murder of negligence. This clearly contradicts with the character and severity of injuries identified on the corps, which, more than negligence do demonstrate an intentional character of acts undertaken in relation to him. The injuries were inflicted several days before the death, therefore, after the detention, which took place on 15 September. In its Report CPT did underline the inefficient investigation: in February, 2010, i.e. 5 months since the commencement of investigation, neither policemen who had detained U.G. were interrogated, nor were questioned a person together with whom U.G. was detained, the representatives of the Ajara Regional Temporary Detention Isolator, where U.G. was placed after the detention and the guard who had transferred U.G. to Prison N7 in Tbilisi from Batumi.⁶ The Report of the Committee does not note this, however according to the information received by the Public Defender from the Office of the Chief Prosecutor on 23 June, 2010, investigation into the case of U.G. commenced based on the notice received from the Ghudushauri clinic. This does once again indicate the improper approach to the facts of ill-treatment: despite the fact that upon admitting to the N7 Prison and Medical Establishment for Convicted and Indicted Persons the injuries on U.G.’s body were recorded, none of the administrations of the institutions considered it necessary to notify the fact to the investigative bodies.

The investigation into the case of U.G. has still not been finalized and there has been no criminal responsibility of any person considered.

6. para. 21

Within the reporting period, as a result of intensive monitoring, the Department of Prevention and Monitoring of the Office of the Public Defender of Georgia, conducting monitoring of closed institutions, identified several facts of ill-treatment regarding which Public Defender approached the Georgian Prosecution Service immediately.

1. Use of excessive force during detention

According to the information received from Chairman of the Penitentiary Department of the Ministry of Corrections and Legal Assistance of Georgia, during 01 January - 30 June, 2010, there were 403 inmates with different bodily injuries admitted to prisons of the Penitentiary Department, out of which 42 inmates stated that injuries were inflicted during detention.

According to the answers received by the Office of the Public Defender of Georgia from the Office of the Chief Prosecutor of Georgia, 8 inmates out of 42 confirmed in their interviews that bodily injuries were inflicted onto them during detention, and respectively preliminary investigations were commenced into those facts.

However, there has been no response received as to based on which of the articles of the Criminal Code of Georgia the investigations had commenced, what investigative actions had been undertaken and at what stage the investigation into those criminal cases is.

During the monitoring of temporary detention isolators during the reporting period the representatives of the Department of Prevention and Monitoring identified several instances when detainees stated about ill-treatment by Police.

Case of juvenile Malkhaz M.

On 16 April, 2010, the representatives of the Department of Prevention and Monitoring met and interviewed a juvenile inmate Malkhaz M. in the General and Strict Regime Penitentiary Establishment No. 5 for Women and Juveniles. There were various injuries identified on his body. According to the statement of the juvenile, he was detained by Police due to shop-lifting in Telavi on 6 April, 2010. According to him, after being brought to the Police station

he was beaten by the policemen, who were demanding from him to also confess the fact of stealing a bicycle.

According to Malkhaz Z. the Police Chief threatened to kill him if he would have made this fact known to others.

On 16 April, 2010, there were noticeable general soft-tissue lesion and excoriations and bruises at different parts of the body of the minor.

On 19 April, 2010, the Public Defender, deriving from the above, transmitted the case to the Chief Prosecutor of Georgia. According to the response received, on 16 April, 2010, the Investigative Service of the Kakheti Regional Prosecution Service commenced the preliminary investigation into the fact with characteristics of a crime envisaged by paragraph 1 of the Article 332 of the Criminal Code of Georgia.

On 06 July, 2010, we requested the information on the ongoing investigation into the mentioned criminal case from the Office of the Chief Prosecutor again. According to the response received officials of the Telavi District Unit of the Ministry of Internal Affairs of Georgia, the Kakheti Regional temporary detention isolator, and the General and Strict Regime Penitentiary Establishment N5 for Women and Juveniles, as well as persons detained together with Malkhaz M. and their parents were questioned. According to the same reply, forensic medical examination was ordered based on the health certificate issued for Malkhaz M. by the General and Strict Regime Penitentiary Establishment No. 5 for Women and Juveniles on 09 April, 2010.

The investigation into the case is ongoing.

Case of Kakhaber K.

On 22 April, 2010, Special Preventive Group visited the temporary detention isolator in Zugdidi for monitoring. Members of the Group met and recorded testimonial of a detainee K.K. According to his statement, he was at home together with his disabled mother at around 10-11 p.m. on 21 February, 2010; at that time around 10 people in police uniforms rushed into his bedroom, they threw him down from the bed and insulted him physically and verbally. According to K.K he was beaten in hands and legs, following which they insulted his mother. Afterwards K.K was transferred to the Police station, where physical and verbal assault continued. Later on he was told that he was charged with stealing a car accumulator.

The detainee stated he was not aware of the identity of the policemen however he could recognize them.

Medical expert of the Special Preventive Group conducted external visual examination of the detainee, who had physical injuries. DS: general soft-tissue lesion and excoriations and bruises at different parts of the body.

The record of the external visual examination of the detainee placed in the temporary detention isolator indicated that the detainee's right eye-socket was black.

On 04 March, 2010, all the material around the mentioned fact accumulated by the Special Preventive Group was transmitted to the Chief Prosecutor of Georgia. The reply received from the Prosecution Service stated that in Zugdidi District Prosecutor's Office preliminary investigation into criminal case based on para. 2(b) of the Article 144¹ of the Criminal Code of Georgia commenced on 04 March, 2010.

On 31 March, 2010, representatives of the Department of Prevention and Monitoring visited and spoke with the inmate K.K who stated that an investigator had visited him who, and according to the inmate, "had a general conversation with him". According to the inmate, there was no forensic medical examination undertaken.

To ascertain the above-mentioned reports, the information on the ongoing investigation into the above mentioned criminal case was once again requested from the Office of the Chief Prosecutor of Georgia. According to the reply received on 23 July, 2010, forensic medical examination was ordered on 16 March, 2010, officials of the Zugdidi District Unit, Zugdidi temporary detention isolator and N4 Prison were questioned. According to the latest available news, the investigation into the case is ongoing.

Case of Levteri T

During the monitoring of Prison N4 in Zugdidi the Special Preventive Group met and interviewed inmate L.T., who stated that 6-7 policemen entered his house on 5 March, 2010, and told him that based on the phone notification they were about to search his house.

As a result of the search Police found a stolen cow in the cow house of the inmate. Following this, according to the inmate, he was slapped into face by the policemen, than they put him

into a car and drew him the Zemo (Higher) Etsera Police station. The inmate noticed, that the policemen were demanding from him to confess stealing a cow, they were punching him, than threw him down and 4-5 policemen bet him. According to his statement, he lost conscious as a result of beating.

As the inmate stated, following the beating, he had headaches and his hearing was impaired. As stated by him, upon entering both - temporary detention isolator as well as N4 Prison in Zugdidi, he declared that he had been beaten policemen; however no reaction followed.

On 07 April, 2010, envoy of the Public Defender visited Zugdidi temporary detention isolator and checked the Register for the persons placed in the isolator. In accordance with the record, L.T. had a scrape in the area of head, bruise in the right eye-socket, and a scratch on a right hand finger. The record did also indicate that the inmate had no complaints, however, there was no mention as to where had he got those injuries.

The 8 March, 2010 record made by a doctor upon placing the inmate into Prison No. 4 in Zugdidi mentioned that the inmate had soft-tissue lesion in areas of both eye-sockets.

On 08 April, 2010, deriving from the above the Public Defender submitted the case files to the Chief Prosecutor of Georgia. According to the reply received, on 07 May, 2010, Zugdidi District Prosecution Service commenced the preliminary investigation into the criminal case on the fact of torture of L.T. committed with the abuse of power by policemen of the Zugdidi District Unit of the Ministry of Internal Affairs of Georgia. The crime is envisaged by paragraph 2(b) of the Article 144¹ of the Criminal Code of Georgia.

In reply to the request for information by the Office of the Public Defender of Georgia made on 06 July, 2010 we were notified that L.T. and witnesses were questioned, forensic medical examination was undertaken, according to the results of which the inmate did not have any physical injuries.

In this case also the accuracy of investigation is questionable, as the National Preventive Group visited Levter T. 3 weeks after the fact had occurred, whereas the preliminary investigation commenced after more than a month following the notification by the Public Defender.

The response from the Prosecutor's Office does not clearly state the date of the forensic medical examination, however, taking into account the fact that the investigation

commenced on 7 May, 2010, it may be assumed that there has not been forensic medical examination conducted before 7 May. This means that minimum 2 months had elapsed from the point of inflicting injuries to the moment of examination of the person. As it was already mentioned, the person to be examined had noticeable notch, which is a damaged epidermis of outer skin; the disappearance of the bruises depends on sex, age of a person, the location of the damage and other factors. Healing wounds in the areas of head and neck takes around 12 days, on front surface of a body and extremities requires around 14-15 days, on the lower extremities - 17 and on the back - 18-20 days. Based on the character and form of the injury an expert may ascertain the prescription of injury, features of the subject that inflicted injury, etc. Bearing in mind that fairly long period had elapsed from the point of inflicting injuries to the forensic medical examination the macro-morphological signs of notches conceivably would not have been retained there for the medical forensic expert to see them.

The person to be examined did also have bruise which emerges as a result of hitting some stiff, blunt subject followed by congestion of tissues with blood due to slashing blood-vessel in soft tissues in and underneath of skin. Small-sized bruise disappears totally in 2 weeks. The intensity of the color of a bruise depends on its size, localization, age of an injured person, etc. Deeply situated bruise appears relatively later. The form of a bruise often is a negative materialization of an injuring subject. Taking into account the nature of injury, in such a case signs of an injury may also not be noticeable on an injured person in 2 months.

Taking into account the above-mentioned, forensic medical examination should not have been based only on the condition at the moment of examination. Presumably, forensic medical expertise has not referred to the records in the case files. Due to this ostensibly the real situation has not been reflected in the forensic medical examination conclusion.

In this specific case two types of violations are identified: first of all, the forensic medical examination was not ordered in time and it may be suggested that ordering it was protracted on purpose. Apart from this, due to the fact that the expert has not used the case files, the examination undertaken is not comprehensive and does not comply with international standards. In addition, during the investigation of alleged facts of torture, it is indispensable to undertake forensic psychiatric examination as well, as psychological consequences of torture do linger for a way longer. This aspect was totally ignored by the investigation.

Case of Sergo R

On 25 February, 2010, envoy of the Public Defender of Georgia met and got an account from inmate S.R. in prison No. 4 in Zugdidi. According to S.R., on 16 February, 2010, the

policemen of the Senaki District Unit detained him nearby his house, beat him and verbally assaulted him. According to the inmate, policemen beat him in his head with the filled bottle of "Nabeghlavi" spring water and demanded from him to also confess stealing of mobile phones.

As stated by S.R., the above mentioned happened during his detention, as well as before his transfer to the police station and later on - in the building of the Unit.

As noted by the inmate, around 5 policemen beat and swore at him in the Senaki Police station; as stated by him, each of the policemen did beat him in face, head and body. As a result of beating, the inmate got injuries and had periodic head ache. In accordance with the register of detainees of the Senaki police and the register of Senaki temporary detention isolator, the inmate had injuries both on the face and the body before detention. As stated by the inmate, he was scared and therefore did not protest violence exercised against him. As explained by him, the defender of his interests visited him in the Senaki temporary detention isolator, requesting forensic medical examination; however, as stated by the inmate, this request was not granted.

According to the explanations of the inmate, in the Senaki District Unit the policemen threaten that they would have incarcerated his mother and wife, put his child in orphanage and put drugs in his belongings, as if it was his.

When envoy of the Public Defender met S.R., he was on a hunger strike due to protest, demanding fair investigation of his case and punishment of the policemen.

On 11 March, 2010, the Public Defender applied to the Chief Prosecutor of Georgia for further reaction. On 06 July, 2010, the information was requested as to whether the investigation into the case had commenced. However, there has been no reply to any of the letters to date.

2. Facts of ill-treatment in penitentiary establishments

Inmates' complaints, as a rule, refer to physical assault, however often there are instances of complaining about degrading and humiliating treatment by the officials of penitentiary establishments. In both instances Public Defender does immediately refer to the relevant agencies for reaction. However, often investigation is ongoing only formally, or is discontinued based on the testimonies of the very law enforcement officials. There are often cases, when the injured person rebuffs the complaint and states that the injuries were self-inflicted or were result of an accident, such as e.g. falling down from bed. The factor of fear is first of all resulting from the fact that even after submitting a complaint injured person stays in the same establishment, under the supervision of the same officials. Frequently, in case of lodging a complaint, the case had commenced against the complaining inmate, for allegedly putting up resistance and it was "ascertained" that the injuries were inflicted as a result of his resistance. Therefore, as often investigation is based not on facts, but only on the testimonies of the witnesses representing the interested party, the syndrome of fear has emerged within inmates that certainly, considerably hinder identification of facts of ill-treatment and punishment of offenders.

Establishment No. 1 in Rustavi

On 1 June, 2010, a new building was opened in the Prison and Closed Type Penitentiary Establishment No. 1 in Rustavi⁷. According to the convicts, they had been transferred and placed in this establishment by using physical force however they refrained from publicizing this fact and asked for the confidentiality. The convicts with noticeable injuries were naming different things as a cause for their injuries, such as e.g. falling down from the bed, playing football, etc.

Prison No. 8 in Gldani

The CPT Report mentions, that the inmates in the Prison No. 8 in Gldani and the Medical Establishment for Convicted and Indicted Persons do not confirm ill-treatment; however inmates in other establishments do confirm ill-treatment of inmates in the mentioned establishments. In the prison in Gldani inmates are beaten in punishment cells and showers for knocking on doors, talking loudly, and contacting inmate in another cell. The Committee has not overlooked the unusual silence in the living part of the penitentiary establishment

7. As the reporting period covers 1 January - 1 July, 2010, the old names of establishments are referred to

in Gldani⁸. This apart from raising reasonable doubts somehow confirms the alleged by the inmates.

During the monitoring inmates in different establishments frequently talk to the Special Preventive Group about the inhuman treatment of inmates in the Prison No. 8 in Gldani. However in those cases as well they abstain from publicizing the facts.

Medical Establishment for Convicted and Indicted Persons

During the reporting period convicts, who had been taken to the Medical Establishment often spoke of the facts of ill-treatment, however they always refrained from confirming in writing and publicizing those facts. Many of them had been stating that even in case of need they did not wish to go to the medical establishment any more due to the situation there (See also “Regime”).

Case of Merab Ts

On 23 June, 2010, staff of the Department of Prevention and Monitoring of the Office of Public Defender got clarification from Merab Ts in the Medical Establishment for Convicted and Indicted Persons.

According to him, the representatives of the administration of Medical Establishment for Convicted and Indicted Persons physically abused him on 20 June, 2010.

The convict stated that at around 10:30 on 20 June, 2010, around 4-5 officials of the Medical Establishment for Convicted and Indicted Persons entered the second ward of the surgical unit, stating that the search of the ward should have been undertaken. The patients Merab Ts. and Avto N. were in the second ward of the surgical unit at that moment. Avto N. left the ward and Merab Ts. was remained. According to him, in several minutes after the above mentioned persons entered, the Deputy Director of the Medical Establishment for Convicted and Indicted Persons also entered the ward. The Deputy Director did address him in an irritating manner and hit with his leg the wheelchair in which Merab Ts. set and got him in throat. According to Merab Ts., he was physically abused also by the employees of the same establishment Avto Popiashvili and Giorgi Bitsadze. During the beating the wheelchair turned upside down, the convict lost conscious. According to him, when he became

8. paragraphs 49, 51

conscious after this, Avto Popiashvili verbally abused him, and Avto Popiashvili and Giorgi Bitsadze again physically abused him.

On 23 June, 2010, the accused had following bodily injuries noticeable: the bruise at the upper right part of forehead, three bruises in the form of stripes, above the right eyebrow, hematomas in the area of the right and the left eye-sockets, the scratched wound beneath the right eye-socket, bruises and intumescences on the nose, hematomas on both sides of the throat, hematomas on a side and backside of the upper part of the right and left arms.

On 24 June, 2010, the explanations provided by the convict were submitted for the further reaction to the Investigative Department of the Ministry of Corrections and Legal Assistance.

In the letter of the Office of the Chief Prosecutor of Georgia to the Office of the Public Defender, received on 26 July, 2010, the following is stated: on 14 July, 2010, the investigation commenced into the criminal case #073100343, on the fact of abuse of power by the staff of the Medical Establishment for Convicted and Indicted Persons, observing the signs of the crime envisaged by the paragraph 1 of the Article 333 of the Criminal Code of Georgia.

On 5 July, 2010, the representative of the Department of Prevention and Monitoring of the Office of the Public Defender once again visited the convict Merab Ts. in the Medical Establishment for Convicted and Indicted Persons. Merab Ts. mentioned that after the above-mentioned abuse by the administration of the establishment, his rights were violated again. In particular, he was deprived of the radio set, was not able to use the phone of the establishment, he was deprived of the right of everyday walk, services of dentist, using bath, and according to him no nurse was allowed into his ward; due to this he was not able to use toilet, his ward was not cleaned up and the remaining were not taken away. The convict was linking these to the fact that he had complained about his physical abuse by the staff of the establishment.

On 05 July, 2010, based on the above mentioned, the account provided by Merab Ts. was submitted to the Investigative Department of the Ministry of Corrections and Legal Assistance.

According to the response received, the above-mentioned report was attached to the criminal case. The persons mentioned by Merab Ts. were interrogated as witnesses.

According to the letter, the investigation had not yet established the persons having carried out illegal actions against Merab Ts.

According to the information at our disposal the investigation into this case is ongoing.

General and Strict Regime Penitentiary Establishment No. 8 in Geguti

The Report of the Public Defender of Georgia covering the first half of 2009 mentions the issue of dealing with inmates in the establishment in Geguti as well. The Report mentions that the attitude towards the prisoners is abusive and negligent⁹.

On 26 February, 2010, the majority of inmates in the establishment in Geguti went on hunger strike. As stated by them, on the third day of the hunger strike, on 28 February, representatives of the Penitentiary Department and the establishment visited them. The convicts informed them that there was a systematic inhuman treatment of prisoners in the establishment, in particular, placing the convicts in solitary cells without any ground, and their physical abuse. According to the inmates, the reason for the mass hunger strike was also the death of the convict Giorgi Kvantrishvili placed in the solitary cell of the mentioned establishment. As stated by inmates, G. Kvantrishvili was placed in the solitary cell due to his request to return him to the building N6 of the establishment, where he used to be. His request had not been granted, as a result of which he refused to eat. The prisoners were mentioning that the convict passed away shortly after he was placed in the solitary cell.

Following this discussion, scores of the Special Rapid Response Forces entered the establishment. They searched dormitories of the establishment. Following this they called on several inmates from the register, others were told it was time to eat. According to the inmates, those convicts refusing to eat had to go through the so called “corridor” of the Special Forces, where they were physically abused. Following this around 200 convicts, first of all those who had refused to end the hunger strike were dispersed in different establishments.

Deriving from the above mentioned the envoyes of the Public Defender met and spoke with the inmates transferred from the establishment No. 8 in Geguti to the No. 2 establishment in Kutaisi, No. 2 establishment in Rustavi and No. 6 establishment in Rustavi. In the conversations with the envoyes of the Public Defender they were unanimously confirming

⁹ http://www.ombudsman.ge/uploads/reports/saxalxo_damcvelis_angarishi__2009_I__naxevari.pdf – p.57

the above mentioned fact, however only several of the inmates wished to publicize the facts and to provide written explanations. The majority refrained from providing the written account and requested to keep their stories confidential.

On 19 March, 2010, the Public Defender addressed the Chief Prosecutor of Georgia for reaction over the inhuman treatment of convicts in the establishment in Geguti.

According to the reply received from the Office of the Chief Prosecutor of Georgia, on 28 April, 2010, the Investigative Service of the West Georgia Regional Prosecutor's Office commenced the investigation into the criminal case based on the sub-paragraphs (a), (b), (d), and (e) of the paragraph 2 of the Article 144³ of the Criminal Code of Georgia, on the fact of inhuman and degrading treatment of inmates. According to the reply of 27 July, 2010, the investigative actions were carried out and inmates were interrogated, however no reply was received on the 6 July, 2010 repeated address of the Office of the Public Defender, as to what specific investigative actions were undertaken, and whether anyone was made criminally responsible.

The Recommendation to the Chief Prosecutor of Georgia: To exercise personal control over swift and efficient investigation of the facts of beating and torture of persons detained and otherwise deprived of their liberty and ensure efficient, transparent and timely investigation of such cases.

II. SITUATION IN PENITENTIARY ESTABLISHMENTS

1. Conditions of Imprisonment

According to one of the basic principles of the European Prison Rules “*prison conditions that infringe prisoners’ human rights are not justified by lack of resources.*”

According to the case law of the European Court of Human Rights, apart from the ill-treatment and inhuman treatment, the violation of the Article 3 of the European Convention may also result from the conditions in which a person is kept (e.g. *Dougoz v Greece*, *Dorokhov v Russia*).

In the case of *Aliev v Georgia*¹⁰ the European Court of Human Rights established the violation of Article 3 of the Convention due to the fact that the applicant had to serve sentence in overcrowded and not hygienic cell, without the isolated toilets, and with the iron shutters which were not letting in enough light and air. The same was the conclusion of the Court in the cases of *Ramishvili and Kokhreidze v Georgia*¹¹, *Ghavitadze v Georgia*¹² and *Gorgiladze v Georgia*.¹³

In the case “*Ramishvili and Kokhreidze v Georgia*” the European Court of Human Rights once again reiterated the universal principle, reflected in a number of the Court’s decisions: “[t]he Court reiterates that, under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the person’s health and well-being are adequately secured”.¹⁴

Despite all the above mentioned there are still establishments in the penitentiary system of Georgia where placing and keeping inmates may be equal to inhuman and degrading treatment. These are the Prison No. 1 in Tbilisi, Prison No. 3 in Batumi, Prison No. 4 in Zugdidi and the Establishment No. 9 in Khoni; there were several recommendations in

10. 13 January, 2009

11. 27 January, 2009

12. 3 March, 2009

13. 20 October, 2009

14. para. 79

the Parliamentary Reports of the Public Defender of Georgia to close them down. The old semi-open regime part of the No. 7 establishment in Ksani is also still operational. The conditions there do not correspond to any of the standards.

Due to the insufficient ventilation inmates are in unbearable conditions in summer. Particular attention shall be paid to the situation of the inmates in prisons who have to stay in cells for at least 23 hours. This was also confirmed during the monitoring in the summer of 2010. Conditions in some of the establishments were further deteriorated as the inmates were either forbidden to purchase air fans at all or were not allowed to have more than one ventilator per cell.

On 20 September, 2010, as it was mentioned above, the Report of the Committee against Torture was published. The CPT Delegation visited various types of closed institutions in Georgia: the General, Strict and Prison Regime Penitentiary Establishment No. 7 in Ksani¹⁵, General and Strict Regime Penitentiary Establishment No. 8 in Geguti¹⁶, the Medical Establishment for Convicted and Indicted Persons¹⁷, Prison No. 7 in Tbilisi¹⁸ and Prisons No. 8 Gldani¹⁹.

The Committee positively assessed the obvious improvement of infrastructure of penitentiary establishments however it did note as well that the principle of co-operation with the Committee is not limited to steps taken to facilitate the task of visiting delegations. It also requires that decisive action be taken in response to the Committee's recommendations issued in the past.²⁰ As for the penitentiary establishments the CPT was also concerned that apart from the improvement of the infrastructure little or no progress has been made in other areas.²¹

CPT did especially negatively assess the conditions in the Penitentiary establishment No. 7 in Ksani, and noted, that conditions of detention of prisoners could fairly be described as amounting to inhuman and degrading treatment, and issued an urgent recommendation to improve the mentioned.²²

15. At present Semi-Open and Closed Type Penitentiary Establishment No. 15

16. At present Semi-Open Type Penitentiary Establishment No. 14

17. At present Medical Establishment for Convicted and Indicted Persons No. 18

18. Prison and Closed mixed Type Penitentiary Establishment No. 7

19. Prison and Closed mixed Type Penitentiary Establishment No. 8

20. para. 6

21. *ibid.*

22. para. 7

In addition, despite numerous recommendations issued by the Public Defender, to undertake major repairs in that part of the establishment, only one redecoration was done, and this has not changed the conditions significantly there.

The same may be said about the prison of the same establishment, where the renovation works were only limited to the painting of the walls and floor of cells.

On 01 June, 2010, new building was opened in the General and Strict Regime Establishment No. 1 in Rustavi; however the establishment was opened before the infrastructure was arranged. In particular, the rooms for short-term visits and rooms for meetings with lawyers were not refurbished, due to which at the one hand the convicts' right to defense, and on the other hand the contact with the outside world was limited.

The Establishment No. 8 in Geguti has 5 barrack-type dormitories. There are around 200 to 250 convicts in each of the barracks. In its 2010 Report, the CPT issued a recommendation to transform the barrack type dwelling space in the Establishment No. 8 in Geguti into cells, which is also recommended from the point of view of security.²³

There is a barrack-type system in the General and Strict Regime Penitentiary Establishment No. 10 Tbilisi as well.

The sanitary-hygienic conditions of the cells in the dormitories I, II, III and IV of the General, Strict and Prison Regime Establishment No. 2 in Rustavi is not satisfactory and does require refurbishment. The above mentioned dormitories are provided with artificial lighting, as the size of windows does not ensure access to natural lighting. There is natural ventilation, however it is not sufficient. In some of the cells the water taps are out of order; in others, there are no light bulbs.

The General and Strict Regime Establishment No. 10 in Tbilisi has barrack-type dormitories, needing thorough refurbishment. There is no central heating system there and inmates have to use electric heating appliances.

One of the dormitories of the Educational Establishment for Juveniles has 7 dwelling rooms (for 25-27 places). The Establishment requires interior cosmetic refurbishment. The dormitory has no ventilation system.

23. para. 77

Medical Establishment for Tubercular Convicts is a complex of 3 isolated buildings with 82 wards. One of the blocks was thoroughly renovated, the other two require refurbishment. Their sanitary-hygienic conditions are poor. Heating is provided by means of electric appliances.

The Prison No. 7 in Tbilisi has 25 cells with satisfactory sanitary-hygienic conditions; however there is no electricity supplied to toilets and inmates have to use candles when using the toilets. The windows are small; due to this no sufficient natural ventilation of cells is possible. The central ventilation system is insufficient to ensure proper ventilation of the cells. Deriving from the mentioned, the cells are airless in summer. The cells are lightened by artificial means, as the size of the windows can not ensure adequate access to natural light.

The sanitary-hygienic conditions in the old-regime blocks of the General, Strict and Prison Regime Penitentiary Establishment No. 6 in Rustavi are not satisfactory. In particular, the ventilation is not provided, the walls are damp, the plaster is damaged; very weak light bulbs are used for lighting and the access to natural light is not adequate, the floor is of concrete. Deriving from the above, renovation works need to be carried out.

The General and Strict Regime Establishment No. 3 in Tbilisi is located on the territory of the former Medical Establishment for Convicted and Indicted Persons. The establishment was built in 1952 and refurbished in 1975; the sanitary-hygienic conditions inside are poor. Since the construction of above mentioned institution, only some cosmetic interior renovation has been done only on the ground floor of the establishment, where the offices of the administration and the medical service are located. Based on the above mentioned, the establishment needs major repairs.

Recommendations to the Minister of Corrections and Legal Assistance:

- To immediately undertake the measures required to liquidate the prisons No. 1 in Tbilisi, No. 3 in Batumi, No. 4 in Zugdidi and the establishment No. 9 in Khoni; to liquidate the old part of the half-open regime of Establishment No. 7 in Ksani.
- To refurbish all the above mentioned establishments, that do not comply with the national and international standards.
- To ensure the sufficient natural and artificial ventilation and light as well as heating of the cells in all the penitentiary establishments.

2. The fire in the Ksani Establishment

The Public Defender has not once mentioned that placing inmates in the old half-open regime part of the Ksani establishment was equal to inhuman treatment. The convicts were placed in the so called barracks and tents and were using self-made heating appliances to have some heating. In addition to all this, there was a serious overcrowding, due to which the convicts had to sleep in shifts.

On 06 March, 2010, the fire broke, as a result of which the former dining hall building, which was used as a dormitory, was almost entirely burnt. The tent put up next to this building at the territory of the old club was also burnt down. One convict died and over 1200 were left without a shelter.

A part of the convicts remaining without a shelter were placed in the remaining dormitory (the so called central barrack) and the old tent, where there were 1039 beds, out of which 730 beds were on two floors of the dormitory and 309 beds were in the old tent. By 08 March, 2010, there were over 2000 convicts placed at 1039 beds.

Some convicts were also placed in the buildings of the former club, sports-hall and medical service. There were 66 convicts voluntarily transferred to the prison of the establishment. There were two tents put up at the territory of the stadium where 164 beds were placed.

By 08 March, 2010, there were in total, 1287 beds surviving the fire and 204 new beds shared by over 2700 convicts, in different buildings in the territory of the colony.

The administration of the establishment was doing everything to ease the conditions of the convicts to the maximum degree possible. However, taking into account the fact that even before the fire on 6 March, 2010, the problems of overcrowding, outdated infrastructure and insanitary conditions were serious, the results of the fire turned out to be very heavy.

3. Admission of inmates and their placement

According to the European Prison Rules, “[a]t admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.”²⁴ “Prisoners shall be allowed to keep in their possession a written version of the information they are given.”²⁵

The fact that the list of the rights and obligations of inmates is displayed and instantly renewed if it is damaged, in each cell in the Batumi N3 Prison, shall be welcomed. There are only obligations of the prisoners displayed in the cells of the Prison No. 8 in Gldani. This does once again underline the strict regime conditions in the mentioned establishment. The prisoners are informed in writing in penitentiary establishments, as confirmed by signing under the list of the rights and obligations in their personal files. However, this only carries a formal character, as the prisoners are not able to carry with them the list of their rights and obligations.

According to the European Prison Rules, “[i]n deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain: a. untried prisoners separately from sentenced prisoners”²⁶.

The same principle is embedded in the Article 9(2) of the new Code on Imprisonment.

Despite this, persons in pre-trial detention and convicted persons are placed together in the cells of the prisons No. 8 in Gldani, No. 3 in Zugdidi and No. 4 in Batumi, as well as in the Establishment No. 2 in Kutaisi.

The Recommendations to the Penitentiary Department:

- **The handing over the list of rights and obligations in writing to prisoners on admission to establishment shall be ensured;**
- **Placing of accused and convicted persons separately in penitentiary establishments shall be ensured.**

24. Rule 30.1

25. Rule 30.2

26. Rule 18.8

4. Overcrowding

The problem of overcrowding in the penitentiary system of Georgia remains to be a problem. This is caused by the increasing number of inmates and strict criminal law policy. The Public Defender has approached the respective agencies not once to solve the mentioned problem. From 2004 to 30 June, 2010 the number of inmates increased with 15974. By 30 June, 2010 there were 22628 prisoners/convicts in the penitentiary system of Georgia.

The solution of this problem may not be considered only from the view point of ensuring individual bed for each of the inmate. However, in some of the establishments even this problem is still there. For example, certain number of convicts still has no individual bed in the establishment No. 2 in Rustavi and No. 8 in Geguti, the prisons No. 1 in Tbilisi, No. 3 in Batumi, No. 4 in Zugdidi.

European Committee for the Prevention of Torture has not once issued a recommendation to ensure 4m² of living space per detainee; however the new Code of Imprisonment envisages the same space, as it was stipulated in the "Law of Georgia on Imprisonment"²⁷.

A range of reports of the Public Defender mention that the overcrowding of prisons may not be only dealt with by means of building new establishments. The number of inmates has reached the critical limit throughout the last years; this calls for undertaking other, more global measures. These apart from easing the collective principle of punishment and the criminal law policy also includes more rigorous use of non-custodial measures, advancing and the fully fledged use of the probation system and, decriminalization of some, less dangerous acts for society (e.g. use of drugs, irregular crossing of borders), etc.

Proposal to the Parliament of Georgia:

- **to amend the Criminal Code of Georgia respectively, to replace the current collective principle of punishments with absorption principle of punishments;**
- **to carry out measures for the decriminalization of some crimes less dangerous for society;**
- **to respectively amend the Code on Imprisonment and envisage 4m² per prisoner.**

The Recommendation to the Chief Prosecutor of Georgia: in the process of criminal law policy creation, to give a priority to alternative, less strict sentences for the crimes less dangerous for society.

27. *There shall be a norm of no less than 2m² living space per convicted person in penitentiary establishment, 2,5m² - in prison, 3m² - in the establishment for women, 3,5² - in Educational Establishment for Juveniles, 3m² - in Medical Establishment. 3. The food norms shall be established by a normative act. For pregnant women, mothers breast feeding babies, juveniles, sick.*

5. Re-socialization

According to the Article 39 of the Criminal Code of Georgia, the purpose of the crime is the restoration of justice, prevention of the new crime and re-socialization of an offender.

According to the European Prison Rules, “[a]ll detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty”.²⁸

According to the Standard Minimum Rules for the Treatment of Prisoners, “[t]he treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility”²⁹.

“All appropriate means shall be used, including religious care, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release”³⁰.

Deriving from all the above mentioned, imprisonment shall serve protection of society and isolation of an offender, however at the same time the conditions of imprisonment shall ensure re-socialization and reintegration of a prisoner into a society, and it shall not be oriented on punishment only. It is essential to provide a convicted person with a possibility to receive or deepen the respective education or professional skills, provide possibility to participate in sporting or other events, competitions, have the respective conditions to observe the ongoing processes outside, keep the contact with close people and family members during serving the sentence. All of this is essential for preparing a convicted person to return to society. In the contrary case there is a high probability that an embittered person having forgotten the normal life will not find the place in society even after leaving prison and will again follow a criminal path. Apart from this, all the above mentioned is vital for the normal way of life of a convicted person in penitentiary establishment. Absolute

28. Rule 6

29. Rule 65

30. Rule 66

uningagement and absence of activities damages health of a convicted person, as well as makes the security measures less effective.

When discussing re-socialization, it shall be kept in mind that important elements to achieve this goal apart from cultural, educational and other measures are the professionalism and attitude towards inmates of the officials of penitentiary. The staff must be familiar with the Georgian legislation, as well as international documents, and during work they must be guided by the rules and standards embedded therein.

The Report on the Reform of Penitentiary System is published at the official web-site of the Ministry for Corrections and Legal Assistance of Georgia. The Report mentions that the reform of the penitentiary system in line with the international and European standards is one of the main priorities for the Government of Georgia. The Report also mentions that the reform includes promotion of the programs of re-socialization and reintegration of prisoners, including educational, professional and sporting activities.³¹

It must be welcomed that one of the main priorities of the reform is exactly the re-socialization, however there is still a lot to be done for its implementation.

The rehabilitation of drug addicts is not properly addressed either. According to the information acquired by the Department of Prevention and Monitoring in majority of penitentiary establishments there are no rehabilitation programs at all. These are: the prisons No. 1 in Tbilisi, No. 3 in Batumi, No. 4 in Zugdidi, No. 7 in Tbilisi, the establishments No. 1 and No. 2 in Rustavi, No. 7 in Ksani N7, No. 8 in Geguti, No. 9 in Khoni, No. 10 in Tbilisi, as well as the Medical Establishment for Convicted and Indicted Persons and the Medical Establishment for Tubercular Convicts. The methadone substitution therapy is in place in the prison No. 8 in Gldani, whereas the psycho-social rehabilitation programme "Atlantis" for the convicted persons with alcohol and drug addiction operates in the establishments No. 2 in Kutaisi, No. 6 in Rustavi and No. 5 in Tbilisi.

Recommendation to the Minister of the Corrections and Legal Assistance: to ensure drafting of the Action Plan for the Re-socialization of Convicted Persons in the shortest possible term.

31. <http://www.mcla.gov.ge/content.php?id=9&lang=geo>

Social Service

According to the legislation, in the process of re-socialization of a convicted person essential role shall be undertaken by the Social Service of the Penitentiary Department. According to the Article 13 of the Regulation of the Department³² the Social Service ensures implementation of social rights of prisoners and convicted persons, coordinates and supervises the social adaptation groups, rehabilitation centers, activities of the education service and the professional preparation of convicted persons; ensures awareness raising of convicted persons, and activities supporting the relations of convicted persons with representatives of society; studies conditions of a convicted person and a prisoner, undertakes particular measures for ensuring protection of their rights and freedoms; in case of early release of a convicted person sends the information about the convicted person to the supervising body; plans activities to involve convicts in work and to that end elaborates suggestions for the development of production and advancement of the material basis; organizes and controls the functioning of production sectors; supports the labour rehabilitation of convicts; studies and elaborates the conditions for life and communal conditions, as well as conditions for getting education, the practice of organizing visits, postal communication and phone conversation, receiving packages and parcels, their compliance with the established norms and ensures the respective reaction; for the purpose of experience sharing and further cooperation establishes contacts with international and local, governmental and non-governmental organizations working in the field of human rights protection; participates in drafting of legal acts on the issues within its scope of responsibilities.

Respectively, all the rehabilitation and re-socialization activities, programs and planning for convicts, are the direct competence of the Social Service. Unfortunately, in practice the work of the Social Service is far from the requirements of the legislation.

As regards the social workers working in the establishments, it is impossible to acquire any information on their quantity, terms of reference and any other related information, as according to the Chapter V of the “List of the Issues belonging to State Secret” approved by the Order No. 42 of the President of Georgia, dated 21 January, 1997, this information is a state secret. We consider, that the Order No. 42 of the President of Georgia contradicts the Law of Georgia “On State Secret”, the Article 7 of which clearly indicates what category of the information may belong to the category of state secret.

32. Approved by the Order N60 of the Minister of Corrections and Legal Assistance of Georgia, dated 25 February, 2009. The latter was replaced by the Order N156, which refers to the Social Service in Article 11.

Deriving from all the above mentioned, the Special Preventive Group may not study thoroughly this issue and relies only on the information provided by prisoners/convicts. As a result of this, the role and activities of social workers, apart from several establishments, is unknown to the Special Preventive Group. In some of the establishments inmates do not at all know social workers, in some establishments social workers mainly undertake the regime and security related functions that shall not be allowed and does absolutely contradict the scope of their functions as provided by the Law.

In our opinion, bad functioning of Social Service is also determined by the fact that it is under the Penitentiary Department, where there is a very little space for the full development of social and other specific issues. We consider that as with the medical sphere, which from April, 2009 was taken out of the subordination of the Penitentiary Department and became the responsibility of the Medical Department of the Ministry, there shall be a structural entity established within the Ministry for the supervision of the social issues, which would more thoroughly and with the higher responsibility deal with the functions given to it.

Recommendation to the Government of Georgia: Respective changes and amendments shall be introduced into the Decree No. 8 “on the approval of the Regulation of the Ministry of Corrections and Legal Assistance”, dated 30 January, 2009, to set up a new structural unit within the Ministry - the Social Department.

Education

New Code on Imprisonment does not envisage any more the right to higher education. We consider the mentioned change a step back, as fight against criminality, as already mentioned above, is not limited only to their isolation and punishment. It is essential to provide prisoners with a right to get higher education, if they have potential to exercise this right. The state on its turn shall encourage development of inmates.

According to the Recommendation No. R(89)12 of the Committee of Ministers of Council of Europe to Member States on Education in Prison “*Education for prisoners should be like the education provided for similar age groups in the outside world, and the range of learning opportunities for prisoners should be as wide as possible*” (para. 2). “*Wherever possible, prisoners should be allowed to participate*

in education outside prison” (para. 14). “Where education has to take place within the prison, the outside community should be involved as fully as possible” (para. 15).

A significant step was made for the implementation of the above mentioned standard last year. The Ministers of Penitentiary and Education elaborated a Mutual Concept on Distance Learning for the purpose of ensuring higher education in prison. However, following the entry into force of the Code on Imprisonment, which does not mention higher education any more, the necessity of this Concept is put under a question mark.

The Special Preventive Group is aware, that in August, 2010, due to passing the Unified National Exams three juveniles were released based on the pardoning act of the President of Georgia. However, the fate of other convicts, who had successfully passed the Unified National Exams and remain in prison, is unclear.

Employment of inmates

According to the European Prison Rules, *“Prison authorities shall strive to provide sufficient work of a useful nature”*.³³

*“The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life”*³⁴.

*“In all instances there shall be equitable remuneration of the work of prisoners”*³⁵.

There is a bakery in the General and Strict Regime Penitentiary Establishment No. 10 in Tbilisi. One inmate is employed there. There are 3 convicts employed in the bakery of the General and Strict Regime Establishment No. 8 in Geguti. Each of the 3 convicts gets 250 GEL as a salary. There are 2 convicts employed in the bakery of the prison No. 3 in Batumi. Salary is 250 GEL. There was a tailor’s workshop functioning in the General and Strict Regime Penitentiary Establishment for Women and Juveniles. 30 convicts were employed there; however the tailor’s workshop stopped functioning during the reporting period. There are

33. Rule 26.2

34. Rule 26.7

35. Rule 26.10

2 convicts employed in the bakery in the General, Strict and Prison Regime Penitentiary Establishment No. 2 in Rustavi. There are 4 convicts employed in the bakery in the General and Strict Regime Establishment No. 1 in Rustavi. There are 2 convicts employed in the bakery in the General, Strict and Prison Regime Establishment No. 6 in Rustavi. There are 6 convicts employed in the bakery in the General and Strict Regime Establishment No. 3 in Tbilisi.

Therefore, according to the data of the first half of 2010, only 20 prisoners out of approximately 23 thousand in the penitentiary establishments have remunerated employment.

It must be mentioned that the full-fledged realization of the employment of convicts is directly linked with attracting and raising the interest of private business. Deriving from the mentioned, in the 2009 Reports the Public Defender suggested to the Parliament of Georgia to introduce changes into the Tax Code of Georgia with a view of granting tax benefits to entrepreneurs who provide inmates with employment opportunities. We consider that the similar benefits shall be applied to the companies employing probationers.

Suggestion to the Parliament of Georgia: to introduce the respective changes and amendments into the Tax Code of Georgia, establishing tax benefits for entrepreneurs who provide convicts or probationers with employment opportunities.

Recommendation to the Minister of Corrections and Legal Assistance: to elaborate the action plan for the employment of convicts.

Contact with the outside world

Visit

According to the Georgian legislation, prisoners have no right to have long-term visits, they can meet members of family in a room in which prisoners and visitors are separated by a Plexiglas screen and communicate via phone.

The Public Defender had issued several recommendations to improve this bad practice. However, even in the new Code on Imprisonment long-term visits are envisaged only for juveniles, and even that only from 2012.

Exercise of the right to one hour visit as provided by law is problematic in almost all the penitentiary establishments. However this problem is especially challenging in the Prison No. 4 in Zugdidi. In accordance with prisoners' statements, a visit lasts for only 20-25 minutes in the Prison No. 4 in Zugdidi. This is caused both by the lack of infrastructure, as well as negligible attitude of the administration to this issue.

CPT did particularly underline the necessity for prisoners to keep normal relations with members of family. The most important means of this considered by CPT is the reintroduction of long-term visits. CPT addressed the authorities of Georgia with the recommendation to amend the legislation respectively.³⁶ As for the short-term visits, the Report of the Committee indicates, that they shall be held in a room in which prisoners and visitors are separated by a Plexiglas screen and where all the physical contact is excluded, shall be used only in individual cases, based on well-founded and reasoned decisions³⁷. **Open visiting arrangements should be the rule and closed ones the exception, based on well-founded and reasoned decisions following individual assessment of the potential risk posed by a particular prisoner or visitor.**

The Committee of Ministers of Council of Europe recommends states that consideration should be given to the possibility of allowing inmates to meet with their sexual partner without visual supervision during the visit.³⁸

According to the European Prison Rules *"[t]he arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible"*³⁹. *"Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so"*⁴⁰.

The interviews with the prisoners showed that one of the major problems for them was the absence of the visits with contact with their close ones and impossibility to have long-term visits.

36. para. 109

37. para. 110

38. Recommendation No. R (98) 7 of the Committee of Ministers to Member States Concerning the Ethical and Organizational Aspects of Health Care in Prison, para. 68

39. Rule 24.4

40. Rule 24.5

Deriving from the above mentioned, in his 2009 Parliamentary Report the Public Defender suggested to the Parliament of Georgia to introduce amendments to the Law of Georgia “On Imprisonment” to guarantee the right of all convicts to long-term visits.

At the same time, the Public Defender recommended the Minister of Corrections and Legal Assistance of Georgia to ensure the provision of respective infrastructure for long-term meetings in the new penitentiary establishments.

The change introduced into the new Code on Imprisonment, which envisages the possibility for long-term visits for juveniles shall be positively assessed. This is certainly a step forward, which shall contribute to the re-socialization of juvenile offenders. However, this change, according to the Transitional Provisions of the Code on Imprisonment, shall enter into force only on 01 January, 2012.

Building of rooms for long-term visits started in three penitentiary establishments, however there has not been any change introduced into the legislation and there is no discussion of future changes ongoing either.

A suggestion to the Parliament of Georgia: to introduce respective changes and amendments into Code on Imprisonment, that shall ensure the right of all categories of convicts to long-term visits.

Recommendation to the Penitentiary Department: to ensure the full realization of the right of inmates to visits in all the establishments in compliance with the European standards.

Phone conversations

According to convicts, the charge for using phone is quite high - 40-50 tetri per minute. Deriving from the above, there was a letter sent from the Office of the Public Defender of Georgia to the Chairman of the National Communication Commission of Georgia, wherein we requested the information as to whether the discriminatory tariffs are used in the penitentiary establishments.

According to the reply received, the tariffication of the phone service provided to convicts is exercised from the very first minute with the method of fixing each second. As for the phone conversation in Rustavi - it costs 0.04, in Georgia - 0.15; Tbilisi - 0.10; mobile operators - 0.29 and outside Georgia - 0.50 GEL.

This issue requires further study and checking of tariffs.

According to the Law of Georgia “On Imprisonment” a convict has a right to have access to phone conversations. According to the new Code on Imprisonment, in half-open penitentiary establishment a convict has a right to have 3 phone conversations a month on convict’s own expense. Each of the phone conversation shall last no longer than 15 minutes. In the closed penitentiary establishments a convict has a right to have 2 phone conversations on own expense in a month, each one not exceeding 15 minutes.

New phone cards provide convicts with the possibility to call only one number for 15 minutes. The card is blocked after the very first dialing despite the length of the call. A convict is made to purchase another card, to make several calls, that is related to respective expenses.

CPT welcomed the dispositions of the new Code on Imprisonment regarding the relation of remand prisoners with the outside world, according to which the right to visits and phone communication will be a rule, a right which may be restricted only in exceptional cases.⁴¹ Unfortunately, this disposition shall only enter into force from 2014.

The Committee also mentioned that in the establishments visited prisoners could make only one call a month due to the shortage of phones. At the same time they had no access to phone calls abroad.⁴²

As a result of monitoring conducted, there are establishments identified where there is either no possibility to have phone conversation (e.g. the prison No. 3 in Batumi, where as a reason for disfunctioning of the phone for the last years are sometimes named rains, sometimes stealing the telephone cables) or is exercised once a month (the prison No. 4 in Zugdidi).

Recommendation to the Penitentiary Department:

- **to ensure full realization of a right of each prisoner to phone conversations, including taking into consideration the interests of persons whose close persons are not in Georgia;**
- **to ensure production of such phone cards that will not be for single use.**

41. para. 108

42. para. 111

Access to press, TV and radio

Several Reports of the Public Defender refer to absence of TV sets in closed establishments (except for the Ksani establishment). Absence of TV set is particularly unacceptable when prisoners spend 23 hours a day in a cell and are not at all occupied with any activity. Public Defender anticipates that the entering into force of the new Code on Imprisonment, which in general authorizes having TV set, will improve the situation.

In the establishment No. 6 in Rustavi majority of convicts serve sentence for years. Despite the title of the establishment, the establishment is of closed type and convicts have only 1 hour walk a day. The similar is the situation in the establishment No. 2 in Kutaisi. The prisoners in the prison No. 8 in Gldani and the Medical Establishment for Convicted and Indicted Persons have no right to have TV set either. The convicts in the prison No. 7 in Tbilisi watch recorded DVD instead of TV programs.

CPT did mention that the prisoners in the prison No. 8 in Gldani have no TV sets and to improve this, the Committee invited the Georgian authorities to allow inmates at Prison No. 8 in Gldani to have TV sets in their cells⁴³.

According to the European Prison Rules, “[p]risoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case”⁴⁴.

Recommendation to the Ministry of Corrections and Legal Assistance: to ensure the right to have TV sets in all the penitentiary establishments.

Press

As a rule, printed media is provided to prisoners with parcels or can also be purchased in the shops of the establishments. As an exception it shall be noted that there are no newspapers sold in the shop of the establishment No. 2 in Kutaisi and it is not allowed to receive them with parcels either.

Recommendation to the Penitentiary Department: to ensure access to the print media in all the penitentiary establishments.

43. para. 82

44. Rule 24.10

Prisoners' correspondence

Prisoners have a possibility to have written communication with the family members, however in the establishments, where phones are available on a regular basis, prisoners rarely use this right or do not use it at all.

CPT requested to receive the comments of the Georgia authorities as to why is it that prisoners were charged 84 GEL for the postage of a letter to the European Court of Human Rights.⁴⁵

Applications and complaints

Complaints boxes are present at all the penitentiary establishments, however, alike the previous year, in some of the establishments the problem of sending complaints to their addressees is a remaining problem.

According to the Article 36(2) of the Law of Georgia "On Imprisonment", "*Administration of the penitentiary establishment is not allowed to delay or check the application of a convict sent to court, department, defense lawyer or a prosecutor*". The same principle is introduced in the Code on Imprisonment as well⁴⁶.

The Parliamentary Report of the Public Defender has several times mentioned the violations of a right to correspondence of prisoners however there are still establishments, from where it is almost impossible to send complaints. In particular, these are the prisons No. 4 in Zugdidi and No. 8 in Gldani, the establishments No. 2 in Kutaisi, No. 8 in Geguti, No. 9 in Khoni, the Medical Establishment for Convicted and Indicted Persons and the Medical establishment for tubercular convicts.

Recommendation to the Penitentiary Department: to ensure the exercise of the right of prisoners provided by Law and timely sending of their complaints and other type of correspondence to addressees.

45. para. 112

46. para. 6 of the Article 16

6. Regime

According to the Article 24 of the Law of Georgia “On Imprisonment”, *“the regime of life of convicts in penitentiary establishment shall facilitate the improvement of convicted persons in detention”*.

According to the same Law, three types of regime existed: general, strict and prison. Different establishments had different practices in relation to each of the regimes. For example, in the new building of the Establishment No. 7 in settlement Ksani there is a regime, according which a convict which has come down to courtyard in the morning may not go back to cell before lunch, as the door of the building is shut and they are made to stay out for 3-4 hours, irrespective of weather; as for convicts who could not make it on time to get out of the building, they are forced to stay in a cell for the time period.

The regime in the establishment No. 1 in Rustavi is of the same type however the only difference is that they receive food in cells.

There is a totally unclear regime in the Medical Establishment for Convicted and Indicted Persons. The convicts happen to be at the open air for maximum 1-2 hours. This is even when being outdoors may be determinant for their health conditions. During any movement at the territory of the establishment the administration forces the prisoners to have hands at the back even when the physical condition of a prisoner does not allow this. In case of not obeying a prisoner is denied of walk and some of the rights are restricted, such as access to phone. Often prisoners try to avoid walk, as any movement may be a source of a conflict with the staff. To get clarifications over this issue, we applied to the administration of the establishment, which denied the existence of this practice, however the prisoners do unanimously confirm such a practice. There are unclear restrictions for using shop, for example prisoners are not allowed to purchase coffee, tea and a tea-urn. The administration considers purchasing of these items as a violation of the regime requirements. We consider such restrictions in the Medical establishment inadmissible, as the regime requirements shall not be detrimental to a patient.

In the Parliamentary Report for the First half of 2009 the Public Defender of Georgia mentioned that due to the special regime for eating convicts were allowed to stay out-of-cell for only several hours that was not at all compliant with their regime. The same is mentioned in the 2010 Report of the CPT as well. To improve the mentioned the CPT

issued a recommendation and requested to review the eating arrangements with a view to ensuring that they do not impact unduly on prisoners' out-of-cell time.⁴⁷

According to the European Prison Rules, “[t]he regime provided for all prisoners shall offer a balanced programme of activities”⁴⁸.

“The regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction”⁴⁹. “The regime shall also provide for the welfare needs of prisoners”⁵⁰.

Recommendation to the Penitentiary Department: To elaborate the unified form of the daily schedule which will not establish more limitations than provided by law and apart from ensuring the security and order will be oriented at ensuring the normal living conditions for prisoners.

7. Discipline and punishment

According to the European Prison Rules, “disciplinary procedures shall be mechanisms of last resort”⁵¹.

“Prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners”⁵².

“Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence”⁵³.

A prisoner must be immediately informed in an understandable language about the misdemeanor that has caused his punishment, as well as the imposed punishment and shall have a right to express the position and a possibility to appeal against the disciplinary measure.

47. para. 77

48. Rule 25.1

49. Rule 25.2

50. Rule 25.3

51. Rule 56.1

52. Rule 56.2

53. Rule 57.1

The CPT mentioned that the disciplinary punishment is used differently in different establishments. The CPT recommended to introduce the unified rules. The Committee also considers that the situation be reviewed in the establishment No. 8 in Geguti, where the disciplinary cells are used very frequently.⁵⁴

In the process of monitoring during the reporting period majority of persons placed in the punishment cells in the establishments No. 14 in Geguti and No. 7 in settlement-Ksani did not know for which misdemeanor and for how long were they punished. There are frequent cases, when a convict for reasons and duration not known to him is moved from open type establishment to a closed type establishment.

Recommendation to the Penitentiary Department:

- **to elaborate unified rules for disciplinary misdemeanors and disciplinary sanctions;**
- **during imposition of disciplinary sanctions to ensure informing a prisoner of the misdemeanor attributed in an understandable language, as well as about the type and the length of the disciplinary sanction;**
- **to ensure provision of information to convicts about the rules and procedures on lodging an appeal against disciplinary punishment, as prescribed by law.**

8. Legislative changes

On 01 October, 2010, the new Code on Imprisonment entered into force. This shall be welcomed. At the same time, the Code introduced several important novelties, e.g. the law directly states that a convict shall serve sentence in an establishment located close to own or close relative's residence. Some restrictions, which were a rule in the "Law on Imprisonment", is provided as an exception in the Code (e.g. a right to have a TV set). Despite this we consider that the Code on Imprisonment in some instances does not comply with the European standards and some of the provisions even deteriorate conditions of prisoners..

1. Paragraph 1(b) of the Article 14 of the Code grants a convict a right to receive only general and professional education; the paragraph 1 of the Article 113 of the Code also refers to the same issue. We consider that it is important to grant

54. para. 114

convicts a right to receive higher education as well, even if this right would be with a reservation. Apart from this, to ensure getting higher education, the Ministers of Corrections and Education elaborated the Mutual Concept on Distance Learning, the need of which shall be put under a question mark, if convicts will have no possibility to receive higher education any more.

2. According to the paragraph 6 of the Article 16: *“the administration is forbidden from delaying or checking an application or a complaint sent by a charged/convict to the President, Chairman of the Parliament, member of the Parliament, a court, European Court of Human Rights, international organization, which is established based on an international treaty ratified by Georgia, Ministry, Department, Public Defender, defense lawyer, prosecutor.”* It is unacceptable to ban only checking and delaying applications and complaints, as the similar protection shall be extended to any other type of documentation, that are sent to the above mentioned bodies by the persons deprived of their liberty. This may be explanation, a letter, etc.
3. According to paragraph 2 of the Article 17 an accused/convict, based on written request, may be granted a right to a short-term visit. The list of persons, with whom a person deprived of liberty has a right to meet, is expanded, that shall be welcome, however it is important to include into the list friends as well, as envisaged by the UN Standard Minimum Rules for the Treatment of Prisoners: *“Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”*⁵⁵
4. Paragraph 3 of the Article 17 envisages that supervision during visit shall be undertaken without prejudice to honor and dignity of an accused/convict. We consider, that the obligation to respect private life of an accused/convict and their contact persons must also be mentioned therein.
5. The paragraph 1 of the Article 19 prohibits phone conversations between accused/convicts. We do not consider this unconditional prohibition appropriate. There shall be a right to a phone conversation with close relatives, as listed in the Code, in case they serve sentence in another penitentiary establishment. The legislator may define the restrictions to the exercise of this right (e.g. interests of investigation, security). Respectively, each such restriction shall be duly justified by the administration of the establishment deriving from the case.
6. According to the paragraph 2 of the Article 20, with the permission obtained from the administration of the establishment of imprisonment/deprivation of liberty, in line with the restrictions based on the type of an establishment, a group of accused/convicts may have a personal radio set and TV set, if their usage does not violate the internal regulation of the establishment and peace of other accused/

55. Rule 37

convicts. They may purchase the mentioned equipment on their own expense or receive them from close relatives. The right to have a personal TV set and radio set must be granted. The administration shall have a right to limit the exercise of this right by persons deprived of their liberty in duly justified specific cases (e.g. if in a 6 bed cell each of the 6 convicts will desire to have a personal TV set).

7. The minimum frequency of changing the bed linen shall also be added into the paragraph 3 of the Article 22 of the Code, which provides for the obligation of the administration to ensure provision of linen to convicts and cleanness.
8. In the paragraph 4 of the Article 23, according to which some of the vulnerable groups shall have eating arrangements corresponding to their health conditions, it is important to specifically provide that for the persons, provision of specific food for whom is not regulated by the health legislation (e.g. juveniles, women), the eating arrangements shall be regulated by the by-law issued by the Minister of Corrections and Legal Assistance.
9. In the paragraph 6 of the Article 23, which refers to a right to receive additional food, it would be better to change the wording *“with the permission of the Chairman of the Department”* which is very generic and may even acquire discriminatory character in practice, with the wording *“in cases as established by the order of the Chairman of the Department”*. Such cases may be illness, allergy, absence of means, etc.
10. According to the paragraph one of the Article 24: *“In case of a justified request accused/convict has a possibility to invite on own expense a personal doctor with the permission of Chairman of the Department.”* The right to invite a personal doctor does directly derive from the right to choose a doctor, which is an individual right of a patient⁵⁶ and restriction of which is not allowed by the legislation. Accordingly, this right shall exist in relation with prisoners, even without permission by Chairman of the Department. Denying a person deprived of liberty to exercise this right may be possible only deriving from exceptional circumstances (e.g. abuse of right). In any case, the decision shall be made by the medical personal of the prison.⁵⁷ Following such a decision a doctor shall be obliged to apply to the administration of the establishment with the request to allow the doctor requested by the convict into the establishment. Any limitation of this right shall be individually justified.

56. According to Chapter V of the European Charter of Patients' Rights, *“Each individual has the right to freely choose from among different treatment procedures and providers on the basis of adequate information”*.

According to para. 17 of the Recommendation No R (98) 7 of the Committee of Ministers of Council of Europe concerning the ethical and organisational aspects of health care in prison”...Sentenced prisoners may seek a second medical opinion and the prison doctor should give this proposition sympathetic consideration.”

57. *The third sentence of the para. 17 of the same recommendation:* However, any decision as to the merits of this request is ultimately his responsibility.

11. Paragraph 2 of the Article 27 envisages conditions for exercising the right to leave the establishment for a short period. We consider that these criteria must not be identical to the conditions for the early conditional release - the right to leave the establishment for short term must not turn into an alternative to early conditional release.
12. Paragraph 5 of the Article 27 mentions that in exceptional circumstances Chairman of the Department may grant a convict a right to leave the establishment for short term even if the criteria are not met. In this case it must be precisely stated, what is considered to be those exceptional circumstances, when a Chairman of the Department may, without respecting terms, grant a convict a right to leave the establishment for short term.
13. The form of notification in case of admitting an accused in the establishment shall be specified (written or verbal) in the Article 34. The same observation shall be extended to paragraph 2 of the Article 76 as well.
14. Paragraph 3 of the Article 46 determines that in case of overcrowding a convict may be placed in an establishment remote from own or close relative's residence. We consider that in the wording of the Article it is better to change the word "overcrowding" with the term "the limit is reached". The same observation shall be extended to the paragraph one of the Article 51.
15. Paragraph 2 of the Article 34 and paragraph 4 of the Article 47 oblige the administration of establishment to send a notification about the admission of a convict. In the first instance it is mentioned that addressees of the notification shall be close relatives and the court that made a decision about conviction, whereas in the second instance the court is not mentioned any more. Therefore, these two dispositions regulate the same situation - first admission of a convict in a penitentiary establishment - differently. Article 51 regulating the transfer of a convict, does not contain an obligation of notifying respectively. This is especially important, as convicts and their family members often express dissatisfaction for not sending such notification.
16. According to the paragraph 2 of the Article 42, the Council without an oral hearing, based on the criteria determined by the Minister, establishes to allow the application for early conditional release to the oral hearing or not. The Order No. 151 of the Minister of Corrections and Legal Assistance, dated 28 October, 2010, establishes criteria, based on which preliminary assessment (without oral hearing) shall be undertaken. These criteria - the gravity of a crime, behavior of a person, the personality of a convict, family conditions (which, according to the Order, includes the attitude of a convict towards the family members), and previous convictions - do themselves represent the conditions for early conditional release. Respectively,

if their initial assessment is made without oral hearing, and even more, as a result of such assessment the case will not be considered orally any more, practically the presence of a convict and/or the defense lawyer on the oral hearing is devoid of any meaning. It would be better to consider such subjective issues, as the personality of a convict or his/her attitude towards the family members only during oral hearing, in the absence of a convict. Deriving from the above mentioned, we consider that the very elaboration of the criteria in an explicit manner and the introduction of the evaluation system is certainly a step forward, however only in those cases, if the assessment is made after the oral hearing. In the contrary case the assessment will be formal and will not fully reflect the real situation of a convict.

17. The term *“dangerous repeated commission of offence (recidiv)”* shall be taken out from the paragraph 2 of the Article 48 to make the provision in line with the Criminal Code.
18. According to the paragraph 1(d) of the Article 50, the victims of trafficking in persons (143¹) and trafficking in minors (143²) shall be placed in a penitentiary establishment separately. The purpose of this disposition is not clear.
19. The wording of the Article 54, which allows audio-video control, *“for the purpose of receiving the necessary information about the behavior of accused/convicts”*, is very general and grants excess discretion to the administration. Each instance of employing such control shall require respective and individual justification, and the obligation for such justification shall be reflected in the Law.
20. According to the paragraph 2 of the Article 57, director of the establishment makes a decision over the use of handcuffs or a sedative gown and notifies a medical worker. This disposition contradicts the Rule 33 of the UN Standard Minimum Rules for the Treatment of Prisoners, *“the director shall at once consult the medical officer and report to the higher administrative authority.”*
21. Paragraph 3 of the Article 60 must establish the general criteria according to which Chairman of the Department shall be guided when permitting to let audio-video equipment in.
22. Paragraph 4 of the Article 61 must determine the maximum duration of the transfer to the closed type establishment in case of the violation of the internal regulation, as well as the conditions for return to the half-open penitentiary establishment.
23. Paragraph 2 of the Article 76 determines the sending of a notification about a transfer of an accused. We consider that the forms of the notification and the respective documentation shall also be specified.
24. The wording of the paragraph 3 of the Article 95 shall be as follows: *“the request shall be registered immediately in the chancellery of the establishment, and the registration number shall be provided to an accused/convict.”*

25. According to the paragraph one of the Article 97, a convict shall be informed of his/her rights upon entering a penitentiary establishment. This shall include the right to a complaint and right to appeal. It is desirable to have established by the law that a person deprived of liberty shall confirm in writing the fact of being informed (by signing the respective form).
26. The wording of the paragraph one of the Article 98 shall be reformulated, as the existing version creates the impression that a person deprived of liberty has a right to apply to the Special Preventive Group only because of the actions of a director. This does contradict the Organic Law "On the Public Defender of Georgia".
27. The wording of the paragraph 2 of the Article 105 shall be changed as follows:
"The director of the establishment or the person authorized by the director and the National Preventive Group shall be notified about the complaints related to torture, inhuman and degrading treatment within 24 hours."

III. TEMPORARY DETENTION ISOLATORS UNDER THE MAIN DIVISION OF HUMAN RIGHTS PROTECTION AND MONITORING OF THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

During the reporting period the staff of the Department of Prevention and Monitoring of the Office of the Public Defender of Georgia undertook 43 planned and 25 *ad hoc* visits to temporary detention isolators.

During the monitoring of temporary detention isolators the Special Prevention Group was guided by the standards provided by the European Prison Rules⁵⁸ and the standards established in the recommendations issued by the European Committee against Torture (CPT) to Georgia.

As a positive note, it shall be mentioned that the Monitoring Team had no impediments when entering any of the temporary detention isolators. The administration fully cooperated with the Monitoring Group.

It shall also be positively noted, that during the reporting period the Order No. 108 of the Minister of Internal Affairs was issued on 10 February, 2010. The Order “On the approval of the additional instruction regulating activities of temporary detention isolators of the Ministry of Internal Affairs, and complementing the typical regulation and internal rules of isolators” is the guiding document for the administration of temporary detention isolators. The very fact of explicitly setting up the rules of functioning of isolators shall be welcome. However, some of the dispositions of the above mentioned order are not compliant with the European standards.

The members of the Monitoring Team checked on spot the registers for the persons in the temporary detention isolators and the registers for the primary healthcare. When examining the documentation, as well as during the interviews with detainees, special attention was paid to the treatment of detainees, the use of excessive force by police during detention, attitude of the officials of temporary detention isolators towards detainees. The infrastructure, including cells, investigative rooms, inventory, conditions for keeping

58. Recommendation Rec(2006)2 of the Committee of Ministers to member states adopted on 11 January 2006

food was examined. Frequency of provision of food, taking shower, staying out-of-cell was established by interviewing administration and detainees/prisoners.

1. Treatment

It shall be positively noted, that during the recent years the Monitoring Team has not identified any instance of inflicting injuries after placing a person in temporary detention isolators. However, in some instances time was recorded in the registers for admission into isolators as if injuries were inflicted after a person had been placed in the isolator. Very often a person is placed in temporary detention isolator with different injuries. There is an inappropriate practice established in all temporary detention isolators, according to which if a detainee does not claim anything against law enforcement bodies, the Prosecution Service is not notified of the injuries.

If a detainee complains, administrations of all the temporary detention isolators, as a rule, notify the supervising prosecutor, however even in this case the reaction is of quite formal nature. Often there is no forensic medical examination of an injured person undertaken.

For the prevention of torture the comprehensive and competent recording is essential. There were problems identified in all the temporary detention isolators in this regard - the records are made not competently, in particular, the injuries are indicated in a way that their type and location is not clear, some times their origin is not indicated, neither is recorded the detainee's comment.

CPT, in its Report to the Government of Georgia following its visit on 5-15 February, 2010, negatively assessed the improper practice of recording the external visual examination during the placing of a person in a temporary detention isolator. The issue was also not once addressed in the reports of the Public Defender. In particular, except for the Tbilisi N1 and N2 temporary detention isolators, the external visual examination is carried out by an officer on duty, who also has an access to all the medical records. Therefore, there is no protection of confidentiality of the medical information provided. Apart from this, the Committee notes, that the presence of an officer during the conversation with a doctor, will hamper an injured person to openly disclose the reason for injuries. The CPT recommends to have only doctor conducting visual examination and also to protect the confidentiality of the medical records. If a person has injuries and points out at ill treatment, the forensic

medical examination shall be undertaken by an independent doctor immediately, who at the same time shall assess the correspondence of the statement of a person with the nature of injuries.⁵⁹

CPT notes, that in the isolators which do not have a doctor on the ground, the emergency medical service is called in. Public Defender appreciates the fact that in case of a request by a detainee the administration of a temporary detention isolator always calls emergency medical service, however as observed by the Special Preventive Group, the statistics of following the recommendations issued by the doctors of the emergency medical service is far more discouraging - often, the recommendations of a doctor to consult hospitals or some specialists is not followed (details see below, "6. Medical Aid").

The Report also mentions that there is no psychiatric care accessible in temporary detention isolators. Psychiatric care is necessary for persons with psychiatric disorders, as well as persons abusing alcohol or drug. Detention of such persons for up to 72 hours is very likely to develop significant clinical problems. As stated by the Committee the staff of isolators do not have sufficient awareness about this problem. The CPT recommends that steps be taken to ensure that appropriate medical intervention, including access to specialist care, is always sought in such circumstances.⁶⁰ When talking with the Monitoring Team, administration of some of the temporary detention isolators expresses dissatisfaction due to the fact that they do not have corresponding conditions and means for drug edicts or persons with psychiatric problems, and this causes many problems during the work.

The Committee against Torture pays particular attention to protection by police of the three rights of detainees: the right of detainees to inform the third party of their choice (family member, friend, consulate) about the fact of their detention, a right to have a defense lawyer, and a right to request medical examination by a doctor of their choice (in addition, any medical examination by a doctor brought by the Police). According to the Committee against Torture, these are the three main means for the protection of detainees from ill treatment, used during the initial stage of detention, despite the fact, how this stage is reflected in any legal system (detention, deprivation of liberty, etc.).

As for the right to notification, the Prevention Team has often met detainees mentioning that they had not been provided a possibility to get in touch with the family members. The Committee positively assessed the fact that the legislation envisages a right of a detained person to notify family members about the detention; however it notes that this right is

59. para. 23

60. para. 28

not sufficiently realized in practice. The Public Defender considers that the inappropriate practice is a result of the very gap in the legislation, which even though mentions the right to notify, but does not make it clear, at what stage and by whom shall this be done.

Suggestion to the Parliament of Georgia: to make clear the rules and procedures of the phone notification during the detention.

Recommendation to the Ministry of Internal Affairs of Georgia:

- to introduce the unified system of recording injuries;
- to ensure trainings for the staff of temporary detention isolators in the field of due documentation of injuries;
- to have staff of temporary detention isolators informing a prosecutor in all cases when a person is injured during the detention or after the detention;
- to ensure adding a medical staff in all the temporary detention isolators;
- to have visual examination carried during placing a person in the temporary detention isolators by medical staff; to protect the confidentiality of the medical records;
- to ensure regular follow-up to recommendations issued by doctors of emergency medical service;
- to ensure due medical aid and supervision of drug addict detainees and detainees with psychological problems.

Recommendation to the Office of the Chief Prosecutor of Georgia: to ensure efficient and timely investigation related to the injuries inflicted during or after the detention. To have mandatory forensic medical examination ordered timely on each fact.

2. Living Conditions

The Public Defender issued a recommendation in the 2009 Parliamentary Report, to envisage 4m² space for each detainee, as recommended by the Committee against Torture⁶¹, however so far with the exception of some of the cells of the Marneuli, Ambrolauri, Tbilisi

61. These are the cells for 2 or more persons. The standard for cells for one person is 7 m², however the functioning of solitary cells is not recommended by CPT, apart from the cases when a cell is used for sleeping only, whereas a person deprived of liberty spends the rest of the day out of the cell and has a possibility to contact others.

N1 and Batumi temporary detention isolators, the space allocated for each detainee does not comply with the 4m² standard.,

Despite the fact that temporary detention isolators are renovated and the new ones start functioning, the temporary detention isolators recommendation to liquidate which had been issued by the Public Defender, still function. These are the temporary detention isolators in Gori, Samtredia, Tsageri and Khashuri.

Bed linen is not provided to detainees/prisoners in any of the isolators. They are only provided with blankets. As said by the administration, the blankets are washed once a month at best. Respectively, there is a risk of spreading various diseases and parasites emerging. The exception is the temporary detention isolator in Chokhatauri, where the administration ensures provision of clean blankets to detainees.

According to the Article 4 of the N108 order of the Minister of Internal Affairs of Georgia, 1. *The sanitary-hygienic and general conditions in the isolator shall ensure dignified existence of a person, respect of his/her honor and dignity, personal integrity, possibility of protecting the own interests.*

According to the Rule 19.4 of the European Prison Rules, adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

Despite the fact, that the N108 Order of the Minister of Internal Affairs of Georgia does not clearly state the possibility for detainees/prisoners to take shower, paragraph one of the Article 4 of the Order states the conditions, which shall be provided in temporary detention isolator.

It shall be noted, that some of the temporary detention isolators do not have showers (temporary detention isolators in Marneuli, Bolnisi, Dusheti, Kazbegi, Gori, Khashuri, Akhalkalaki, Borjomi, Zestaphoni and Samtredia) or despite having showers, prisoners are not able to use it (e.g. temporary detention isolators N2 in Tbilisi, in Gardabani and Regional temporary detention isolator in Kakheti).

Some of the temporary detention isolators have no heating means that places detainees/prisoners in inhuman conditions. These are the temporary detention isolators in Marneuli,

Bolnisi, Kvareli, Gori, Khashuri, Akhalkalaki, Akhaltsikhe, Borjomi, Terjola, Chiatura, Baghdati, Samtredia, Ambrolauri, Mestia, Tsageri, Lanchkhuti and the Imereti, Racha-Lechkhumi and Kvemo SvaneTi Regional temporary detention isolators.

There is no sufficient light and ventilation in the majority of temporary detention isolators, some of them have no windows or they are so small that do not provide for natural ventilation and light.

According to the European Prison Rules, “[e]very prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness”⁶².

Despite the recommendation by the Public Defender, some of the temporary detention isolators use wooden boards instead of beds.

According to the European Prison Rules, “the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system”⁶³; “artificial light shall satisfy recognised technical standards”⁶⁴.

In the majority of temporary detention isolators toilets are in cells and they are not isolated. This is true for the newly renovated isolators as well, such as e.g. Ambrolauri temporary detention isolator. According to the Article 19.3 of the European Prison Rules, “[p]risoners shall have ready access to sanitary facilities that are hygienic and respect privacy.”⁶⁵

Recommendations to the Ministry of Internal Affairs of Georgia:

to ensure 4m² space for each of the detainee;

to abolish wooden boards in all temporary detention isolators and provide all the detainees with an individual bed;

to provide each detainee/prisoner with clean bed linen, which shall be changed with the appropriate frequency for the administrative detainees;

to provide for detainees for over 24 hours taking shower with the proper frequency;

62. Rule 21

63. Rule 18.2 „a”.

64. Rule 18.2 „b”

65. Recommendation Rec(2006)2 of the Committee of Ministers to member states adopted on 11 January 2006

**to install the central heating in the cells of all temporary detention isolators, as well as to ensure the appropriate lighting and ventilation of cells, including by natural means. To liquidate the isolators, where it is impossible to introduce the appropriate conditions due to the characteristics of the infrastructure;
to isolate toilets in all the temporary detention isolators.**

3. Staying at the fresh air

According to the Article 9 of the Order N108 of the Minister of Internal Affairs of Georgia, *“the walk shall be organized only for those persons detained administratively, who shall serve no less than 15 days of administrative imprisonment, as an administrative punishment”.*

“Walk shall be organized during the day-time, from 10:00 to 18:00, according to the schedule elaborated by the Chief of the isolator. The duration of the walk shall be an hour”.

“In the isolator, which does not have a special walking yard, the walk shall be organized at the administrative building of the body of the internal affairs of Georgia or the territory adjacent to it, as a rule without accompanying guard or other employees of the Ministry of Internal Affairs of Georgia. During the walk at that territory, there shall be a visual supervision over the detained person sustained. Before the walk the Chief of the isolator warns a detained person in writing, that in case of escape he/she shall be subject to criminal liability. None of the staff of the body of the internal affairs of Georgia shall not be in any way liable in case of the incident as mentioned above”.

The Rule 27.1 - Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits⁶⁶.

CPT addressed the Government of Georgia with a recommendation to ensure a right of any person detained/prisoner for over 24 hours, to have a daily walk. Respectively, it is necessary for each of the temporary detention isolators to have own walking yard.

Administratively imprisoned persons shall enjoy all the rights that convicts have. Deriving from the mentioned, they shall have not only the right to have a daily walk, but they shall have a possibility to meet the family members, that is not envisaged by the legislation in force in Georgia.

66. Recommendation Rec(2006)2 of the Committee of Ministers to member states adopted on 11 January 2006

Deriving from the very mentioned, the Public Defender indicated in the 2009 Parliamentary Report that taking into consideration the fact that temporary detention isolators are not adapted and respectively, they do not comply with the living and sanitary-hygienic conditions required for the long-term placement, it is desirable to introduce special establishments for the placement of persons to serve administrative imprisonment.

Recommendation to the Minister of Internal Affairs: to introduce the respective changes into the Order N108 to ensure the daily walk of prisoners.

Recommendation to the Government of Georgia: to create special establishments for the placement of persons to serve administrative imprisonment, where corresponding conditions shall be ensured, for long-term placement of a person.

4. Food

CPT expresses satisfaction due to the fact that after its latest visit certain steps have been taken from the point of view of providing food to detainees. In particular, three meals a day are provided for detainees.

It is also allowed to send foodstuff as a parcel into temporary detention isolators. The administration of temporary detention isolators provides the detainees with the standard food - bread, tinned pate and dry package soup. The mentioned foodstuff is defective, especially taking into consideration that a person may happen to stay in the temporary detention isolator for up to 90 days.

According to the Standard Minimum Rules for the Treatment of Prisoners, “[e]very prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served”.⁶⁷

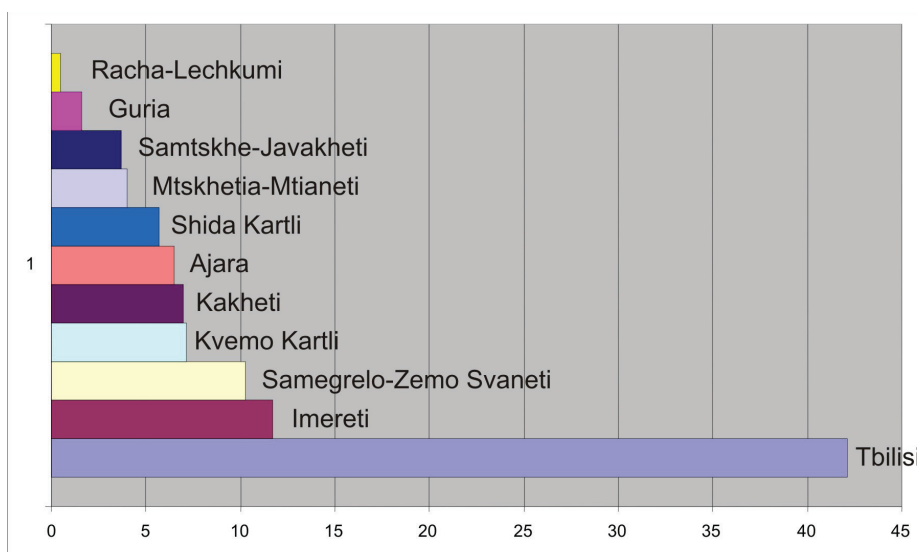
Recommendation to the Ministry of Internal Affairs of Georgia: to ensure three times a day provision of wholesome quality food for detainees/prisoners.

67. Rule 20

5. Medical Care

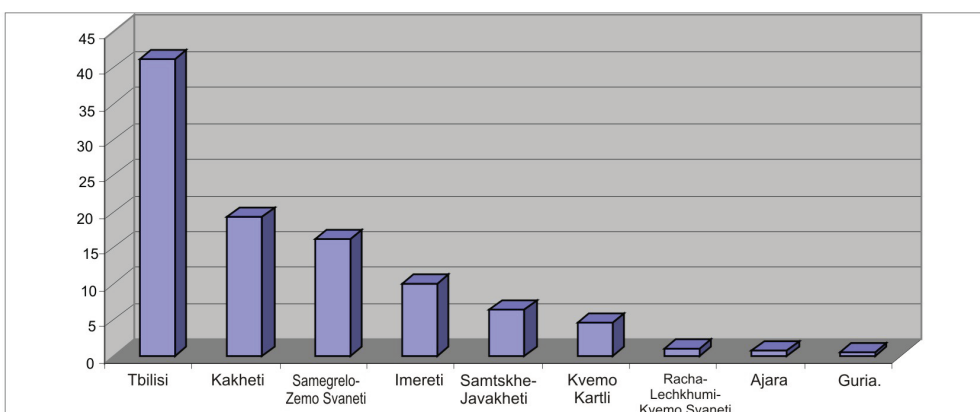
Within the framework of the monitoring undertaken during the first half of 2010 (January - June), the National Preventive Mechanism undertook medical monitoring of 43 temporary detention isolators in 11 regions of Georgia. With this virtually entire territory of the country within the effective control of Georgia was covered.

As a result of monitoring it was revealed that there were 10433 persons placed in all 43 temporary detention isolators. The breakdown of this figure according to the regions is provided graphically below:



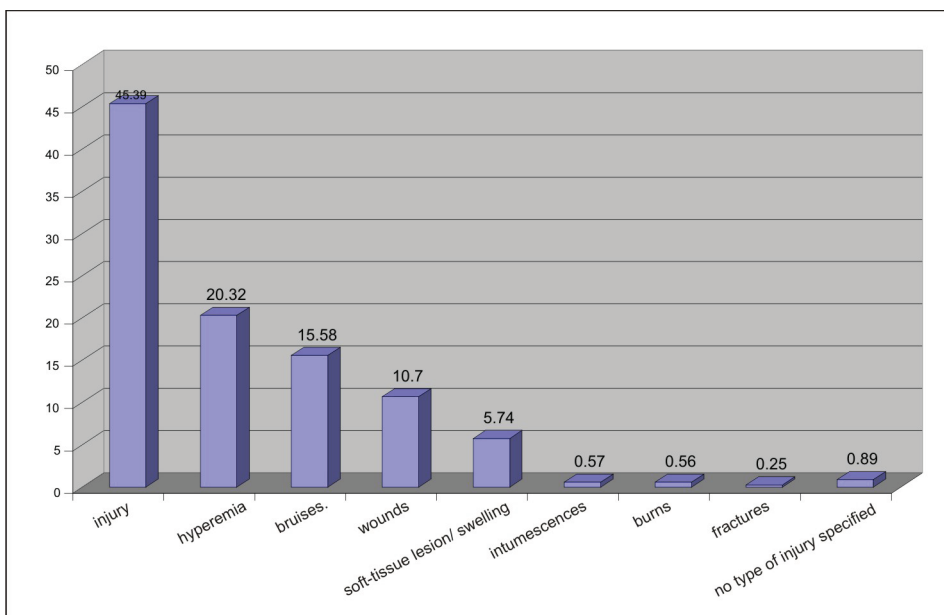
Out of the persons placed in the temporary detention isolators 2769, i.e. 26.56% of the total number had injuries. This indicates that every fourth person placed in the temporary detention isolators had one or the other type of physical injury, which was recorded by the temporary detention isolator staff. The Monitoring Group revealed several facts, according to which it is obvious that the description of injuries had not taken place in the temporary detention isolator (in these cases the examination of detainees was conducted in the penitentiary establishments). This leads us to thinking that the full description of physical injuries does not take place in all the temporary detention isolators. Despite this, it shall be mentioned that such facts are identified as exceptions and they do not have a systematic character.

According to the comments by persons placed in temporary detention isolators, as recorded in registers, it is becoming evident that 73.61% of the detainees was injured before the detention; 6.62% were injured during the detention, 0.43% do not remember, where and in what circumstances did they get injuries; 0.32% does not clarify this on purpose; and 0.25% mentions that they were physically injured after the detention. It shall be noted that in 18.77% of cases temporary detention isolators' staff have not at all recorded the comments of a detainee in relation to injuries. The recommendation of the Public Defender about the recording of this information had not been followed. This information is not indicated statistically according to regions as follows:



As shown in the table above, most frequently there is no indication of the circumstances of getting injuries in the Tbilisi temporary detention isolators, this is basically a share of the Tbilisi N1 temporary detention isolator (where this information is not indicated in any case). The problem regions in this regard are also Kakheti and Samegrelo-Zemo Svaneti. As for the Mstkhet-Mtianeti and Shida Kartli regions, the mentioned problem does practically not exist there. Therefore, these two regions are not mentioned in the diagram above.

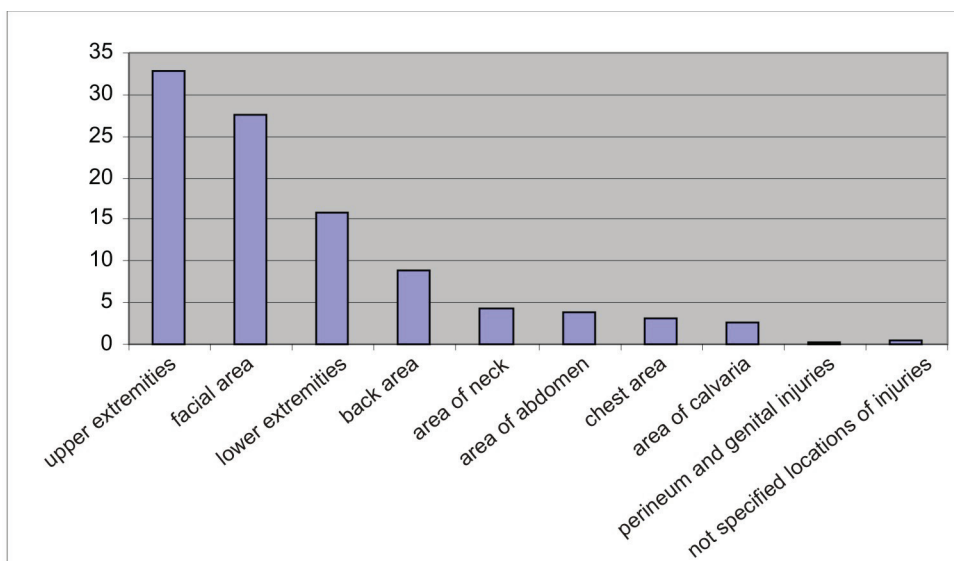
There was notch identified in 45.4% of cases as an injury; in 20.32% of instances there was hyperemia (plethaor) of different intensity recorded; in 15.58% there were bruises. In 10.70% of cases the injured persons had wounds; in 5.74% there was soft-tissue lesion and swelling; in 0.57% general intumescences on the body was identified; in 0.56% - burns and in 0.25% fractures of extremities were identified. There was no type of injury specified in 0.89% of the cases. The data is provided graphically as follows:



The analysis of the occurrences has revealed the most common types of injuries as broken down by the regions. E.g., notch is recorded most often in Tbilisi, whereas it is minimally revealed in Racha-Lechkhumi and Kvemo (Lower) Svaneti, as well as Guria regions; bruises are highly recorded in Tbilisi, as well as Kvemo Kartli, Imereti and Samegrelo-Zemo (Upper) Svaneti regions. The mentioned type of injury is revealed at a minimum rate in Guria and Racha-Lechkhumi and Kvemo Svaneti Regions. As regards hyperemia, which in majority of cases, is characteristic to newly inflicted injuries, is maximally recorded in Kvemo Kartli. Maximum number of wounds was also revealed in the Kvemo Kartli region, and minimum number - in Ajara. Cases of fracture are most often described in Imereti, whereas in 5 regions they are not recorded at all. Instances of soft-tissue lesion/intumescences of variety of parts of body were revealed after Tbilisi most often in Samegrelo-Zemo Svaneti and Kvemo Kartli regions. The facts of general soft-tissue lesion are generally met in the Imereti, Kakheti, Ajara and Guria regions. Traces of scorch are often identified during the physical examination of persons placed in Tbilisi, Imereti, Kvemo Kartli and Kakheti temporary detention isolators. The type of injury is more often not indicated by the staff of the temporary detention isolators in the Kvemo Imereti, Kvemo Kartli and Kakheti regions.

The monitoring team made a special emphasis also on the analysis of the anatomic location of injuries described in the Report. As the analysis of the data showed, the most common were injuries of the upper extremities (32.94%), followed by the injuries located in the facial area (27.46%). In 15.89% of cases the injuries were located at the lower extremities, in

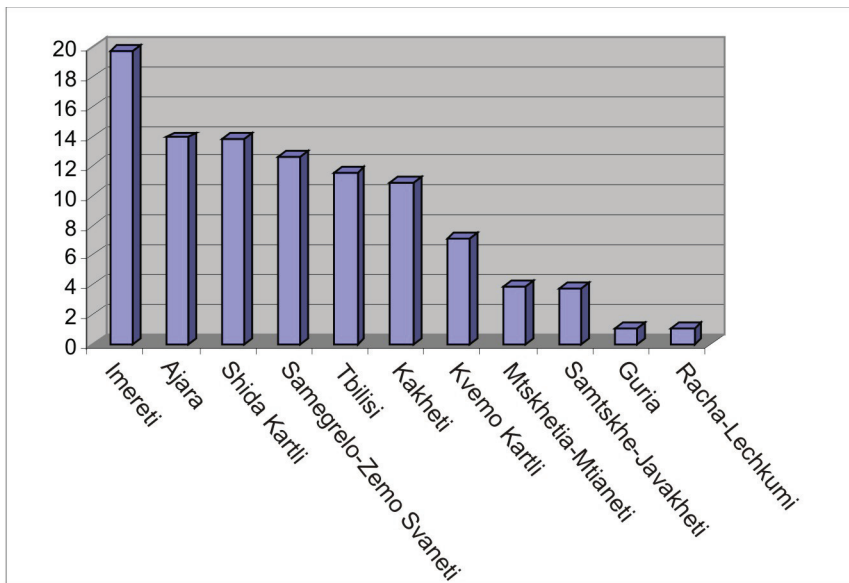
8.98% - in the back area, in 4.37% - in the area of neck, in 3.88% - in the area of abdomen, in 3.09% - in the chest area, in 2.56% - in the area of calvaria, and in 0.26% there were perineum and genital injuries. In 0.57% of cases, temporary detention isolator officials had not specified locations of injuries. The diagram below demonstrates the above mentioned data:



As for the regional specification of the location of injuries, the analysis shows that the majority of injuries in the area of calvaria, facial area, neck, and the back area are registered in Tbilisi; the majority of injuries in the chest area, in the area of abdomen, upper and lower extremities, perineum and genital injuries are recorded in the Kvemo Kartli region. Apart from the mentioned, the multitude of injuries in the area of calvaria is eye-catching in the Kvemo Kartli region, injuries in the facial area - in Samegrelo-Zemo Svaneti Region; injuries in the area of neck are mostly registered in the Shida Kartli and Imereti Regions, the injuries in chest - in the Kakheti and Ajara Autonomous Republic; injuries in the area of abdomen are eye-catching in the Imereti region; injuries in neck are mostly registered in the Kvemo Kartli, Imereti and Samegrelo-Zemo Svaneti regions. The injuries of upper and lower extremities, apart from Tbilisi and Kvemo Kartli regions, are largely registered in the Imereti region. The perineum and genital injuries are only registered in Tbilisi and Kvemo Kartli region. Seemingly, injuries of the mentioned part of the body are neglected and not registered in other regions. As regards the fact of not mentioning the location of an injury by the officials of the temporary detention isolators, most frequently this was identified in Tbilisi, Shida Kartli and Guria.

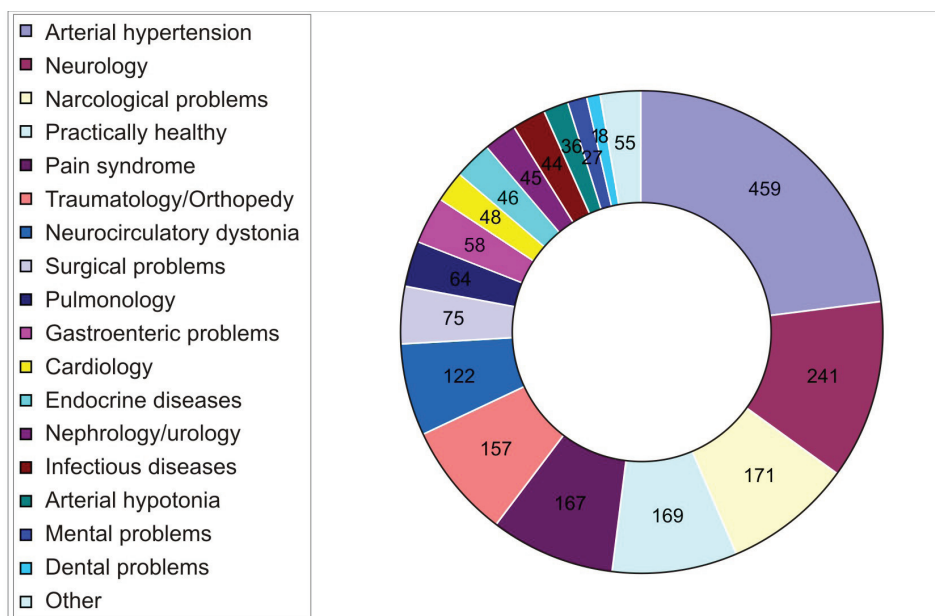
The Special Preventive Group also studied the issues related to medical care in temporary detention isolators. Access to a doctor is only ensured in the Tbilisi temporary detention isolators. In other isolators, depending on the health conditions of a detainee an ambulance is called.

In the first half of 2010 temporary detention isolator officials called an ambulance 1040 times. Due to the fact mentioned above the number of calls is decreased proportionally in temporary detention isolators in Tbilisi. The diagram below shows the statistics of calling ambulance, by regions:



As shown at the diagram, most frequently, the ambulance has been called in Imereti region. There are high numbers also in Ajara Autonomous Republic, Shida Kartli and Samegrelo-Zemo Svaneti regions. In 55 cases (5.28%) the detainees were hospitalized. The rate of hospitalization is especially high in the Kakheti region and Ajara. In 84% of cases the emergency doctors provided medical care to detainees on spot. In around 12% of cases ambulance doctors recommended further steps for meeting the health need of detainees. The recommendations of doctors, according to the records made, are followed-up in 62% of cases. In other cases there was no reaction over the recommendations issued by doctors. In 3.75% the detainees refused medical care, whereas in 7.69%, according to records made, medical measures were to be undertaken, however the ambulance doctors did not provide detainees with the medical care.

Special medical register is maintained in temporary detention isolators, reflecting information about the measures undertaken by a doctor with regard to a detainee. As shown from that source, the most frequent reason for calling ambulance is arterial hypertension and neurological problems. The diagram below provides the full spectrum of nosological groups:



The results of the monitoring revealed that some of the temporary detention isolators have not at all registered the calling an ambulance. As stated by officials of some of temporary detention isolators, often the registers are taken to medical establishments and records are made there. In other cases, documents produced by doctors are glued into the registers. The majority of temporary detention isolators also keep the note issued by the ambulance upon taking a patient to hospital. The practice in this regard is diverse in different regions.

Recommendation⁶⁸ to the Ministry of Internal Affairs of Georgia: to ensure in all temporary detention isolators full and immediate follow-up to medical recommendations (taking to hospital, consultation of a specialist) of emergency doctors.

68. Please find the recommendations about the describing injuries and making comprehensive recorded above, under “1. Treatment”