

THE REPORT OF
THE NATIONAL
PREVENTIVE MECHANISM

2014



EUROPEAN UNION



PUBLIC
DEFENDER
OF GEORGIA



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

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

1.1. PREVENTIVE VISITS

In 2014 overall 24 planned and 364 ad hoc visits to the penitentiary institutions were conducted following individual applications. In total 3 040 prisoners were visited and interviewed by the special preventive group. 28 planned visits to the police stations and temporary detention isolators, 3 planned visits to the psychiatric institutions and 44 planned visits to the small family-type homes for children were also carried out. For the first time, the joint return operation flight (Tbilisi – Paris – Warsaw – Tbilisi) was attended and monitored and the vehicles for transportation of prisoners were inspected.

Since 1 October 2014 the Department of Prevention and Monitoring at the Office of the Public Defender of Georgia no longer deals with individual applications/complaints and is primarily focused on preventive monitoring, which is fully in line with the Guidelines on National Preventive Mechanism issued by the UN Subcommittee on Prevention of Torture (hereinafter referred to as “SPT”). The individual applications received from the places of deprivation of liberty are now reviewed by the Criminal Justice Department of the Office of the Public Defender of Georgia.

1.2. COMMUNICATION WITH STAKEHOLDERS

In compliance with its mandate the National Preventive Mechanism (hereinafter referred to as “NPM”) gives due consideration to the need for maintaining good communication with stakeholders. It sees it rather impossible to carry out inspection, draft recommendations and consequently advocate for and follow up the fulfillment of recommendations without engaging in the dialogue with civil society, international organizations, relevant authorities and all other stakeholders. In this regard, various activities were carried out in 2014.

1.2.1. DIALOGUE WITH RELEVANT AUTHORITIES

During the reporting period, the NPM maintained active communication and engaged in dialogue with relevant authorities. Meetings were held both individually and within various working groups. Along that, in 2013, for the purposes of facilitating the follow up process, the Parliament of Georgia decided to reflect the recommendations of the Public Defender in its resolution and to request relevant governmental agencies to provide information on the fulfillment of Public Defender’s recommendations. By virtue of this initiative, throughout a year the Parliament of Georgia had remained to be a venue for dialogue between authors and addressees of the recommendations. To illustrate the process of dialogue several events can be outlined:

- The NPM held several meetings with the Minister and Deputy Ministers of Correction, as well as with the staff of the Prison and the Medical Departments of the Ministry of Corrections. Various specific problems faced in the penitentiary system were discussed and possible solutions sought during such meetings.
- The NPM participated in the sessions of the working group on the reform of the penitentiary system, where the set of amendments to the Prison Code and the revised action plan on reforming the penitentiary system were actively discussed.
- The NPM attended the meetings of the steering committee of the EU-CoE joint project – “Human Rights in Prisons and Other Closed Institutions”. These meetings provided an excellent opportunity for advocating fulfillment of the recommendations.
- On 17-18 May, the NPM actively participated in the working session held by the Ministry of Corrections in Gudauri. The draft decrees of the Minister of Corrections concerning the use of special means and electronic surveillance were scrutinized at the working session. The discussion was then continued on 19 May in the Ministry of Corrections.
- On 18 July, the meeting was held with the representatives of the Ministry of Internal Affairs. The discussion touched upon the relations between the Office of the Public Defender of Georgia and the Ministry of Internal Affairs and the prevention of possible impediments to the work of the representatives of the Public Defender.
- The NPM was actively involved in the activities within the working group of the Interagency Council Against Torture and Ill-Treatment. After several meetings and intensive discussions the Action Plan to Combat Torture and ill-treatment (2015-2016) was elaborated.
- Several meetings were organized concerning the progress made in implementing the Human Rights Governmental Action Plan. The NPM provided its views as to the accomplishment of the objectives foreseen in the Action Plan.

1.2.2. DIALOGUE WITH DIPLOMATIC MISSIONS AND INTERNATIONAL ORGANIZATIONS

In 2014, the NPM had active communication with diplomatic missions and international organizations. Staff members of the NPM have several times met the human rights officer of the U.S. Embassy and exchanged information concerning human right situation at the places of deprivation of liberty. Also, the NPM closely cooperated with the International Committee of the Red Cross (ICRC). Below listed are some of the important meetings:

- Meeting with Nils Muiznieks, the Council of Europe Commissioner for Human Rights.
- Meeting with James Murdoch, the expert of the Council of Europe. The problems existing in the temporary detention isolators of the Ministry of Internal Affairs and the possible solutions were discussed during the meeting.
- The NPM met the members of the European Committee for the Prevention of Torture (CPT) and informed them of the situation of the human rights protection at the places of deprivation of liberty.
- Within the official visit to Strasburg several very important meeting were held with representatives of the Council of Europe and informed them of the human rights situation in the closed institutions in Georgia.
- The NPM actively cooperated and periodically held meetings with the representatives of the UNHCR basically on the issue of protection of aliens in the places of deprivation of liberty.
- The NPM communicated with the UNDP. With the support of the latter the guidelines for visiting adult male prison were elaborated.
- The NPM maintained contacts with the SPT and updated its members with the human rights situation at the places of deprivation of liberty and information concerning the activities carried out by the NPM.

1.2.3. PUBLIC RELATIONS

The provision of information concerning the human rights situation at the places of deprivation of liberty to the public remains one of the priority objectives set by the NPM. This objective is achieved by publishing after visit, special and annual reports, organizing various events and making public statements on different issues through media.

In June 2014, the NPM presented its activity report and the special report concerning persons with disabilities in prisons, temporary detention isolators and the National Centre for Mental Health. It is noteworthy that such study on the issues of persons with disabilities in detention was carried out for the first time and it received recognition from relevant stakeholders shortly.

On 10 December 2014, the Public Defender of Georgia held the presentation of the human rights situation in Georgia and on the occasion of the Human Rights Day hosted the reception.

After 1 October 2014, when the Department of Prevention and Monitoring became solely focused on proactive measures, for the first time it began to produce, send to relevant authorities and publish after visit reports. Since October 1st, 2014, overall 5 after visit reports were eventually prepared.

The NPM regularly disseminated public statements concerning outcomes of the visits to the places of deprivation of liberty, proposals related to the amendment of legislation and various events. Among them were public statements regarding the legislative amendments related to the use of special means in penitentiary institutions; the need for implementing dynamic security and entitling a member of special preventive group to use photo camera in prisons and the challenges linked to the prevention of suicide.

The Members of NPM have participated in tens of TV and radio programs and have given interviews to the printed and internet media outlets.

1.2.4. PARTICIPATION IN INTERNATIONAL EVENTS

The NPM members participated in several international events, among them, the regional conference – “increasing effectiveness of the fight against ill treatment in the penitentiary system” – held in Chisinau, on 27 February; two meetings on torture prevention („Pre-meeting of National Preventive Mechanisms on Police and the Prevention of Torture”, “Supplementary Human Dimension Meeting on the Prevention of Torture”) organized by the government of Switzerland in Vienna, on 10-11 April; East European NPM conference held in Lviv, on 13-14 November and international conference – “towards good governance” – arranged in Brno, on 27-28 November.

On 10 September 2014, the Head of the Department of Prevention and Monitoring at the Office of the Public Defender of Georgia delivered speech before the Human Rights Council at its 27th session held in Geneva. He voiced up the Public Defender’s position concerning the need for the establishment of an independent investigative mechanism and the strengthening of the NPM.

1.2.5. DIALOGUE WITH NGOS AND DONOR ORGANIZATIONS

In 2014, the NPM was actively cooperating with NGOs, among them, “Open Society Georgia Foundation” (OSGF), “Penal Reform International” (PRI), “Human Rights Center” and “Institute of Social Studies and Analysis”. Various activities of NPM during the year were financially supported by the European Union and the OSGF.

The NPM had an active communication with the “Association for the Prevention of Torture (APT)”. Public Defender of Georgia was visited by Professor Andrew Coyle and Baroness Vivien Stern (International Centre for Prison Studies). Detailed discussions were held about the challenges faced in the prison system of Georgia.

1.2.6. COMMUNICATION WITH COLLEAGUES

The NPM of Georgia paid a special attention to the communication and experience sharing with the representatives of the national preventive mechanisms of other

countries. Experiences on different issues were shared through the European NPM network, by e-mail. In Addition, study visits of the NPM were carried out in Spain and Serbia; in return the NPM of Georgia hosted Czech and Ukrainian colleagues and shared its experience.

1.3. REVIEW OF THE WORKING METHODOLOGY AND STAFF TRAINING

1.3.1. ADVISORY COUNCIL

According to the decision of the Public Defender, the NPM advisory Council was created from December 2014. Advisory Council was established for the purposes of supporting the effectiveness of NPM in prevention of torture and other forms of ill-treatment. Members of the Council provide their opinions concerning different activities, working methodology, thematic studies, professional trainings, in relation to various strategic documents and other issues connected with the NPM activities. The members of the Council will support the NPM in strengthening the communication with academic circles, donors and other stakeholders. It should be noted that the advisory Council in various countries significantly contribute to the strengthening of the NPM work in their respected countries and facilitate involvement of interested professionals in their activities.

1.3.2. WORKING METHODOLOGY

The NPM has worked extensively for reviewing and updating monitoring instruments in 2014. Updates were made to the monitoring instruments for small family-type homes for children, separately for prisons for female, juvenile and adult male prisoners. The monitoring instrument for penitentiary institution for female prisoners was developed with the financial assistance of the UN Women. The elaboration of the monitoring Instrument for juvenile prisoners were made possible with the assistance of “Penal Reform International” (PRI) and the UNICEF. The review process of the monitoring instrument concerning prisons for adult male prisoner was financially supported by the United Nations Development Program (UNDP) and was assisted by Ms. Mari Amos, the SPT member.

1.3.3. STAFF TRAINING

Two-day workshop/training was conducted in February 2014 for the NPM members¹ with the participation of the SPT member. A three-day workshop was held in June and it was led by Ms. Mari Amos, the SPT member. The guidelines for the visit to the

1 The Special Preventive Group is composed of the permanent staff members of the Department of Prevention and Monitoring at the Office of the Public Defender of Georgia and the invited members selected on the basis of multidisciplinary composition of the Group.

penitentiary institutions for adult male prisoners were discussed at the workshop and then tested in the Prison N3.

In June, the study visit of the NPM was arranged for the purposes of sharing experience with the Spanish colleagues. During the stay in Madrid, the NPM of Georgia was taken by the Spanish colleagues to visit one of the police departments. From 10 to 16 August, the NPM team visited Serbian colleagues. During the visit, meetings were held with the representatives of the Ombudsman's Office of Serbia, at the Ministry of Justice and the Ministry of Health of Serbia. Visits were arranged at penitentiary, psychiatric and social care institutions, as well as Zemun police department. The last two days were dedicated to the workshop with the members of the National Preventive Mechanisms of Serbia, Czech Republic, Macedonia and Poland.

During 2014 the five-day training on monitoring psychiatric institutions was held for the NPM members on two occasions. The training was led by Mr. Mykola Gnatovski, the CPT member and by Dr. Clive Meux, the CPT expert. In September, the "Democratic Control of Armed Forces" (DCAF) held three-day training for the staff of the Department of Prevention and Monitoring on the monitoring of the security sector. In addition, the NPM members took part in the training on the monitoring of juvenile penitentiary institutions organized by "Penal Reform International" (PRI).

2. SITUATION IN PENITENTIARY INSTITUTIONS

2.1. GENERAL OVERVIEW

The year of 2014 saw several positive changes in the penitentiary system. Among the changes was the amendment of the Imprisonment Code to determine four types of institutions according to security risk level which differentiated prisoner rights according to the risk levels. It is safe to say that, in spite of several arguable clauses, the amendments generally improved the rights of prisoners at the legislative level.

We would like to mention draft amendments to the Imprisonment Code authored by the Ministry of Corrections,² which has been submitted to the Parliament of Georgia. On 28 January 2015, the Public Defender sent its proposal about the draft law to the Georgian Parliament.

In its proposal, the Public Defender welcomes the planned reform of the penitentiary system but emphasizes some of the key issues related to the draft law such as the need for improving the early release mechanism and the procedures for prisoner allocation/transfer, the need for reducing a term of administrative detention of prisoners in high risk institutions, etc.

A major component of the Public Defender's proposal is the Public Defender's request to allow the Public Defender and its Special Preventive Group members to take photographs inside the penitentiary institutions. On the initiative of the Georgian Parliament, a working group of representatives from the Ministry of Corrections and the Public Defender's Office was set up to discuss this request.

It is certainly worth noting that the Ministry of Corrections took the Public Defender's initiative into consideration adding a relevant clause to the draft law under review, which entitles the Public Defender and its Special Preventive Group members to take photos inside penitentiary institutions pursuant to a procedure established by the Minister of Corrections. According to the draft clause, the Minister of Corrections will elaborate such a procedure in cooperation with the Public Defender and publish it no later than 1 August 2016. The clause entitling the Public Defender and its Special Preventive Group members to take photos inside the penitentiary institutions will take effect on 1 September 2016.

During the reporting period, the Central Penitentiary Hospital was refurbished and opened thus improving access to healthcare services to some extent. Penitentiary Institution No. 16 was refurbished as well.

The Public Defender welcomes the introduction of a six-month training program for the regime officers of the Penitentiary Department. We believe a long-term professional education for the Penitentiary Department employees has a crucial role in ensuring

² A full text of the draft law together with an explanatory note accompanying the draft law can be accessed at <http://www.parliament.ge/ge/law/7805> [last viewed 11.02.2015]

proper management of penitentiary institutions on the basis of the principles of human rights and rule of law. Also, we positively assess the proposed reform initiative, which goes in line with the concept of dynamic security and places an emphasis on strengthening rehabilitation programs.

Despite the above-described positive changes, a number of concerns related to the penitentiary system were identified during the reporting period. Draft amendments to the Imprisonment Code concerning the right of the penitentiary personnel to use special equipment generated a lot of controversy but the disputed draft was eventually adopted with certain changes.

Number of reports concerning alleged ill-treatment of prisoners increased in the reporting period; accordingly, the Public Defender's recommendations about the need for carrying out effective investigations increased compared to the year of 2013. In 2014, the Public Defender sent out 21 recommendations to commence investigation (compared to 9 recommendations in 2013). Unfortunately, in none of these cases was criminal prosecution commenced against those responsible and the Public Defender has not been informed in detail about the progress of investigations. Substantive shortcomings were observed in the way the investigative authorities obtain evidence. Protection of possible victims of ill-treatment also constitutes a ground for concern because often times they continue to remain in the same institutions where they had allegedly been ill-treated. In the Public Defender's view, there is a clear systemic problem in terms of investigation of allegations of ill-treatment – a situation that calls for creation of an independent investigation mechanism to ensure independent, impartial and effective investigation.

Also, for the prevention of ill-treatment, it is important to have tools in place for adequate assessment of real and inevitable risks for prisoners' physical integrity and to take measures accordingly. The environment in the prison should be such where torture and ill-treatment are less likely to happen. This requires elimination of the root causes of torture and ill-treatment. It is necessary, in this regard, to bring the current practice of documenting ill-treatment in line with the international standards, ensure such detention conditions as are compatible with human dignity and to apply security measures in a proportional way.

We would like to point out, further, that prevention of ill-treatment also requires implementation of measures such as support to the National Preventive Mechanism's operations, strengthening its functions, allowing the National Preventive Mechanism representatives to make photographs in prisons and access secret information about the treatment of prisoners (including criminal intelligence information), changing laws allowing the National Preventive Mechanism representatives to view the records of surveillance cameras and enhancing current cooperation and ways of reacting to recommendations.

Prevention will be ineffective unless good order and security is ensured in places of

deprivation of liberty. The monitoring results raise security concerns such as conflicts between the prison administration and the prisoners, which is exacerbated by inadequate reaction or lack of reaction of penitentiary officials in specific situations, improper follow-up on complaints and lack of awareness by prisoners of the services available to them. The level of knowledge and qualifications of the prison staff are insufficient. Against this background, the prisoners are often resorting to hunger strikes and injuring themselves. A high risk of violence among prisoners and the impact of criminal mentality in penitentiary institutions are a serious problem. This is what makes it necessary to introduce a system that would ensure maintaining good order and security in prisons according to international standards; in particular, it is necessary to actually implement the concept of dynamic security and develop a well-thought-through plan for management of incidents and emergencies.

Unfortunately the moving of prisoners from one institution to another remained a frequent practice in 2014. The Public Defender's Office is unable to evaluate whether or not the individual decisions to transfer prisoners between different prisons were reasonable because, according to an official explanation by the Penitentiary Department, the decisions are based on secret letters authored by prison directors; since these letters contain criminal intelligence information, the Public Defender's representatives have no right to access them. Our observation is that prisoners are often moved from the penitentiary institutions located in the eastern Georgia to those located in the eastern Georgia and vice versa. It is for that reason that the prisoners have difficulty to maintain contact with their families and lawyers and are experiencing additional stress related to adaptation to the changed environment.

In regard to movement of prisoners, the Special Preventive Group also inspected the vehicles designated for moving prisoners and concluded that the conditions of transportation are unsatisfactory and represent a serious nuisance for prisoners. Furthermore, we found out that inside a Mercedes vehicle designed for moving the prisoners there is a small-size metal booth (with an area of about 0.3 square meters), which is narrow, is not aerated and it is completely dark inside. The booth is usually used to transport women prisoners and prisoners who belong to sexual minorities. The Special Preventive Group believes that placing an individual in such booths is a degrading treatment and the booths must be removed.

Ensuring proper conditions to prisoners requires a great deal of attention. Compared to previous years, the physical environment and hygiene have improved in a number of penitentiary institutions. However, the existing conditions in the Georgian penitentiary institutions are still leaving a lot of room for improvement. Some of the common problems are: insufficient artificial ventilation in residential cells, quarantine cells and solitary confinement cells; insufficient natural light and ventilation; short time for outdoor exercising and lack of exercising opportunities in closed institutions; lack of required equipment and conditions in the yards of penitentiary institutions designed for outdoor exercising; and lack of infrastructure to support long-term visits.

In the reporting period, disciplinary punishment was used twice as many times as in the year of 2013. The Public Defender's recommendation to develop guidelines on the use of disciplinary punishment was not fulfilled. Prisoners often get locked up in solitary confinement cells as a measure of disciplinary punishment and the disciplinary sanctions are not used proportionally in practice.

The penitentiary healthcare reform deserves positive assessment. We appreciate the fact that the prison healthcare system has been better funded, which really meant increased salaries for the medical staff and accessible primary healthcare services in all of the penitentiary institutions. We also welcome the opening of the Central Penitentiary Hospital and the refurbishment of the Center for the Treatment of Tuberculosis and Rehabilitation. Despite these positive changes, a series of problems remain in the penitentiary system. One of the issues is the timeliness and adequacy of medical services and insufficient periodicity of visits paid by physicians to penitentiary institutions. Measures must be taken to ensure that prisoners have unhindered access to the prescribed medications. It is unfortunate that no breakthrough steps have been made in the reporting period to fully integrate the penitentiary healthcare into the civilian healthcare system; hence, the principle of equivalent services is not fully respected. The penitentiary healthcare system is still facing the challenges related to suicide prevention, excessive reliance on medications and psychotropic drugs, and lack of timely and adequate psychotropic assistance for prisoners with mental disorders. Unfortunately, the number of deaths was higher in the reporting period than in 2013. Twenty-seven (27) prisoners died in 2014. The number of suicides increased as well. Seven (7) facts of suicide were registered. Analysis of prisoner deaths reasonably leads to doubting whether the medical services provided in penitentiary institutions are adequate. The Public Defender deems it is necessary to control the quality of medical services and to strengthen efforts towards prevention of suicides.

The Public Defender's view is that prisoners should have stronger contact with the outside world. Despite the Public Defender's recommendation to allow short-term visits without the separating glass bar, such visits continue to be administered with the glass bars separating the sides. It is important to equip all of the penitentiary institutions with infrastructure for long-term visits. A particular problem in this regard exists in women's institutions and closed institutions for deprivation of liberty.

Special attention is to be paid to the special needs of women and juvenile prisoners. The situation existing in the Georgian penitentiary system is discussed in detail in the relevant chapters below.

2.2. PREVENTING TORTURE AND INHUMAN OR DEGRADING TREATMENT AND PUNISHMENT IN PENITENTIARY INSTITUTIONS

Pursuant to Article 7 of the International Covenant on Civil and Political Rights, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or

punishment.”³

Article 10 of the International Covenant on Civil and Political Rights stipulates that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The United Nations Human Rights Committee explains that [respect for human dignity] is “a norm of general international law not subject to derogation.”⁴

The international human rights law places a special emphasis on the protection of the rights of individuals deprived of their liberty at detention facilities. The Government must take all appropriate measures not to inflict more suffering upon a human being than it is inevitable element of legitimate punishment. Incompliance with this requirement would amount to intrusion in the area protected by Article 3 of the European Convention on Human Rights.⁵

The European Court has been consistently stressing in regard to Article 3 of the Convention that the value protected under Article 3 is one of the fundamental values in a democratic society. Hence, the Government must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.⁶

It should be noted that the human rights law protects the rights of detained individuals at a higher standard than the rights of those in community. According to a standard established by the European Court, although ill-treatment must attain a “minimum level of severity” to fall within the scope of Article 3, in respect of a person deprived of his liberty recourse to physical force which has not been strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right under Article 3.⁷

According to standards established by the European Convention on Human Rights and the case-law of the European Court of Human Rights, the State has not only a negative obligation (not to violate a person’s right) but a positive obligation (to protect a person’s right) in order to secure the implementation of the prohibition of torture and inhuman treatment and the of the right to life. It is of special importance to protect individuals in closed-type institutions from torture and inhuman or degrading treatment or punishment, and to protect their right to life. Since prisoners are under an exclusive control of the State, the State authorities then have an obligation to take all steps that are reasonably expected of them to prevent real and immediate risks

3 Art. 7, International Covenant on Civil and Political Rights

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

5 *Kudla v. Poland*, no. 30210/96; also *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII.

6 *Case of Davtyan v. Georgia*, no. 73241/01.

7 *Case of Tekin v. Turkey*, no. 22035/10.

to the prisoner's physical integrity, of which the authorities had or ought to have had knowledge.⁸

A positive obligation of the State to protect individuals from being subjected to torture and other ill-treatment by definition implies the taking of measures by the State that would help protect individuals against ill-treatment. As an international standard, the requirement of implementing such preventive measures can be found in international human rights treaties as well as in the judgements of the European Court of Human Rights and reports of the European Committee for the Prevention of Torture and the United Nations Committee against Torture. Torture prevention is a global strategy that aims at reducing risks and establishing an environment where torture and inhuman treatment are not likely to happen.

A general obligation envisaged by Article 1 of the European Convention on Human Rights requires the States to launch effective investigation even if the alleged ill-treatment has been administered by private persons.⁹ According to the European Court, the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals.¹⁰

In this respect, we would like to mention the case of loss of his life by prisoner G.F. in the penitentiary institution no. 14 – a fact that has gained an extensive publicity.

G.F. died on 4 March 2014 as a result of argument among the prisoners in the penitentiary institution no. 14.

As the Chief Prosecution Office informed us,¹¹ on 4 March 2014, at about 2:20 am, in the penitentiary institution no. 14, prisoners Sh.Sh., L.M. and G.S. from the cell no. 322 of the sixth regime building had an argument with their fellow inmate G.F. The argument grew into a physical fight. Acting together, Sh.Sh., L.M. and G.S. managed to knock G.F. down on the floor who lost his consciousness and could no longer fight off the attackers. Instead of stopping the violence, Sh.Sh., G.S. and L.M. continued to beat G.F. who lied unconscious with their legs and hands in the chest, neck and face. They were bumping unconscious G.F. with his head against the concrete floor. As the prison staff heard swearing and noise, they rushed to enter the cell where Sh.Sh., L.M. and G.S. were physically abusing G.F. and stop the violence. G.F. was transferred to the medical unit of the institution but, despite the assistance provided by the prison healthcare staff and an ambulance team that arrived on call, prisoner G.F. died.

8 See the following judgments of the European Court of Human Rights: *Pantea v. Romania*, no. 33343/96, §190, ECHR 2003-VI and *Preminyin v. Russia*, no. 44973/04, §84, 10 February 2011.

9 *M. and Others v. Italy and Bulgaria*, Judgment of 31 July 2012, par. 99.

10 *Denis Vasilyev v. Russia*, Judgment of 17 December 2009, par. 98

11 Letter no. 13/23626 dated 12 April 2014

According to a forensic medical report, the reason of G.F.'s death is a sharp swelling of the brain with the brain string dislocated and stuck, which was caused by a blunt trauma of the skull and brain.

Pursuant to information received from the Penitentiary Department of the Ministry of Corrections,¹² on 30 May 2013, prisoner G.F. was moved from the penitentiary institution no. 2 to the penitentiary institution no. 14. The same day, he was accommodated in cell no. 221 of the sixth regime building. On 28 June 2013, he was moved into cell no. 334. The prisoner asked the prison administration to move him into cell no. 322 because one of the inmates in that cell was he childhood friend. The prison administration granted this request and on 20 January 2014 prisoner G.F. was moved to cell no. 322. The reason of moving the prisoner to the institution no. 14 was that he had been sentenced to imprisonment for 8 years, 7 months and 15 days by the Kutaisi Court of Appeal.

Prisoner Sh.Sh. was transferred from Institution no. 6 to Institution no. 14 on 12 February 2014, on the basis of an order issued by the Chairman of the Penitentiary Department, and was placed in the cell no. 338 the same day. He was moved to the cell no. 322 on 14 February 2014.

Prisoner L.M was transferred from the Institution no. 6 to the Institution no. 14 on 12 February 2014, on the basis of an order issued by the Chairman of the Penitentiary Department. The same day, he was placed in the cell no. 429. He was moved to the cell no. 322 on 14 February 2014.

Prisoner G.S. was transferred from the Institution no. 6 to the Institution no. 14 on 27 February 2014, based on an order of the Chairman of the Penitentiary Department. The same day he was placed in the cell no. 322 of the sixth building.

We would like to stress that it were the secret reports of the director of the Institution no. 6 on which basis the orders to move prisoners Sh.Sh., L.M. and G.S. to the Institution no. 14 were issued. The Penitentiary Department refused to furnish copies of these reports to us under the pretext that they are classified as "secret" documents and the Public Defender is not entitled to access such documents under the Law on Criminal Intelligence Activities. We therefore remain unaware of the reasons of moving prisoners Sh.Sh., L.M. and G.S. to the Institution no. 14.

In respect of this case, the Office of the Public Defender addressed the following additional questions to the Chief Prosecution Office:

1. What investigative measures were conducted; how many officials of the Penitentiary Department were interrogated;
2. Which of these investigative measures were conducted by the Investigation Department of the Ministry of Corrections;

12 Letter no. MCLA 1 14 00207345 dated 7 May 2014

3. Is it known, according to facts established by the investigation, whether prisoner G.F. had a conflict with his fellow inmates before the incident and, if yes, whether the administration of the Institution no. 14 was aware of it;
4. What triggered the argument between G.F. and his fellow inmates on 4 March 2014;
5. How much time after G.F. was injured was he taken to the prison medical unit and what was the medical assistance provided (please describe the medical manipulations carried out and the time they were carried out);
6. How much time after the Institution learned about the incident did the Institution's administration call the ambulance and when did the ambulance team arrive (please indicate the exact time of calling the ambulance and the exact time the ambulance arrived);
7. Whether the investigation revealed failure by the staff of the Institution no. 14 or the healthcare personnel to perform or duly perform their duties and whether the investigation considered such a theory of case.

In response to our enquiry, the Chief Prosecution Office wrote us¹³ that the following investigative measures had been conducted: inspection of the place of incident, sample taking, corpse inspection and witness interrogation. 12 staff members of the Institution no. 14 were interrogated. Of these measures, inspection of the place of incident, sample taking and interrogation of 3 witnesses were performed by the Investigative Department of the Ministry of Corrections. According to the case file, G.F. had no conflict with his fellow inmates before the incident, and the investigation could not ascertain an exact reason why the argument took place on 4 March 2014. G.F. was provided with medical assistance on the spot; in particular, the doctor gave an injection of a painkiller and cleaned the respiratory tract as much as it was possible. After that, the prisoner was transferred to the prison medical unit in the shortest time possible. At the medical unit, they measured his blood pressure and injected another painkiller, a medication to stop bleeding and cardiac drugs. As the blood pressure was dropping, the he was given adrenalin and dexamethasone. After the pulse sensation on the wrist disappeared, he was being given heart massage and artificial respiration for an extensive period of time. According to the case file, the ambulance was called at 02:38; it arrived in the Institution no. 14 at 02:59.

It should be mentioned that the initial investigative measures have been conducted by the Penitentiary Department of the Ministry of Corrections, which cannot be considered an independent and impartial investigation authority. Also, a series of the Public Defender's important questions remained unanswered; for example, the Public Defender is unaware of the reasons of moving the prisoner from the Institution no. 6 to the Institution no. 14 and whether all the reasonable security measures were taken to prevent the loss of his life by the prisoner; nor has the Public Defender been informed

¹³ Letter No. 13/39576 dated 23 June 2014

about any possible involvement and hence potential criminal liability of the prison staff. Furthermore, according to the Letter no. 12/23626 dated 12 April 2014, the Chief Prosecution Office informed the Public Defender's Office that criminal prosecution started only against three prisoners under paragraphs 5 to 8 of Article 117 of the Criminal Code. Against such background, it is necessary to conduct an independent and impartial investigation into the death of prisoner G.F. and to properly punish all those responsible.

As a result of its visits to the penitentiary institutions, the National Preventive Mechanism came up with a list of issues affecting the effective prevention of ill-treatment. In particular, the following risk factors should be considered for the purposes of prevention of torture and inhuman treatment in the penitentiary system:

- Documenting facts of ill-treatment and reporting them to the relevant authorities;
- Provision of victims with legal aid (access to a lawyer);
- Protecting victims for recurring ill-treatment;
- Training;
- Surveillance cameras.

2.2.1. DOCUMENTING FACTS OF ILL-TREATMENT AND REPORTING THEM TO THE RELEVANT AUTHORITIES

One of the important standards for the prevention of torture is to document possible evidence of ill-treatment and report it to the relevant authorities. Timely and methodically documenting and reporting injuries found on the body of a possible victim of ill-treatment will greatly facilitate to the investigation of cases of possible ill-treatment and the holding of perpetrators to account, which in turn will act as a strong deterrent against the commission of ill-treatment in the future. A crucial role in documenting possible facts of ill-treatment is played by the prison healthcare staff. For the purposes of prevention of ill-treatment, no less important is that a prisoner is timely examined by a medical specialist on admission to prison to verify whether the prisoner has been subjected to torture or other ill-treatment from the moment of his/her detention until he/she has been brought to the penitentiary institution.¹⁴

According to the CPT (the European Committee for the Prevention of Torture) recommendations, documents produced on admission of a person to a closed institution should contain:

- an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment),

14 23rd General Report of the European Committee for the Prevention of Torture, 2013, paras. 71 – 73

- a full account of objective medical findings based on medical examination, and
- the doctor’s observations in the light of the previous paragraphs, indicating the consistency between any allegations made and the objective medical findings.

The record should also contain a description of the results of additional examinations, findings made and treatment given. For the purposes of documenting bodily injuries, there should be a special form with *body charts* for marking traumatic injuries. Further, it would be desirable for photographs to be taken of the injuries.¹⁵

The need for documenting bodily injuries by way of photographing them is stressed in the “Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment” – “the Istanbul Protocol”.¹⁶

Physicians examining a detainee must be able to ascertain the probability of violent origin of injuries even in the absence of specific allegations by the patient. They should also be able to document mental and psychological evidence of abuse and ascertain a degree of consistency between the patient’s account of ill-treatment and the results of the medical examination.¹⁷ To that effect, physicians may use terms such as “not consistent”, “consistent”, “highly consistent” and “typical appearance”.¹⁸ Physicians should use a standardized medical report form for documenting purposes.¹⁹

Descriptions of prisoner injuries used at Georgian penitentiary institutions do not comply with the standards established by the Istanbul Protocol. Each prison keeps “a journal for registration of traumas of accused/convicted persons”, in which the healthcare personnel register injuries found on the body of a prisoner. The journal requires the healthcare personnel to enter the following information: first name and last name of the prisoner, time of discovering the injury, location and description of the injury, origin of the injury, a physician’s signature and the prisoner’s signature. However, the healthcare personnel will normally provide only a short description of the injury and enter a note in the relevant section of the journal: “self-injury”, “everyday life injury”, “injured by other person”. Physicians do not evaluate consistency of the nature of the injury with the prisoner’s account of origin of the injury.

After injuries are found, standard documents about the healthcare services provided are filled out and kept in the prisoners’ medical files. Currently, photographing as a method of documenting injuries is not practiced in the Georgian penitentiary institutions.

According to information we received from the Penitentiary Department of the

15 *Ibid.*, par. 74

16 The Istanbul Protocol, par. 105.

17 *Ibid.*, par. 122

18 *Ibid.*, par. 187.

19 *Ibid.*, par. 125

Ministry of Corrections, in 2014, 1,040 untried prisoners were admitted with injuries to the detention facilities of the Penitentiary Department. Of this figure, 136 prisoners received their injuries during detention, 853 prisoners before detention, 48 prisoners after detention and 3 prisoners did not disclose the origin of their injuries. According to the same information, in 2014, 3,169 prisoners received their injuries inside the penitentiary institutions. Of this figure, 2,261 cases were self-injuries, 755 cases were everyday life injuries, 53 prisoners did not specify how they got injured and in 100 cases prisoners were injured by other persons.

According to the results of the National Preventive Mechanism's inspection visits paid to the penitentiary institutions in 2014, the healthcare personnel are not properly documenting prisoner injuries. Often times the time of discovering the injuries and their origin are not indicated. Signatures of the physician and the prisoner are also absent in many cases.

During the reporting period, the National Preventing Mechanism encountered many cases of the healthcare personnel not documenting prisoner injuries at all – a practice that clearly contradicts the standards on the prevention of ill-treatment. The Public Defender conducted an inquiry in the following specific case.

According to a letter lodged by S.Q. with the Public Defender's Office, on 14 January 2014, he was verbally and physically abused by the employees of the Penitentiary Department at the Institution no. 15. While meeting with the prisoner, the Public Defender's trustees observed a clear injury on his body (a ruptured skin in the area of the left eyebrow). On this ground, the Public Defender addressed the Chief Prosecutor with a recommendation to launch investigation. The Chief Prosecution Office informed the Public Defender that prisoner S.Q. was interrogated but he did not confirm he was injured by the Penitentiary Department employees; however, he did mention he injured his face in the Institution no. 15 when he fell down in his cell. The Public Defender's trustees, within the framework an inquiry into this case, did not find any document in the Institution no. 15 providing any information about Prisoner S.Q.'s injury. According to the information received from the Chief Prosecution Office, neither did the investigation find such a document. Hence, it follows that S.Q.'s injury remained undocumented in the Institution no. 15.

Prisoner O.G. reported that, on 3 September 2014, he was at the Institution's medical unit where he had an argument with the prison doctor who verbally insulted him several times. According to the prisoner, when the prison staff heard the noise, they rushed into the room and started beating him (the prisoner). When the Public Defender's trustees met with O.G., they observed different injuries on O.G.'s body: a swelling and a bruise in the area of the left eye, a swelling on the forehead and some scratches. Although the incident occurred on 3 September, the prisoner injuries were not documented in the relevant document – a journal for injury registration. It was only on 4 September – when a Public Defender's trustee discovered the injuries – that the prison staff entered the information about the injuries into the journal. Further, on

6 September 2014, when the Public Defender's trustees were visiting the Institution no. 17, they learned that Prisoner O.G. attempted to commit a suicide. As a result, the prisoner had a purple injury at the whole length on his neck. Our representatives checked the injuries journal but this latter injury was not documented either.

On 12 November 2014, the Public Defender's trustees were visiting the Institution no. 8 of the Penitentiary Department. During the visit, they heard sounds of quarreling and yelling as they were on the staircase that goes down to the Smart Reception Unit. Our representatives tried to find the room where these sounds were coming from. In the corridor, near the shower room, they observed a trace of newly wiped off blood and a stain. The prison staff looked troubled, talking to each other with abrupt phrases and showing anger towards the Public Defender's trustees.

A Public Defender's trustee inquired into how the blood traces occurred and what the noise was coming from. A deputy director of the Institution no. 8 replied that they were keeping (drunk) prisoners at the Smart Reception Unit and the prisoners were verbally abusing him and his employees. The Public Defender's trustees announced they wanted to see the prisoners immediately. This request was met with manifest and unhidden discontent on the part of the prison staff who were present there. However, the Public Defender's trustees insisted; they entered the shower room where they saw the prison staff were keeping detained prisoners M.U. and M.F.

As the Public Defender's trustees entered the shower room, they saw both prisoners, in wet clothes, lying on the floor. M.U.'s hands and legs were fastened to each other with a special chain (the shackles had a single structure). Both prisoners had traces of violence on their bodies, including their faces. M.U. had a cut in his forehead that was bleeding; he had other multiple injuries too. Prisoner M.F. had a bruise in his right eye.

The Public Defender's trustees demanded that the deputy directors of the Institution no. 8 of the Penitentiary Department provide explanations about the prisoners' condition and the origin of the injuries. The deputy directors stated the injuries came from falling.

The Public Defender's trustees enquired about the reason for keeping the prisoners in the shower room, in wet clothes and with their hands and legs fastened. One of the deputy directors replied that at that point it would be unreasonable to place these prisoners with other inmates in solitary confinement cells; and them lying on the floor in wet clothes was caused by their own negligence. As the deputy director and the chief of the security unit stated, the prisoners were not placed in the de-escalation zone since this would require drawing up relevant documents; moreover, they were wet and soiled with blood. For these reasons, they decided to keep the prisoners in the shower room.

The Public Defender's trustee demanded that the prisoner injuries be entered and described in the relevant journal. The trustees noticed the prison doctor was under pressure from the prison administration, which was the reason of why the prisoners'

external injuries did not get documented and described in the journal in detail. In particular, when the doctor was examining the prisoners to look for any injuries, there was a deputy director of the Institution in the doctor's room directly instructing the doctor not to indicate the injuries that were expressly present on the prisoner's body in the relevant documents.

On admission to a closed institution, a medical screening of the person must be confidential. It is crucial that the person is questioned about ill-treatment only by a doctor, without the prison staff attending.²⁰

In the reporting period, the National Preventive Mechanism paid its inspection visit to the Institution no. 3 of the Penitentiary Department. During the inspection, the Special Preventive Group members observed a prisoner admission process. It turned out that the way prisoner admission is administered at the Institution no. 3 is completely inconsistent with the principle of confidentiality of medical screening. Women prisoners were being visually inspected by a prison staff instead of a doctor. One and the same staff member was searching the person of the prisoner and telling a doctor on duty about injuries found on prisoner's body. Men prisoners, on the other hand, were being searched by the doctor, in the presence of the prison staff. They were also searching the person of prisoners at the same time; the process was attended by even the escort officers who brought the person to the institution. It should be noted that after the visual observation was over, the doctor filled out the medical papers and talked to the prisoners but this process was also attended by the prison staff.

As already mentioned above, a special role in preventing ill-treatment is played by the healthcare personnel responsible for documenting prisoner injuries. In this respect, it is crucial that a relationship of trust is established between the prisoner and the doctor to ensure that possible facts of ill-treatment are fully documented. Such an environment of trust is unimaginable without the doctor and the prisoner being able to communicate in privacy.

Members of the National Preventive Mechanism believe that the above-described practices of prisoner admission to penitentiary institutions do not ensure detection of ill-treatment for prevention purposes. Our belief is supported also by the information furnished to us by the Ministry of Corrections that, of the accused persons accommodated in the Institution no. 3 in 2014, 43 persons had injuries on their bodies and only 4 of them indicated the origin of their injuries. Other persons abstained from providing the doctor with any information about their injuries.

We note that in its 2013 Annual Report to the Georgian Parliament, the Public Defender recommended to the Minister of Corrections that the Minister elaborate and implement a new form of injury registration in conformity with the Istanbul Protocol to enable taking down of more detailed information about prisoner injuries. Unfortunately, the recommendation of the Public Defender remains unfulfilled to-

20 23rd General Report of the European Committee for the Prevention of Torture, 2013, par. 75

date; we do welcome the fact though that, as the Ministry of Corrections informed us, Minister agrees with the recommendation and has started elaboration of new forms for registration of prisoner injuries.

Along with documenting injuries, it is equally important, in the interests of torture prevention, to immediately report possible cases of ill-treatment to the relevant authorities,. Reporting to the relevant authorities of and subsequently launching an investigation into what might constitute ill-treatment is mandatory under both the national legislation and the international standards.

Prison doctors must bear in mind the best interests of the patient and their duty of confidentiality to that person, but the moral arguments for the doctor to denounce evident maltreatment are strong. Where prisoners agree to disclosure, no conflict arises and the doctor's moral obligation is clear. If a prisoner refuses to allow disclosure, doctors must weigh the risk and potential danger to that individual patient against the benefits to the general prison population and the interests of society in preventing the perpetuation of abuse.²¹

The inspection visits paid by the National Preventive Mechanism during the reporting period have shown that prisoner injuries discovered on admission get reported by prison authorities to the Prosecution Office, while injuries occurred while in prison are reported to the Investigation Department of the Ministry of Corrections.

During its inspection of the Institution no. 3 of the Penitentiary Department, the Special Preventing Group discovered that two cases of injured prisoners were not reported to the Investigation Department of the Ministry of Corrections and that happened against the background that all other cases of injuries were reported.

2.2.2. PROVISION OF LEGAL AID TO POSSIBLE VICTIMS OF ILL-TREATMENT

Article 14(1) of the United Nations Convention against Torture stipulates that “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.”

The United Nations Committee against torture highlights the importance of affirmatively ensuring by the States Parties that victims and their families are adequately informed of their right to pursue redress. In this regard, the procedures for seeking reparation should be transparent. The States Parties should moreover provide assistance and support to minimise the hardship to complainants and their representatives. Such proceedings should not impose a financial burden upon victims that would prevent or discourage them from seeking redress. The Committee recommends implementing mechanisms that are readily accessible. Judicial remedies must always be available to victims, irrespective of what other remedies may be available. States Parties should

²¹ The Istanbul Protocol, par. 72.

provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress.²²

The possibility for persons taken into custody to have access to a lawyer is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons. Further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.²³

In Georgia, State-funded legal assistance is governed by the Law on Legal Aid, which provides that such legal assistance shall be administered by the Public Law Entity “Legal Aid Service”. Normally, only insolvent individuals are eligible for free of charge legal aid, with a number of exceptions in certain circumstances. The mandate of the PLE “Legal Aid Service” does not envisage provision of free-of-charge legal representation to victims of torture at remand facilities and places of deprivation of liberty. This means eventually that persons who may become subjected to ill-treatment during their detention are not always eligible for a fundamental legal guarantee such as access to a lawyer.

In order for torture victims to be involved in redress procedures for the restoration of their rights, they must be provided with qualified legal assistance, which includes drafting legal documents and representation before judicial and law enforcement authorities. It is important that legal aid be ensured to these individuals from the moment they wish to complain about any ill-treatment administered against them.

Under the Government Action Plan for 2014 – 2015 approved by the Georgian Government Resolution No. 445 dated 9 July 2014, one of the projected activities is improvement of effective legal aid for torture victims through financial and technical support of the Free Legal Aid Service (including by funding the necessary expenses required for effective defense). Unfortunately, this activity has not been implemented this far.

2.2.3. PROTECTION OF VICTIMS AGAINST REPEATED ILL-TREATMENT

Pursuant to Article 13 of the United Nations Convention against Torture, each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

One of the fundamental criteria for effective investigation of allegations of ill-treatment, according to the Committee for the Prevention of Torture, is that for so

22 3rd General Report of the European Committee for the Prevention of Torture, 2012, paras. 29 and 30

23 23rd General Report of the European Committee for the Prevention of Torture, 2013, par.18

long as a preliminary inquiry or criminal investigation into possible ill-treatment is underway, the possible victims of ill-treatment should under no circumstances be returned to the custody of the law enforcement agency where it is alleged the ill-treatment was inflicted.²⁴

In *Popov v. Russia*, the European Court of Human Rights mentioned that it is of the utmost importance for the effective investigation of ill-treatment allegations that applicants be able to freely participate in the investigation process without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy.²⁵

One of the aims of Georgia as a democratic State is to prevent, suppress and effectively investigate all facts of ill-treatment. At the same time, this is an international obligation assumed by Georgia under its international treaties. Fulfillment of this obligation requires Georgia to have an effective mechanism in place for the protection of victims of ill-treatment. Victims of ill-treatment as well as their family members must be provided with additional guarantees and protection against any violence, threat of violence or any other forms of intimidation that might occur between the commencement of investigation and completion of judicial process.

As a result of its activities implemented during 2014, the National Preventive Mechanism concluded that protection of possible victims of ill-treatment from repeated pressure and intimidation is a matter for concern. In many cases we dealt with during the reporting period, prisoners were reporting ill-treatment administered against them to the Public Defender’s trustees first but were rejecting their statements afterwards in the presence of representatives of investigative authorities. Then, at follow-up meetings with the Public Defender’s trustees, they were stating that they had been intimidated by persons who administered ill-treatment against them, which was the reason for them not to pursue their complaints. The prisoners were mentioning, in particular, that they did not feel safe and protected from repeated pressure because they remained in the same penitentiary institutions and under the supervision of the same staff that have ill-treated them.

The National Preventive Mechanism believes that the Georgian law does not envisage guarantees and mechanisms of protection against repeated victimization of victims of ill-treatment at places of deprivation of liberty. According to Article 91 of the Law on Civil Service, if on the basis of a prisoner’s complaint an in-house inquiry is commenced against a civil servant on account of his/her possible perpetration of ill-treatment, such civil servant may be suspended from office. However, if a criminal investigation is commenced under Articles 159-162 of the Criminal Procedure Code, a civil servant

24 Report of the European Committee for the Prevention of Torture (CPT) on its visit to Albania from 23 May to 3 June 2005, CPT/Inf(2006) 24, par. 52. See also CPT’s Public Statement Concerning the Chechen Republic of the Russian Federation, Appendix I, CPT/Inf (2007) 17, par. 53.

25 *Popov v. Russia*, Judgment of 13 July, 2006, application no. 26853/04 §246.

can be suspended from office only if he/she is formally found accused. Further, the law does not contain any mandatory provision obligating the relevant authorities to move a possible victim of ill-treatment to another institution.

We welcome the fact that the Interagency Coordination Council for the implementation of measures against Torture, Inhuman, Cruel or Degrading Treatment, which has been established by a Government Resolution no. 341 dated 7 May 2014, drafted a set of amendments to the effect of increasing the role of judges in combating torture. The amendments propose the following new regulations:

- If, at any stage of hearing/proceedings, a judge doubts that the accused/convicted person has been subjected to torture, degrading or inhuman treatment, he/she will be authorized to request that the relevant investigative body commence investigation;
- A judge may issue a judicial order obliging the Penitentiary Department to report to the court about the prisoner's health status. The judicial order may specify periodicity of such reporting;
- If there is a likelihood that a prisoner's life or health will be at risk if the prisoner remains in the same remand facility / place of deprivation of liberty or there is a supposition, including information received under paragraph 2 of this Article, that the prisoner has been or may be subjected to torture, degrading or inhuman treatment, a judge may issue a judicial order obliging the Penitentiary Department to move the prisoner to other remand facility / place of deprivation of liberty.

2.2.3.1. INCOMPLIANT DETENTION CONDITIONS

According to the case-law developed by the European Court of Human Rights, Article 3 of the Convention may be violated not only by action but by the conditions in which a person is kept detained. In *Dougoz v. Greece*, the Court elaborated detention conditions/criteria, which, among others, include the standard that there should be a normal temperature in the cell so that it is neither too hot nor too cold; bedding is appropriate; and sanitation complies with the standards.

In *Ramishvili and Kokhreidze v. Georgia*, the European Court of Human Rights stated 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.

In its judgment in *Modârcă v. Moldova*, the European Court of Human Rights explained that a combination of different expressions of inappropriate living conditions may have a cumulative effect to amount to violation of the right under Article 3 of the European Convention on Human Rights (inhuman and degrading treatment).

In *X v. Turkey*, the European Court of Human Rights stated that the Government was unable to explain why the applicant was not given the opportunity to take regular open-air exercise. After having examined the case circumstances, the Court concluded that the applicant had been subjected to inhuman and degrading treatment.²⁶

Problems related to physical environment at penitentiary institutions are discussed in the relevant chapter of this Report. It is worth noting that during the reporting period the Public Defender's Office encountered cases where prisoners had been unduly placed separately from other prisoners for different reasons and the conditions they were kept in were incompatible with the established standards as humiliating and degrading the dignity of their persons. For example:

On 22 January 2014, the Public Defender's trustees met and spoke with defendants detained separately from other inmates at the Institution no. 6. They inspected the detainees' living and other conditions as well.

Having spoken with the accused persons and inspected their residential cells, we found out that they were allocated in the cells on the first floor but the cells were under the ground by half of their size. The walls in the cells were newly painted that made the cells humid. The stone tiles on the floor were soiled with construction mud. Each cell had one window sized 70x70 cm with three-rowed built-in iron bars. Also, in front of the windows, there was a wall construction in the yard that made penetration of sufficient daylight into the cells impossible. The detained defendants were saying they were keeping the windows open all the time because, firstly, had they closed the windows, they would not open again because the windows had no handles and, secondly, the cells were not being ventilated enough. These factors altogether had the effect that the temperature in the cells was low, despite the fact that the heating system was on. The doors of toilets inside the cells were barely covering the toilets and the toilets were not therefore fully isolated. There was no water tank to flush the toilet. There were ventilation pipes in the cell but the ventilation system was off; in fact, the detained defendants stated, the ventilation system was never on.

In conversation with us, the accused detainees stated that, due to the above-described conditions, they were suffering from lack of air, they had not been allowed to do an outdoor exercise since the day they were admitted to Institution no. 6 (28 November 2013), and they were alone in the cells, isolated from others. All these factors were negatively affecting their mental health with the effect that they had sleep disorders, were feeling anxiety and could easily get irritated. Some of the detainees had inflicted self-injuries stating they did so out of protest against the conditions they were kept in.

The administration of the penitentiary institution referred to security reasons as a justification for keeping the accused detainees isolated. Because the detention conditions of these prisoners were not complying with the established standards, on 28 January 2014, the Public Defender addressed the Minister of Corrections with

26 *X. v. Turkey*, Judgment of 9 October, 2012, application no. 24626/09, §§ 42-45.

its Recommendation no. 03-2/3953 to provide the prisoners with adequate living conditions.

The Special Preventive Group considered the conditions of prisoners in solitary confinement cells at the Institution no. 3 also ill-treatment. The Group was visiting the Institution no. 3 through 23-24 October 2014. Our monitoring revealed that it was impossible to keep sanitation and hygiene in the cells, there was an unbearable smell all around, the prisoners did not have mattresses and linen²⁷ and they had to sleep on iron beds.²⁸ One of the prisoners had toilet paper rolled around his body underneath his clothes to protect himself from cold. The prisoners allocated in solitary confinement cells were not allowed to exercise outside.²⁹

The living conditions are particularly grave at the Institution no. 7. The Public Defender has been repeatedly addressing the Minister of Corrections with its recommendations on this issue. The matter is discussed in detail in the Public Defender's 2013 Report to the Georgian Parliament but major problems at the Institution have not been dealt with to this date.³⁰

2.2.3.2. PENITENTIARY STAFF TRAINING

Development of professional teaching programs and trainings for public officials is a key element of a strategy of prevention of torture and inhuman treatment.³¹

Consequently, it is necessary to organize trainings and courses for them periodically. Especially needed are trainings in effective prevention of prison incidents and human rights-based approaches.

Pursuant to the UN Convention against Torture and Other Cruel, Inhuman or

27 On the issue of providing prisoners in solitary confinement cells with mattresses and linen, the monitoring team spoke with the Institution's lawyer who explained that the law does not envisage that such prisoners be provided with mattresses and linen.

28 It should be noted that, during our visit to the Institution no. 3, the Penitentiary Department's Monitoring Division was conducting its scheduled monitoring to the same institution. The National Preventive Mechanism team provided the Penitentiary Department's monitoring group with information about detention conditions in solitary confinement cells that are incompatible with human dignity demanding that the Penitentiary Department's monitoring group take appropriate measures immediately. Our team informed the group also about other problems we revealed at the Institution no. 3.

29 Detention conditions must be compatible with respect for human dignity, prisoners' health and well-being should be adequately secured (*Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII).

30 For more detail, please see in this Report a chapter entitled "Physical environment and sanitation and hygienic conditions at penitentiary institutions"

31 Human Rights Committee general comment No. 20: "Enforcement personnel, medical personnel, police officers and any person involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States Parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons" (par. 10).

Degrading Treatment or Punishment, “Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.” This implies an obligation of the State to elaborate a program based on a human rights methodology.

Equally important is the subsequent use of the knowledge received at trainings. As the international experience shows, prison training programs are often times incompatible with the human rights-based approach and procedures and lack practical application. Prison staff prefers to do things the way they have always done.³² In order to maintain sustainability and practicability of trainings, mechanisms for training assessment should be developed. Training effectiveness should be evaluated differently to show whether the actual performance has improved.

Training evaluation may be done on the basis of the following criteria: participant satisfaction and inclusion, willingness to use the learned knowledge in practice, and knowledge testing including by simulations and operational scenarios.³³

Qualifications and experience of the penitentiary system employees remains one of the major challenges of the penitentiary system in Georgia. The following activities have been implemented in the Georgian penitentiary institutions in this regard:

A UNDP program has been approved for the Public Law Entity “Penitentiary and Probation Training Center” envisaging a number of new opportunities for the Training Center.

With the help from the Council of Europe, the Penitentiary and Probation Center developed a 6-month training program for new staff. Based on the positive results achieved, it was decided to continue with the program in 2015. On the basis of the mentioned teaching module, a uniform training program for current employees was elaborated which will start to be implemented in 2015. Trainings for the management level of the penitentiary institutions are continuing and are primarily aimed at human rights protection and prevention of torture and ill-treatment.

It is important for prison staff trainings to be designed in a way to uphold protection of human rights and prevent torture and ill-treatment in penitentiary institutions. In drafting training programs, consideration should be given to sufficient frequency of trainings and relevance of training topics. Also, special attention should be paid to enhancing the penitentiary personnel’s ability to work as a team, based on a multidisciplinary approach.

32 United Nations Prison Incident Management Handbook, 2013, p. 23.

33 Andrew Coyle, A human Rights Approach to prison management, International Centre for Prison Studies, (2009).

2.2.3.3. IMPORTANCE OF SURVEILLANCE CAMERAS

A penitentiary institution should be based on several components of security. One of such components is physical security that implies a physical sustainability of the premises and additional security systems such as video surveillance.³⁴ Video surveillance of prisoners should be implemented in way that their rights are protected and risks and threats related to their privacy are paid due consideration. This means that such video control should only be exercised in places of shared use as determined by law.

Video observation at places of shared use implies electronic surveillance only in non-private areas such as the prison reception unit, corridors, exercising yards, etc. Electronic surveillance and control of remand and convicted prisoners may not be administered in shared shower rooms, toilets and rooms designed for long-term visits except in accordance with a procedure and in circumstances envisaged by the Georgian legislation. The European Committee for the Prevention of Torture (CPT) has been emphasizing in its reports to individual countries that it is essential that the privacy of detained persons be preserved when they are using a toilet and washing themselves.³⁵

Video surveillance is one of the most important components of prison security. It also enhances public control over and monitoring of places of shared used. The Georgina legislation regulates how video surveillance should be exercised in such places. Pursuant to the Imprisonment Code of Georgia, the administration has the right to use audio, visual and other technical means of electronic control.³⁶ The aim of this power is to prevent escaping from the prison and prevention of commission of crime or other wrongdoing as well as to collect information.

As a result of the monitoring visits paid to various penitentiary institutions, the National Preventive Mechanism was able to reveal problems that lack of proper video control of places of shared use may entail. In particular, we witnessed once again the need for electronic surveillance in such places as we were on our visit to the Institution no. 8 on 12 November 2014 when the Public Defender's trustees found shackled prisoners with traces of violence on their bodies in the shower room of the Smart Reception Unit. It is without doubt that had the Smart Reception Unit been equipped with surveillance cameras, it would have been possible to obtain evidence having crucial importance to the investigation – a video recording – that would help find out at least who took the prisoners to the Smart Reception Unit and how.³⁷ In one of its reports to the Turkish

34 Andrew Coyle, *A human Rights Approach to prison management*, International Centre for Prison Studies (2009).

35 Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, available at: <http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf> [last viewed 23.03.2015].

36 Under Article 54(1) of the Imprisonment Code of Georgia, “the administration is entitled to use, in accordance with the legally established procedure, audio-visual, electronic or other technical means of control”.

37 The Public Defender's 2014 Report on its Visit to the Penitentiary Institution No. 8, p. 8, accessible at <http://www.ombudsman.ge/uploads/other/2/2196.pdf> [last viewed 23.03.2015].

Government, the CPT mentioned that lack of video control rendered fixation of various facts of collective beatings and violence impossible thereby hindering prevention of ill-treatment.³⁸

Further, it should be noted that the Smart Reception Unit is used to accommodate newly admitted prisoners, while the law does not envisage moving prisoners already allocated to their residential cells back to the Smart Reception Unit. Because it happened once, there is a risk that the practice of moving prisoners from their cells to the Smart Reception Unit will become recurrent. It is necessary to mention that this Unit is located in a part of the building where the so-called “greeting by beating” of the inmates was happening before they would be sent to their cells and hence it is necessary, for the prevention of these criminal practices, to establish a constant and full-fledged video surveillance over this area and to store the recordings for a reasonable time. Although there is no uniform rule about retention period of such recordings, our practice analysis shows that video recordings should be kept for a reasonable time (at least 10 years).

No surveillance cameras are installed on the territory of the Institution no. 14, as we learnt during our visit to that institution.³⁹ We would like to note once again that lack of video control hinders fixation, investigation and timely prevention of various incidents at places of shared use.

RECOMMENDATIONS

To the Minister of Corrections:

- Develop and implement a new injury registration form that would be compatible with the requirements prescribed by the Istanbul Protocol, in particular a form that will allow entering more detailed information about prisoner injuries;
- Conduct intensive training for the penitentiary healthcare staff in documenting ill-treatment;
- Take all reasonable measures, including by providing relevant training and instruction, to ensure that conversation between the healthcare staff and prisoners takes place with full respect for the confidentiality principle;
- Ensure that each time doctors discover signs of ill-treatment the case gets reported to the investigative authorities;
- Enact a new normative act or amend the existing one introducing an ob-

38 Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 28 June 2012 available at: <http://www.cpt.coe.int/documents/tur/2013-27-inf-eng.htm> [last viewed 23.03.2015].

39 The Public Defender’s 2014 Report on its Visit to the Penitentiary Institution No. 14, p. 3, accessible at <http://www.ombudsman.ge/uploads/other/2/2196.pdf> [last viewed 23.03.2015].

ligation of moving a possible victim of ill-treatment immediately from the institution where he/she was possibly subjected to ill-treatment;

- Take all reasonable measures, including by providing relevant training and instruction, to ensure to all prisoners in the penitentiary institutions imprisonment conditions that are compatible with the established standards;
- Equip penitentiary institutions with video surveillance systems in accordance with the requirements under Article 54 of the Imprisonment Code;
- Enact an order determining a reasonable term for storing video surveillance recordings and ensure that members of the National Preventive Mechanism have unhindered access to such recordings.

TO THE PARLIAMENT:

- Amend the Law on Legal Aid so that possible victims of ill-treatment are provided, in every case, with appropriate legal aid funded by the State;
- Amend the Georgian legislation with a view of making it possible to suspend public officials who have been reported to have committed ill-treatment from their office regardless of they have formally been charged;
- Amend the Georgian legislation making it mandatory to move victims of ill-treatment from the institutions they have allegedly been subjected to ill-treatment and to take all necessary measures to ensure their security.

2.3. ORDER AND SECURITY AT REMAND FACILITIES AND PLACES OF DEPRIVATION OF LIBERTY

2.3.1. GENERAL OVERVIEW

Pursuant to the European Prison Rules, “Good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity and offering them a full programme of activities”.⁴⁰ This stipulation requires setting up a system of order and security that maintains balance between security and programs for prisoner reintegration into the society. This means, on its turn, that consideration should be paid to various components to effectively manage prisons.

Security includes prevention of violence among prisoners, firefighting and preclusion of other emergency situations, ensuring safe work environment to the prison personnel, and prevention of suicides and self-injuries. In view of these objectives, security components can be categorized as follows. Physical security implies physical

⁴⁰ Council of Europe Committee of Ministers, The European Prison Rules, Rule 49, Recommendation Rec(2006)2, adopted by the Committee of Minister on 11 January 2006

security of buildings, including walls, windows, doors, etc. Procedural security is about having methods and procedures in place to ensure prison security and this has to do with rules on the prevention of escapes and establishing order.⁴¹ One of the best tools of ensuring good security is the so-called dynamic security concept.

The concept of dynamic security envisages establishing positive relations between the prison staff and the inmates by way of maintaining fair treatment practices and making available activities helping the inmates re-socialization and reintegrate into the society. According to the UN Prison Incident Management Handbook, prison staff should realize that humane and fair treatment of prisoners helps maintain a good order and safety in prison.⁴²

An indispensable condition for maintaining order and security in prisons is positive relationship between the staff of the penitentiary institution and the prisoners. For such relationship to arise, it is important that prisoners realize that the institution rules and procedures are there because they are important for keeping the prison environment safe and humane. Prisoners should believe that they will be treated humanely and their rights will be protected.

Although ensuring a good order and safety in prison through positive relationship between the staff and the prisoners is a starting point, in some cases it becomes necessary to use force and other measures of coercion. Prisoner control involves static security elements too such as proper security infrastructure and equipment as well as incident management and use of force where appropriate.⁴³

We should mention here that the United Nations Code of Conduct for Law Enforcement Officials allows the law enforcement officials to use force only when strictly necessary and to the extent required for the performance of their duty.⁴⁴ This means additional security measures should be resorted to only in extreme cases. Force and other measures of coercion should be used only according to a due procedure and following the best examples existing in practice.

During its visits to the penitentiary institutions, the National Preventive Mechanism learned about conflicting, tense and unfriendly relations between the inmates and the prison staff. Several reasons contribute to such environment: the prisoners' feeling that they are treated unfairly; improper follow-up to requests and complaints; unsatisfactory detention conditions at penitentiary institutions; in some cases, a physical environment that is inconsistent with the standards; often times, lack

41 Andrew Coyle, A human Rights Approach to prison management, International Centre for Prison Studies, (2009), accessible at <http://www.prisonstudies.org/> [last viewed 15.02.2015].

42 United Nations Prison Incident Management Handbook, 2013, p. 21-22, accessible in English at http://www.un.org/en/peacekeeping/publications/cljas/handbook_pim.pdf [last viewed 22.03.2015].

43 *Ibid.* p. 13.

44 UN General Assembly, Code of conduct for law enforcement officials, 5 February 1980, A/RES/34/169, accessible in English at <http://www.refworld.org/docid/48abd572e.html> [last viewed 09.03.2015].

of re-socialization and rehabilitation activities; low level of staff knowledge and qualifications; improper management of mental health, drug addiction and redundant use of psychotropic substances; problems in provision of healthcare services; lack of prisoners' awareness of services available in the penitentiary system and procedures to receive those services; etc.

It is quite common in penitentiary institutions for prisoners to go on hunger strike. Analysis of such occurrences has showed that prisoner hunger strike as an extreme form of protest is sometimes related to actions or inactions of the prison personnel. Another extreme form of protest is inflicting injuries to self, which sometimes also has to do with the prison personnel's actions or inactions

Multiple factors contributing to the risk of recurrent violence among prisoners are a serious problem in penitentiary institutions. These risks are exacerbated by the long-embedded prevailing criminal mentality in prisons that has been in place for decades. Gradual elimination of that practice requires a manifold approach, including the measures listed below.

The reasons described above bring us to a conclusion that protection of human rights and maintenance of order and safety in penitentiary institutions require a manifold and systemic approach. The following organizational aspects⁴⁵ need to be considered in this process:

- Appropriate legal framework (regulations);
- Accountability (reporting mechanism);
- Operational abilities and competence of the prison staff (ratio of staff to prisoners, organizational structure, staff skills and experience, prison staff ethics code, prison internal regulations and disciplinary process);
- Elements of dynamic security (staff interaction with prisoners, observation, information gathering, knowledge of each prisoner, conflict management, mediation, etc.)
- A pre-made plan for incident and emergency management.

These organizational aspects are discussed in more detail in the relevant chapters below.

2.3.2. ACCOUNTABILITY

Protection of human rights and maintenance of good order and security in penitentiary institutions are closely related to accountability of the institution personnel. International standards and norms refer to the need for a reporting mechanism as a

45 *Ibid.* p. 15.

general rule.⁴⁶ But it is then for the governments to elaborate their own accountability standards. These standards should serve to managing prisons effectively and should be in line with the UN Standard Minimum Rules for the Treatment of Prisoners.

This can be made possible by putting in place a legal framework that allows for internal and external assessment of performance of both the prison administration and each staff member based on pre-determined indicators and evaluation of maintaining order in prisons. The development of such framework will increase transparency, accountability and credibility of the penitentiary institutions.⁴⁷

Although penitentiary institutions are periodically sending their reports on issues of concern to the Penitentiary Department and the Ministry of Corrections, there is no system in place to assess performance of prison administrations based on pre-determined indicators.

As for the individual accountability of prison staff, they are reporting to their direct supervisor; in addition, possible misconduct committed by the penitentiary personnel is investigated by the Inspectorate-General of the Ministry of Corrections.

To ensure proper performance of their functions by and accountability of the penitentiary system employees, it is necessary to develop clear job descriptions, standard operation procedures, ethics codes and incident management guidelines. Unfortunately, because of the lack of a set of such guiding documents and low qualification of employees of the penitentiary system, the prison staff find it difficult to make right decisions in a timely manner, which on its turn is associated with an increased risk of power abuse and ill-treatment.

Extremely important is to develop a clear-worded ethics code that, among other profession-related issues, would cover: staff behavior rules that would positively affect the environment inside the penitentiary institutions; competent and diligent performance of their duties by the staff in accordance with the legislation and other normative acts, relevant handbooks and lawful orders of superiors; collegial attitude to fellow staff members; respect for the human dignity of prisoners; protection of confidentiality; and maintenance of high professional standards in public relations.

2.3.3. STAFF TRAINING

As the UN Standard Minimum Rules for the Treatment of Prisoners provide, the prison personnel shall possess an adequate standard of education and intelligence.⁴⁸ Another

46 Handbook for prison leaders: a basic training tool and curriculum for prison managers based on international standards and norms, the United Nations Office on Drugs and Crime, New York, 2010, accessible in English at <http://www.unodc.org/> [last viewed 22.03.2015].

47 United Nations Prison Incident Management Handbook, 2013, p. 17.

48 The UN Standard Minimum Rules for the Treatment of Prisoners, Rule 47-1, accessible in English at <http://www.ohchr.org/EN/> [last viewed 02.03.2015].

requirement is that personnel shall have opportunities to further deepen their knowledge. This implies, on its turn, that relevant trainings and courses be offered at various intervals. Especially important is to train the staff in human rights approaches and human rights-based prison management methods.

Qualifications and level of experience of the penitentiary system personnel remain one of the major challenges faced by the Georgian penitentiary system. Prison staff were provided with various training opportunities in 2014. Information about trainings⁴⁹ more or less related to human rights, order and security is provided in the below table:

#	Training topics	Ministry employees	Penitentiary Department employees	Prison employees
11	Use of firearms	10	67	0
22	Training for the escort service members; use of firearms	1	38	0
33	A beginning basic training for employees of remand facilities and places of deprivation of liberty (regime)	0	0	120
44	Team working methods (phase I)	0	0	16
55	Bullying; prevention of bullying (phase II)	0	0	19
66	Art therapy (phase III)	0	0	18
77	Improving survival skills; carrier planning and getting ready for employment (phase IV)	0	0	17

49 The data have been taken from the official webpage of the Penitentiary and Probation Training Center at http://pptc.ge/cms/site_images/pdf/angarisi/PPTC%20Report%202014%20GEO.pdf [last viewed 21.03.2015].

88	Projective and diagnostic techniques in individual work (phase V)	0	0	0
99	Practical application of risks and needs assessment and individual sentence planning methods and relevant instruments in the penitentiary system	0	4	20
110	Changes in the law	0	126	319
111	Tactical training ToT	0	0	12
112	Long-term course for training the staff of prison legal units	0	0	25
113	Training seminar in “Reasonable admission and allocation”	1	0	23
114	Mental disorders in prisoners: early discovery and prevention; methods of intervention, care and treatment	0	0	21
115	The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures Women Offenders (the Bangkok Rules)	0	0	40
116	Special training program for security service employees	0	0	16
117	Altering violent behavior and addictions	0	0	10

The data presented in the above table shows that neither the number of training participants nor the topics covered at the trainings sufficiently meet the needs of penitentiary employees in terms of knowledge and skills required for both protecting human rights and maintaining good order and safety in the penitentiary institutions. However, we do welcome the introduction of a long-term (6 months) training course for the staff of prison legal units; the course consists of 5 phases and includes theory and practice.⁵⁰ Equally important is to further reinforce the basic training program and to keep the teaching results sustainable. The Penitentiary and Probation Training Center offers training for new staff based the basic training program. The basic training

⁵⁰ Information about the long-term training course is accessible at http://pptc.ge/?action=page&p_id=127&lang=geo [last viewed 14.02.2015].

course includes theory, practice, tactics and physical training.⁵¹

When drafting training curricula, it is important to consider sufficient frequency of trainings and relevance of training topics. Special attention should be paid to the ability of penitentiary system employees to work as a multidisciplinary team.

Knowledge received at trainings should then be actually applied in practice. As the international experience shows, translation of the knowledge gained at training courses in practice is not easy because the prison staff prefer to do things the way they have always done.⁵² In order to maintain sustainability and practicability of training, an effective mechanism for assessing training results and supervising their implementation in practice should be developed. Training effectiveness may be evaluated by different means such as measuring participant satisfaction and their willingness/readiness to use the received knowledge in practice, testing their skills of making situational analysis and finding solutions, observation by supervisors to see whether the training participant has improved his/her skills, and providing feedback about the use of the knowledge in practice by the training participants.

2.3.4. PRISONER CLASSIFICATION

Prisoner classification should be performed in a way that a precise analysis of each prisoner's risks and needs is produced. This is important to ease management and control of prisoner behavior. An effective prisoner classification system should also meet requirements such as reliability, accuracy and equality of rights.

The changes effected to the Imprisonment Code on 16 April 2014 determined the following types of places of deprivation of liberty: a low-risk place of deprivation of liberty, a half-open place of deprivation of liberty, a closed place of deprivation of liberty and a special-risk place of deprivation of liberty. The penitentiary system also includes a Juvenile Rehabilitation Institution and a Women's Special Institution.⁵³

Pursuant to Article 46(2) of the Imprisonment Code, the Chairperson of the Penitentiary Department determines the type of deprivation of liberty in accordance with the relevant provisions of this Code. Under paragraph 4 of the same Article, based on a decision of the Chairperson of the Penitentiary Department, a convicted person may be moved, in order to serve the remaining sentence, to a place of deprivation of liberty of the same or other type, due to systematic violation of the institution's regulations, illness and/or risk level for security purposes, on account of the institution's reorganization, liquidation or overcrowding, or where there is a circumstance described in Article 58(1) of this Code or there are other important, justified circumstances and/or based on the convicted person's consent. Risk assessment and periodic review is performed

51 Information about the basic training course is accessible at http://pptc.ge/?action=page&p_id=130&lang=geo last viewed 14.02.2015].

52 The United Nations Prison Incident Management Handbook, 2013, p. 23.

53 Imprisonment Code, Art. 10

by the Multidisciplinary Group. A ministerial order determines the types of risks, risk assessment criteria, rules of assessing and reviewing risks, procedures and conditions of moving convicted persons to a place of deprivation of liberty of the same or other type, and the composition and rights of the Multidisciplinary Group.

The Ministry of Corrections produced a draft version of the above-mentioned ministerial order. The draft order envisages creation of initial data processing groups⁵⁴ and the Multidisciplinary Group. As it is projected in the draft order, the Multidisciplinary Group and the initial data processing groups as well as the Chairperson of the Penitentiary Department should complete the process of prisoner allocation to appropriate places of deprivation of liberty according to the risk assessment results not later than by 1 January 2017.

The draft ministerial order offers the following definition of a danger risk. A danger risk is a danger possibly posed by a convicted prisoner to the security of the institution, the people around, the public, the State and/or law enforcement bodies, in view of the person's personal traits, motive of commission of crime, the actual illegal outcome, behavior in the institution and relations with the criminal world. A danger risk may be low, medium, standard or high. Low risk convicted persons will be allocated to low risk places of deprivation of liberty. High risk convicted persons will be allocated to closed places of deprivation of liberty. Standard risk convicted persons will be allocated to half-open institutions. And high risk convicted persons will be allocated to special risk institutions.

According to the draft ministerial order, each data processing group will be composed of 1 representative from the institution's security unit, 1 representative from the institution's legal regime unit, 1 representative from the institution's special registration unit, 1 representative from the institution's social unit and an institution's psychologist. Information processed by the groups (completed questionnaires) will be forwarded to the institution director who will then refer to the Multidisciplinary Group in 5 days.

The Multidisciplinary Group is a consultative body to the Chairperson of the Penitentiary Department that helps the Chairperson determine categories of prisoners by their danger risks. The Multidisciplinary Group consists of leading officials (chiefs or deputy chiefs) of the Department's relevant units who have appropriate education and professional experience as well as moral values and are able to function as members of the Multidisciplinary Group. The Multidisciplinary Group consists of 5 members: 1 representative from the Department's social services unit, 2 representatives from the main security unit (a legal regime unit and an operative unit), 1 representative from the special registration unit and 1 Department's psychologist. The multidisciplinary group sends its final decision on prisoner danger risk to the Department's Chairperson recommending allocation of the prisoner to the relevant institution.

54 Each group to cover not more than 700 convicted persons.

It should be noted that a prison administration is obliged to inform the convicted person that the Multidisciplinary Group has started evaluation of his/her danger risk. The convicted person has the right to view documents about himself/herself forwarded to the Multidisciplinary Group, if he/she so requests in writing. The convicted person may not view information indicated in Article 8(2) of this order. The person has the right to submit any additional documents, at any stage of proceedings, which he/she thinks will facilitate to making a decision he/she considers favorable to him/her.

The Public Defender welcomes this initiative and considers the introduction of a prisoner risk evaluation and periodic review system a clearly positive step. We also welcome the fact that the ministerial order formally establishes the right of convicted prisoners to appeal the decisions of the Multidisciplinary Group on determining the prisoner risk and/or decisions of the Penitentiary Department Chairperson on prisoner transfer. It has been for years that the Public Defender has been recommending in many of its recommendations to allow the prisoners to appeal against their transfer decisions.⁵⁵

Despite the progress, the Public Defender believes a number of provisions of the draft ministerial order are vague and legally deficient. Annex 2 of the draft order, which lists prisoner danger risk assessment criteria, raises concern in this respect. The Public Defender deems these criteria are vague and insufficient leaving plenty of room for their versatile interpretation and incorrect application in practice. The criteria listed in Annex 2 make the impression that, in evaluating the prisoner danger risks, consideration will only be given to the severity of the punishment.

In addition, the proposed draft order contains provisions allowing for unjustified procrastination of the danger risk assessment exercise.

The Public Defender believes that convicted prisoners must be explained in advance their rights in the process of their danger risk determination. Convicted prisoners should also be informed, in advance, about the danger assessment criteria. It is then necessary to document the assessment procedure by drawing up relevant minutes, which should be signed by the prisoner. This would raise the protection of prisoner right to a whole new level establishing a higher protection standard.

In its proposal, the Public Defender also paid attention to issues such as the need for including physicians in the primary data processing groups and the Multidisciplinary Group. The Public Defender recommended introducing the possibility of moving prisoners from one penitentiary institution to another at their own request.

In its proposal, the Public Defender identified also some other issues concerning the draft ministerial order, which he thought were problematic. The proposal has been submitted on 20 March this year and it is therefore unknown at this stage whether the Public Defender's propositions have been taken into account.

55 Public Defender's 2013 Report to the Parliament, p. 63

2.3.5. PRISONER ALLOCATION

According to the European Prison Rules, prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.⁵⁶ Prisoners should be consulted when moving them from one institution to another. The European Committee for the Prevention of Torture has recommended that prisoners should be able to maintain good contact with the outside world and any limitation thereof should be based only on substantial and manifest security risks.⁵⁷ According to the case-law of the European Court of Human Rights, although the European Convention does not grant prisoners the right to choose their place of detention, detaining an individual in a prison which is so far away from his/her family that visits are made very difficult or impossible may in some circumstances amount to interference with family life.⁵⁸ This covers situations where remoteness is coupled with badly functioning transportation system, health status of family members and exhausting travel for children. For these reasons, prisoners should be consulted with before they are moved to another institution.

Our monitoring showed that moving prisoners between institutions was quite a frequent practice during the reporting period. Often times prisoners are moved from the institutions located in the eastern Georgia to those located in the western Georgia or vice versa. As a result, the prisoners experience difficulties in maintaining contact with their families and lawyers and are suffering from the stress related to changed environment. For example, remand prisoners brought from the eastern Georgia to the penitentiary institution no. 3 in Batumi were refusing to attend court hearings due to a long distance to the court.

Often times reasons the prisoner are unaware of the reasons of moving them from one institution to another. Moreover, the Penitentiary Department refuses to inform the Public Defender's Office about the reasons of transfer. Normally, a template letter from the Penitentiary Department will say that a prisoner has been transferred from one institution to another on the basis of a confidential letter of the institution's director. The European Court of Human Rights has explained that a decision to transfer a prisoner from one establishment to another must be reasoned and must serve a legitimate goal. The frequent moving of a prisoner from one institution to another, depending on the specific circumstances of the case, may result in violation of Article 3 of the European Convention on Human Rights.⁵⁹

In its 2013 Report to the Parliament, the Public Defender recommended to the Minister of Corrections that prisoners be made aware of the grounds and reasons for moving them from one institution to another and the relevant minutes be drawn up; also,

56 The European Prison Rules, Rule 17.1

57 Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf/E (2002) 1 - Rev. 2013).

58 See judgments of the European Court of Human Rights in *Ospina Vargas v. Italy*, *Vintman v. Ukraine*, *Messina v. Italy*).

59 *Khider v. France*, Judgment of 9 July 2009

according to the Public Defender's recommendation, prisoners should be explained that they have the right to appeal their movement order. The Parliament approved these recommendations in its "Resolution on the Report of the Public Defender on the Protection of Human Rights and Freedoms in Georgia in 2013". However, the Ministry of Corrections has not fulfilled the recommendations and the practice concerned has not changed yet.

It has been emphasized in the Public Defender's 2013 Report that remand prisoners and convicted prisoners are not fully isolated from each other in the penitentiary institutions.⁶⁰ Neither are juvenile prisoners and adult prisoners.⁶¹ These two issues are still a matter of concern at the penitentiary institution no. 8. Accordingly, the Public Defender's recommendation has not been fulfilled.

Monitoring carried out at the Institution no. 6 showed that all convicted prisoners, with no distinction by their imprisonment regime, were allowed to exercise outdoors under the same rule – one hour a day. In other words, prisoners who are serving their sentence under a half-open regime cannot move freely inside the institution on a territory designated for that purpose despite the fact that they are entitled to a leisure time for 6 hours and 30 minutes every day under the prison regulations. It follows that, in the Institution no. 6, such prisoners are not able to exercise their freedom to the extent guaranteed to them by the Georgian legislation.

The Public Defender believes this problem has to do with the lack of appropriate infrastructure at the Institution no. 6. This Institution is unfit for housing both closed regime and half-open regime prisoners at the same time.

2.3.6. SECURITY MEASURES; MANAGEMENT OF INCIDENTS AND EMERGENCIES

2.3.6.1. SMART RECEPTION UNITS

On 2 December 2014, the Order of the Minister of Corrections, Probation and Legal Assistance no. 97 dated 30 May 2011 was amended determining legal grounds for placing prisoners in the Smart Reception Unit. There is a separate de-escalation room in the Smart Reception Unit. According to the amended ministerial order, if a remand or sentenced prisoner in the waiting room is a threat to his/her own or others' lives, the penitentiary institution's administration may allocate such a prisoner in a properly-equipped de-escalation room within the institution under a 24-hour visual supervision and with an uninterrupted access to the healthcare personnel. A de-escalation room must be equipped with a safe mattress, a surveillance camera (the lavatory pan must

60 Institution no. 7 is referred to as an example, p. 62. The report is accessible at <http://www.ombudsman.ge/uploads/other/1/1563.pdf> [last viewed 15.02.2015].

61 A recommendation about isolating juvenile prisoners from adult prisoners has also become part of the Parliament's Resolution on the Report of the Public Defender on the Protection of Human Rights and Freedoms in Georgia in 2013

be excluded from the camera visibility area), an open-type damage-proof remotely-controlled toilet, a water tap, lighting and proper ventilation. Where necessary, measures of physical restraint and special means prescribed by the Georgian legislation may be used in relation to individuals placed in a de-escalation room. Physical restraints may be applied for a reasonable period until the criteria indicated in paragraph 1 of this Article are eliminated. Immediately after an individual is placed in a de-escalation room, a relevant document should be drawn up and entries about the condition of the individual must be registered at reasonable intervals. Remand and convicted prisoners will be placed in a de-escalation room until the allocation criteria are eliminated.

The statute of remand facilities and places of deprivation of liberty does not determine who exactly decides on placing an individual in a de-escalation room and what the level of proof is. The statute says a relevant document should be drawn up immediately after an individual is placed in a de-escalation room but it is unclear whether the document to be drawn up should be minutes or decision (order). A maximum term of holding a person in a de-escalation room is not indicated too. Pursuant to the statute, remand prisoners and sentenced prisoners may be placed in the Smart Reception Unit for no more than 15 days. But the statute does not expressly provide that remand/sentenced prisoners will be placed in a de-escalation room until the allocation criteria are accomplished but for no more than 15 days. It follows that it is unclear what happens if the 15 day-term of placing a person in a de-escalation room expires but the criteria for allocation a person in de-escalation room are not eliminated.

Having said that, we believe prisoners should be placed in de-escalation rooms inside the Smart Reception Units only on the basis of clear legal regulations providing proper guarantees against unlawful, arbitrary and disproportionate use of the measure.

2.3.6.2. ELECTRONIC SURVEILLANCE

On 19 December 2014, the Public Defender addressed the Minister of Corrections and Probation with its proposal concerning the draft Order of the Minister of Corrections and Probation “on determining rules and procedures for visual and/or electronic surveillance and control and for retention, deletion and destruction of the recordings”. The Public Defender welcomed the Minister’s initiative to legally regulate visual and/or electronic surveillance in remand facilities and places for deprivation of liberty. Despite the positive assessment, the Public Defender requested betterment of some of the provisions of the draft ministerial order and the bringing of the order into consistency with the European standards.

Pursuant to Article 3(5) of the draft ministerial order, electronic surveillance and control of remand prisoners and sentenced prisoners may not be carried out in the areas of shared use such as shower rooms and rooms designed for long-term (conjugal) visits, except in accordance with the procedure and in cases determined by the Georgian legislation. We believe toilets located in the cells as well as toilets of

shared use should be added to this list. In its reports on visits to various countries the European Committee for the Prevention of Torture (CPT) has been emphasizing that the privacy of detained persons should be preserved when they are using a toilet and washing themselves.⁶²

The European Committee for the Prevention of Torture (CPT) has been emphasizing that the decision to establish a visual and/or electronic surveillance and control must be reasoned failing which such decision may be considered to be in violation of the prisoner's right to privacy. According to Article 4 of the draft ministerial order, a director of the institution decides to apply the measure by issuing a relevant order. Although Article 3 of the draft order says the director's decision must be reasoned and proportional to the purpose, we believe it is necessary to expand the content of Article 4 to specify that, in each case a visual and/or electronic surveillance and control is authorized, the director's decision must refer to the facts and circumstances that warranted application of the measure. The director's decision should also provide arguments as to why other means would not be effective in the given case. In each individual case, risks should be evaluated in detail and the director's decision (order) must clearly prove that visual and/or electronic surveillance and control are the only means with no alternative. This is important against the background that current decisions authorizing electronic surveillance contain scarce information and rather stencil phrases.

According to the draft ministerial order, after a decision to establish visual and/or electronic control is made, the administration must warn the remand/sentenced prisoner about it, except in the events prescribed by law. This will be documented in the relevant minutes to be signed by the prisoner. We think it would be more appropriate if the prisoner not only signs the minutes but also receives a copy thereof. This formulation could be inserted as an additional paragraph in Article 5 of the ministerial order.

Article 8 of the draft order basically repeats the relevant provision from the Imprisonment Code stating that the institution's administration may visually observe a meeting of individuals referred to in Article 54(6) of the Code using remote surveillance and make a recording by technical means, but without hearing the conversation. We believe the above-mentioned provisions of both the Imprisonment Code and the draft ministerial order must prescribe an exception to this rule whenever prisoners are meeting with the Public Defender/Special Preventive Group because these provisions expressly contradict Article 19(3) of the Organic Law on Public Defender, which provides: "Meetings of the Public Defender/Special Preventive Group members with persons who are detained, remanded or whose liberty is otherwise restricted and with convicted prisoners as well as with persons in psychiatric institutions, shelters for senior citizens and children's homes shall be confidential. No eavesdropping or

62 <http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf> see p. 19, par. 31; see also <http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.pdf> p. 30, par. 60 [last viewed 22.03.2015]

observation shall be permissible.”

Another issue which the European Committee for the Prevention of Torture (CPT) pays attention to in its reports is the need for periodic review of decisions on establishing visual and/or electronic control. The above proposed ministerial order does not envisage such obligation. Hence, the Public Defender deems it necessary to expressly articulate in the ministerial order the obligation of such periodic reviews, persons responsible for review and the reasonable intervals at which the review should happen.

Only two of the Public Defender’s six substantive comments were taken into consideration. Two of the comments that were agreed with have to do with the possibility of periodic review of decisions on establishing visual and/or electronic surveillance and control and the exclusion of shared toilets and other places from the coverage area of electronic surveillance. The Ministry of Corrections also took into account a technical comment adding a paragraph to Article 5 of the ministerial order, which envisages the obligation of furnishing remand prisoners and convicted prisoners with a copy of the minutes documenting that a prisoner has been warned about the decision to put him/her under visual and/or electronic surveillance.

During its visit to the Institution no. 3 on 23 October 2014, the monitoring group went round to inspect the so-called “anti-vandal cell”⁶³ (Cell no. 229). There were no items in the cell but a mattress on the floor where prisoners sleep on. There was one prisoner in cell who was spilling water from a plastic bottle onto the mattress and the floor and was then lying on the wet mattress. This was a form of protest the prisoner was resorting to in order to object to the ill-treatment against him. According to the prisoner, he had been placed in the cell for one month and eighteen days by then. The representatives of the Institution’s administration failed to inform the monitoring group about how they were going to deal with this prisoner’s problem. They simply stated the prisoner was one of the “problematic prisoners” and this was the reason of his placement in the so-called “anti-vandal cell”. Formally, the prisoner was under electronic surveillance according to the prison director’s decision but in reality he was being subjected to an additional security measure – isolation from other prisoners (“moved to a safe place”⁶⁴) but without a formal basis (decision). Whenever a prisoner is placed in a solitary confinement cell as a security measure, the term of keeping the prisoner there should not exceed 24 hours, while if a prisoner is moved to a solitary confinement cell on the ground of moving to a safe place, then it should not exceed 60 days. Because the prisoner was not formally ordered to a security measure, it was unclear how long he could be kept in the so-called “anti-vandal cell”.

In respect of use of solitary confinement and extended electronic surveillance during the reporting period, the National Preventive Mechanism inquired into the case of K.G. Convicted prisoner K.G. has been kept isolated from other convicts since 17 November 2013. The director of the Institution no. 7 explained that the security measure has

63 This is how the staff of the Institution no. 3 call the cell no. 229

64 Statute of the remand facility, Article 59 transfer of an accused person to a safe place

been applied in the interests of keeping the prisoner safe. However, the measure has not been ordered in compliance with Article 69 of the institution's statute approved by the Order of the Minister of Corrections and Legal Assistance no. 97 dated 30 May 2011. This means the prisoner cannot enjoy the legal guarantees protecting him from violation of his rights by extended isolation.

Here we would like to stress the approach developed by the European Court that States are obliged to periodically review the necessity and proportionality of a measure applied to a prisoner for security reasons. According to Rule 51.5 of the European Prison Rules, the level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

In *Ramirez Sanchez v. France*, the European Court of Human Rights explained that solitary confinement cannot be imposed on a prisoner indefinitely. Moreover, it is essential that the prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement. The Court found violation of Article 13 because the prisoners in solitary confinement did not have any remedy available to challenge the original measure or any renewal of it.⁶⁵

In *Piechowicz v. Poland*, the Court found a violation of Articles 3 and 8 of the Convention because the prisoner was held in isolation for a long time without having the chance to participate in any social activities with other prisoners. The Court also noted that all forms of solitary confinement without appropriate mental and physical stimulation deteriorates a person's mental faculties and social abilities.⁶⁶

The Court has been consistently stressing in many of its judgments that, under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.⁶⁷ The Court has also mentioned that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.⁶⁸

In the Institution no. 7, sentenced prisoner K.G. lacks the possibility of socializing. He has been repeatedly indicating that he does not feel safe. He does not have a TV set in his cell. During his time in isolation, he has been imposed disciplinary measures several times, which restricted his ability to communicate with the outside world. It should be mentioned that a major reason why he has been disciplined is that he has

65 *Ramirez Sanchez v. France*, no. 59450/00, § 145, 152.

66 *Piechowicz v. Poland*, no. 20071/07, § 173.

67 *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII; see also *Kudla v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI.

68 *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II.

been trying to communicate with other prisoners shouting from his cell – something that is a natural behavior for a human being as a social individual. The negative effects resulting from K.G.'s long-term isolation were clearly visible during the meeting of the Public Defender's trustee with him.

Prisoner K.G. has been disciplined and ordered to isolation in avoidance of the rules and procedures prescribed by the Georgian legislation – a fact that itself amounts to unlawful limitation of his rights. Also, it is unclear how long the disciplinary measure should last or what exactly should happen (what criteria should be fulfilled) for the measure to become unnecessary and to be lifted. Likewise, it is unclear what makes the objective referred to by the director of the Institution no. 7 – the need to ensure security – impossible to achieve by moving K.G. to another cell where there are other inmates or to some other institution where his life and health would not be endangered. Having reviewed K.G.'s case, the Public Defender addressed the Minister of Corrections with its recommendation but, nevertheless, the prisoner remains alone in the cell, subjected to electronic surveillance.

2.3.6.3. USE OF SPECIAL MEANS

The European Court of Human Rights as well as the European Committee for the Prevention of Torture have developed a specific approach and standards concerning special means that can be used by law enforcement agents in maintaining public order. While draft amendments to the legislation on the use of special means were under consideration, the Public Defender produced its recommendations about the draft amendments. A majority of the Public Defender's recommendations have been taken into account and have been reflected in the Imprisonment Code. Below we give an account of recommendations that have not been agreed with but that the Public Defender believes must become part of the Imprisonment Code and of the relevant bylaws.

TEAR GAS AND PEPPER SPRAY

The Code of Imprisonment has been amended by adding paragraphs "d" and "e" to Article 57¹, which allow for using tear gas and pepper spray against remand prisoners and sentenced prisoners.

The European Court of Human Rights has a clear approach toward use of such gases by the law enforcement agents. According to the standard established by the European Court, these substances should not be used in confined spaces. Even when used in open spaces, the European Court concurs with the European Committee for the Prevention of Torture in that there should be clearly defined safeguards in place.

In *Ali Güneş v. Turkey*,⁶⁹ in regard to use of pepper spray and tear gas, the Court has

69 *Ali Güneş v. Turkey*, no. 9829/07.

stated that the use of these substances being potentially dangerous for health can produce effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis and allergies. In strong doses it may cause necrosis of the tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging. Although according to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction⁷⁰ tear gas is not considered a chemical weapon and its use is authorized for the purpose of law enforcement, the Court concurred with European Committee for the Prevention of Torture stating that there can be no justification for the use of such gases against an individual who has already been taken under the control of the law enforcement authorities.

In the above-cited case, the Court discussed whether the use of gas was compatible with Article 3 of the Convention and concluded that spraying the gas into the applicant's face while the applicant was under the control of law enforcement agents amounted to inhuman and degrading treatment.⁷¹ It should well be noted that even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct.⁷² The Convention makes no provision for exceptions and no derogation from Article 3 is permissible even in the event of a public emergency threatening the life of the nation.⁷³

The approach of the European Committee for the Prevention of Torture towards use of pepper spray is also important. In particular, in its report to the Czech Government, CPT stated that there can be no justification for the use of pepper spray in confined spaces. Even if exceptionally it needs to be used in open spaces, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered measures of relief. Further, CPT believes that such gases should not form part of the standard equipment of prison staff.⁷⁴

In the same report, the CPT recommended the Government to elaborate a clear directive on the use of pepper spray. The Committee also stressed the importance of availability of information about the qualifications, training and skills of staff members authorized to use pepper spray.⁷⁵

In this regard, we welcome the prohibition by the legislation of the use of pepper spray in confined areas but the law still does not prohibit the use of tear gas under the same conditions.

70 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, adopted 13 January 1993

71 *ALİ GÜNEŞ v. TURKEY*, paras. 37-43.

72 *Labita v. Italy*, no. 26772/95, par. 119.

73 *Ibid.* par. 119.

74 Report of the European Committee for the Prevention of Torture to the Czech Government, CPT/Inf (2009) 8, par. 46.

75 [REDACTED].

HANDCUFFS

In its report to the Russian authorities, the European Committee for the Prevention of Torture recommended the Government to discontinue the routine handcuffing practice and to use this measure only in exceptional cases, on the basis of an individual and comprehensive risk and needs assessment carried out by appropriately trained staff.⁷⁶ The Committee recommends the Member States that, when resort to instruments of physical restraint is required, the prisoner concerned be kept under constant and adequate supervision.⁷⁷

In its report to the Russian authorities, CPT additionally explained that if a person in custody is acting in a highly agitated or violent manner, the use of handcuffs may be justified. However, the person concerned should not be shackled to a wall or fixed objects but rather be kept under close supervision in an appropriate setting. In case of agitation brought about by the state of health of a person being held in custody, law enforcement officials should request medical assistance and follow the instructions of the doctor.⁷⁸

It should be noted that according to Article 6, *“Types of specials means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means”* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014, fastening remand prisoners and convicted prisoners to a fixed surface is prohibited except in extreme cases where legitimate objectives prescribed by law cannot be achieved by other means. As we see, the text of the article does not completely prohibit fastening prisoners to a fixed surface, which is a substantial defect that must be corrected.

Also the regulations should say that using handcuffs for fastening a prisoner to a strong surface is prohibited and appropriate supervision shall be ensured when handcuffs are used.

NON-LETHAL WEAPONS

The law does not provide a definition of or determine the types of non-lethal weapons, which certainly makes the law unclear and difficult to foresee. However, for the sake of fairness, we should mention that, according to Article 6, *“Types of specials means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means”* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014, non-lethal weapons are rubber bullets, paintball guns, shooting nets and anti-riot smoke. Nevertheless, the Public Defender believes the law must contain a clear definition

76 CPT Report to the Russian Government, CPT/Inf(2013)41, §111, p. 52.

77 CPT Report to the Government of Bosnia and Herzegovina, CPT/Inf(2009)25, §77, p. 36.

78 CPT Report to the Russian Government, CPT/Inf(2013)41, §52, p. 29.

of non-lethal weapons. Also, considering the threats associated with the use of such weapons, the law should expressly say that “special means” should only be applied when – and to the extent – strictly necessary to maintain security and order.⁷⁹

STRAITJACKETS, RESTRAINT CHAIRS, RESTRAINT BEDS

Pursuant to Rule 33 of the United Nations Standard Minimum Rules, straitjackets as instruments of restraint shall never be used. Article 57¹(2)(b) of the Imprisonment Code allows for the use of straitjackets, restraint chairs and restraint beds. These instruments should be used under a doctor’s supervision.

It should be noted that the National Preventive Mechanism has become aware of the fact that on 20 September 2014, the staff of the penitentiary institution no. 3 used a restraint bed in relation to convicted prisoner L.Q. Having inquired into the report, we found out that the restraint bed was used in violation of the provisions of the *“Types of special means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means”* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014. In particular, the prison director did not draw up a report on the use of special means and did not send it to the Minister of Corrections and the Chairman of the Penitentiary Department, as required by Article 18 of the abovementioned Rules.

The use of restraint bed was documented in the minutes which say in their reasoning section: “L.Q. was attempting to injure himself and those around him. His conduct was manifestly aggressive and, due to the extreme security condition, a restraint bed was used because other means were ineffective.” This explanation does not contain a reasoning of why other means were considered ineffective. Also, it is unclear who made the decision to use a restraint bed. According to Article 13(2) *Types of special means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means”* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014, a director of a penitentiary institution or an authorized person in the director’s absence have the right to make such decisions.

It should also be mentioned that a letter from the penitentiary institution no. 3 came with a certificate on health status issued by the institution’s chief doctor, which reads: “Prisoner L.Q. who is put under electronic observation is agitated, anxious and inclined to injuring himself. He needed to be monitored strictly. For this reason, between 20:15 and 22:10 on 20 September 2015, a restraint bed was used in relation to the prisoner for security reasons. The patient then calmed down, as the doctor on duty reported, and no injuries were found on his body as a result of his examination.” As we can see, the chief doctor relies on a hearsay account of the doctor on duty and it is unclear

⁷⁹ *Ibid.* par. 72, p. 38.

whether the chief doctor medically examined the patient or whether prisoner L.Q. was under a doctor's constant supervision while he was subjected to the security measure. The medical certificate dates 20 September 2014 but it does not specify the exact time it was drawn up at. In addition, no medical examination report on the use of special means was produced, in contravention of the Order of the Minister of Corrections no. 145 dated 12 September 2014.

On these grounds, we conclude the use of a restraint bed in relation to accused L.Q. materially violated the *"Types of special means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means"* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014. Nevertheless, the Inspectorate General of the Ministry of Corrections commenced in-house inquiry into the issue only after the Public Defender's Office got interested in it.⁸⁰

RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:

- Put in place a legal framework for internal and external assessment of performance of both the prison administration and each staff member based on pre-determined indicators and for evaluation of the ability to maintain good order in prisons.
- Develop clear job descriptions, standard operation procedures, an ethics code and incident management guidelines with a view of ensuring proper performance of their functions by and accountability of the penitentiary system employees.
- For the purpose of protection of human rights and maintaining good order and safety in penitentiary institutions, develop training programs based on an assessment of the staff knowledge and skills and ensure proper attendance of the staff.
- Ensure that more staff take the long-term (6-month) training course for legal regime unit staff of remand facilities and places of deprivation of liberty.
- Also, special attention should be paid to enhancing the penitentiary personnel's ability to work as a multidisciplinary team.
- Develop an effective mechanism for assessing training results and supervising their use in practice in order to maintain sustainability and practicability

⁸⁰ According to the Letter from the Inspectorate-General of the Minister of Corrections dated 12 March 2015, the Inspectorate-General received a letter from the Chairman of the Penitentiary Department as of 5 March 2015 with an accompanying request of the Chief of the Public Defender's Prevention and Monitoring Department to the Penitentiary Department to inquire into the use of special means against Accused L.Q. in the penitentiary institution no. 3 on 20 September 2014. According to these letters, the Inspectorate-General commenced in-house inquiry into alleged failure by the director of the penitentiary institution no. 3 to draw up a report on the use of special means and to send it to the Minister of Corrections and the Chairman of the Penitentiary Department.

of training. With a view of making it compatible with the international human rights standards, amend the draft ministerial order “on types of risks, risk assessment criteria, rules of assessing and reviewing risks, procedures and conditions of moving convicted persons to a place of deprivation of liberty of the same or other type, and the composition and rights of a multidisciplinary group”.

- In relation to convicted prisoners who have been allocated to half-open institutions, move such prisoners, in shortest time possible, respectively to half-open institutions where they can enjoy their freedom to the full extent guaranteed by the Georgian legislation.
- Since the penitentiary institution no. 6 does not have appropriate infrastructure for the prisoners to enjoy the aforementioned right, do not send prisoners who have to serve their sentence in half-open type places of deprivation of liberty to Institution no. 6.
- Amend the draft Order of the Minister of Corrections “on determining rules and procedures for visual and/or electronic surveillance and control and for retention, deletion and destruction of recordings” in a way to provide that a decision to put a person under visual and/or electronic surveillance and control is well-reasoned and explains why this measure is necessary and cannot be replaced by other measures.
- Amend the draft Order of the Minister of Corrections “on determining rules and procedure for visual and/or electronic surveillance and control and for retention, deletion and destruction of recordings” in a way to provide that meetings of the Public Defender/Special Preventive Group members with accused and convicted persons are confidential and no eavesdropping or observation is permissible.
- Amend “*Types of special means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means*” approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014 prohibiting the fastening of prisoners to a fixed surface using handcuffs and establishing that, whenever handcuffs are used, the prisoner concerned is kept under adequate supervision.
- Comprehensively inquire into the legality of use of a straitjacket in relation to accused L.Q. and take appropriate measures against those responsible.
- Ensure that the relevant laws and bylaws are strictly adhered to in each special means are used by, *inter alia*, organizing intensive training for the staff and increasing staff accountability.

PROPOSAL TO THE PARLIAMENT:

- Amend the Code of Imprisonment to provide that meetings of the Public Defender/Special Preventive Group members with accused and convicted persons are confidential and no eavesdropping or observation is permissible.
- Amend Article 57¹ of the Code of Imprisonment to expressly prohibit use of tear gas in confined areas.
- Amend Article 57¹ of the Code of Imprisonment to provide a clear definition of what non-lethal weapons mean and stipulate that they should only be used when and to the extent strictly necessary to maintain security and order.

2.4. DETENTION CONDITIONS

2.4.1. PHYSICAL ENVIRONMENT; SANITATION AND HYGIENE

According to the European Prison Rules, the accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.⁸¹ In all buildings where prisoners are required to live, work or congregate: *a.* 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; *b.* artificial light shall satisfy recognised technical standards; and *c.* there shall be an alarm system that enables prisoners to contact the staff without delay.⁸² According to the case-law of the European Court of Human Rights, Article 3 of the European Convention can be violated by not only undue or inhuman treatment but the environment in which a person is kept. Also, one of the principles of the European Prison Rules is that “prison conditions that infringe prisoners’ human rights are not justified by lack of resources”.⁸³

The European Court has been consistently stressing in its judgments that Article 3 of the Convention requires of the States to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.⁸⁴ The Court has also mentioned that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.⁸⁵

81 Rule 18.1

82 Rule 18.2

83 Rule 4

84 *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII; *Kudla v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI;

85 See *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II.

Compared to previous years, the physical environment and sanitation/hygiene have improved in a number of penitentiary institutions. However, the conditions existing in the penitentiary institutions still need to be improved and be brought in line with the international standards. The State must, despite the existing difficulties, timely eradicate the shortcomings and create proper conditions for prisoners.

2.4.1.1. PENITENTIARY INSTITUTION NO. 7

The living conditions at the Institution no. 7 are unfavorable. The Public Defender has been addressing the Minister of Corrections with a number of recommendations on this matter.⁸⁶ The problems in the Institution No. 7 are described in detail in the Public Defender's 2013 Report to the Parliament of Georgia. A majority of these substantive problems remain unresolved.

There are 25 cells in the Institution No. 7. Twelve of these cells are designed for two prisoners, five for four prisoners and the remaining eight cells are meant for eight prisoners each. In total, the institution has places for 108 prisoners.

Cells for two are about 7 square meters each, cells for four are nine square meters and cells for eight are 14.5 square meters. Each prisoner is allocated 3.5 square meters in a cell for two, 2.25 square meters in a cell for four and 1.8 square meters in a cell for eight.

By 25 March 2015, in cells for eight people, there were seven prisoners in cells no. 9 and no. 25, six prisoners in cell no. 7, five prisoners in cell no. 2 and four prisoners in cell no. 16. As regards cells for four people, there were four prisoners in cells no. 10 and no. 17 and three prisoners in cell no. 24. As for the cells for two people, there were two prisoners in cells no. 12 and no. 19. Fifteen prisoners were accommodated in single cells each.

According to our monitoring results, it follows that, in cells no. 9 and no. 25 with 7 prisoners, each person gets a space of about 2 square meters, which is a violation of a standard under the Imprisonment Code.⁸⁷ In regard to cells no. 7, no. 2 and no. 16 housing six, five and four prisoners respectively, each prisoner gets an area between 2,4 square meters and 3,6 square meters. In cells no. 10 and no. 17 where four prisoners are accommodated as well as in the cell no. 25 with 3 prisoners inside, the area allocated to each prisoner is between 2,25 square meters and 3 square meters.

It should be noted that, in doing the above calculation, we did not subtract the toilet space and the area occupied by beds and chairs. Toilet areas vary from 0.4 (0,63 x 0,69) square meters to 0,5 (0,62X0,78) square meters. Each bed occupies 1.3 square

86 30/07/2013 N03-3/513; 16/12/2013 N894/03-5; 19/02/2014 N03/458.

87 Under Article 15(2) of the Imprisonment Code, the floor area per each convicted prisoner in all types of places of deprivation of liberty should not be less than 4 square meters. Under paragraph 3 of the same Article 15, a residential area per prisoner in a remand facility should not be less than 3 square meters.

meters. It follows that we should subtract 5,2 (1,3X4) square meters as well as roughly 1 square meter occupied by toilettes and tables amounting to a total of 8.3 square meters from the total area of each cell for eight people. It follows that even if only 4 prisoners are accommodated in a cell for eight people, the actual area usable by prisoners is narrow enough. The same is true for cells designed for four people.

In assessing living conditions in the light of Article 3 of the European Convention on Human Rights, the European Court takes into consideration, in addition to personal space allocated to a prisoner, other aspects of physical conditions of detention, such as the possibility of outdoor exercise, access to natural light, availability of natural and artificial ventilation, adequacy of heating arrangements, the possibility of using the toilet with respect for privacy, and compliance with basic sanitation requirements.⁸⁸ In *Peers v. Greece*, the Court deemed that the fact that two prisoners shared 7 square meters coupled with the lack of ventilation and daylight amounted to violation of Article 3 of the European Convention on Human Rights.⁸⁹

The cells in the Institution have small-size windows (75x43 cm) covered with several layers of iron bars making the entry of air and sun beams into the cells virtually impossible. The institution's ventilation system does not allow for sufficient movement of fresh air. Damp cells are ill lit and insufficiently heated.

According to Article 15(4) of the Code of Imprisonment, the premises where remand prisoners and convicted prisoners are accommodated must have windows to ensure access to natural light and ventilation. Prisoners must be provided with heating as well.

Pursuant to Rules 10 and 11 of the Standard Minimum Rules for the Treatment of Prisoners adopted in Geneva in 1955, all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.

We would like to mention here that recently there has been a plan to install new windows in the penitentiary institution no. 7. These windows would not open and the cell would only be aired by artificial ventilation.

On 16 December 2013 the Public Defender addressed a recommendation to the Minister Corrections stressing that even if artificial ventilation system would be provided, such a system could not substitute the need for fresh air intake in the cells. Accordingly, the Public Defender's recommendation was to take account of domestic

88 *Vlasov v. Russia*, no. 78146/01, § 84, 12 June 2008; *Trepashkin v. Russia*, no. 36898/03, § 94, 19 July 2007.

89 *Peers v. Greece*, judgment of 19 April, 2001, application no. 28524/95, § 70-72.

and international requirements by installing such windows as would ensure to prisoners in the cells access to daylight and natural ventilation.

As a result of the Public Defender's recommendation, the installation of the abovementioned artificial system and windows has been stopped but a handful of other problems yet persist.

In its reports on visits to Georgia, the CPT has been paying special attention to windows in the cells of Georgian penitentiary institutions, which are covered with iron shutters and bars preventing the entry of daylight and fresh air into cells.⁹⁰ The Committee has been urging the Georgian Government to take measures, without delay, to provide the penitentiary institutions with natural lighting and adequate ventilation. CPT has been particularly keen on prisoners' ability to access daylight and fresh air considering that these two are basic elements of life which must never be denied to prisoners despite any security needs.⁹¹

In its judgments against Georgia, the European Court of Human Rights has been referring to the reports of the European Committee for the Prevention of Torture (CPT) stating that the iron shutters on windows in the cells of a penitentiary institution were blocking the entry of fresh and daylight into the cells, and there was no ventilation system to compensate for the absence of lack of air. The Court deemed that these conditions amounted to violation of Article 3 of the European Convention on Human Rights.⁹² In particular, the European Court of Human Rights stated:

"The Court also notes that, in the prison concerned, windows had iron shutters preventing air and natural light from entering the cells. There was no ventilation system to compensate for this lack of air. [...] In the view of the Court, the evidence at its hand allows it to consider it proven "beyond reasonable doubt" that the applicant was indeed kept in the conditions of detention he complained of in his application. In particular, he had no bed of his own and was suffering from constant lack of air and dirt... Therefore, there was a violation of Article 3 of the Convention."⁹³

The Penitentiary Institution no. 7 does not have infrastructure for long-term visits for which reason prisoners are unable to enjoy their right to conjugal visits.

90 Report of the European Committee for the Prevention of Torture on its visit to Georgia from 6 to 18 May 2001, published on 25 July 2002, accessible at <http://www.refworld.org/docid/415c2d784.html>

Report of the European Committee for the Prevention of Torture on its visits to Georgia from 18 to 28 November 2003 and from 7 to 14 May 2004, accessible at <http://www.cpt.coe.int/documents/geo/2005-12-inf-eng.pdf>

91 Extract from the 11th General Report [CPT/Inf (2001) 16], p. 25, par. 30, accessible at <http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf>.

92 *Aliev v. Georgia*, application #522/04, Judgment of 13 January 2009; *Ramishvili and Kokhreidze v. Georgia*, Application # 1704/6, 27 January 2009; *Ghavitadze v. Georgia*, application #23204/07, Judgment of 3 March 2009; *Gorgiladze v. Georgia*, application #4313/04, Judgment of 20 October 2009.

93 The European Court of Human Rights, *Aliev v. Georgia*, application #522/04, Judgment of 13 January 2009, paras. 82 to 84

Prisoners in the Institution no. 7 complain of the location of the exercise yards and lack of the necessary equipment in the yards. The yards are small-size and are located in areas where there is almost no movement of air. As our monitoring shows, each exercise yard is as narrow as 13 square meters (4,2x3,1) and there are four such yards in the Institution. Each of the small yards is surrounded by walls of about three meters high and is covered with bars and an iron net. These conditions coupled with the fact that the yards are encompassed by buildings around them are responsible for the fact that sun beams and fresh air do not properly penetrate into the yards.

One should also take into account that the Penitentiary Institution No. 7 is a closed-type facility for both sentenced and remand prisoners and the prisoners are entitled to 1 hour of walk per day. Amongst the Institution's population are prisoners who are suffering or have previously suffered from lung tuberculosis multiple times. These conditions negatively affect their health and increase the risk of them contracting the same disease in the future again.

In its judgment in *Ananyev v. Russia*, the European Court of Human Rights has stated that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining the inmates' sense of personal dignity.⁹⁴

In *Kudła v. Poland*, the Court has stressed that Article 3 of the Convention imposes the obligation on the Government to protect the physical health of persons deprived of their liberty.⁹⁵

According to Article 14(a.a.) of the Imprisonment Code, remand prisoners and sentenced prisoners have the right to be provided with personal hygiene. Under Article 21 of the Code, "remand prisoners and convicted prisoners must be able to satisfy their physiological needs and maintain their personal hygiene in a manner that their dignity and honor are not abased."

The toilets in the Institution No. 7 are small-size, there is no ventilation system and flush tanks are not installed. Although toilets are isolated from the rest of the cell space, the doors on the toilets are too short to cover the toilets in full and, due to lack of the ventilation system, the open space above the short doors lets the stench out of the toilettes.

According to prisoners' reports, the process of satisfying physiological needs is made difficult due to insufficient floor area of the toilettes. A toilet area varies from 0,4 (0,63 x 0,69) square meters to 0,5 (0,62X0,78) square meters. According to the prisoners, some inmates, due to their physical limitations, have to satisfy their physiological needs in a humiliating manner – with the toilet door open. It should also be noted that beds in the cells are located right in front of the toilets thus making it virtually impossible to maintain some privacy. The European Court of Human Rights has discussed this issue

94 *Ananyev and Others v. Russia*, judgment of 10 January 2012, application nos. 42525/07 and 60800/08, §156.

95 *Kudła v. Poland* [GC], no. 30210/96, §94, ECHR 2000 XI.

in the context of inhuman and degrading treatment in many of its judgments.⁹⁶

2.4.1.2. PENITENTIARY INSTITUTION NO.8

The area of residential cells in the Institution no. 8 does not, in most cases, comply with the requirements under paragraphs 2 and 3 of Article 15 of the Imprisonment Code.⁹⁷ It should be noted that as a result of its visit to Georgia in 2012, the European Committee for the Prevention of Torture recommended the Georgian government to ensure that every prisoner in the Institution no. 8 has at least 4 square meters of living space in the multi-occupancy cells and excess beds are removed from the cells accordingly.⁹⁸ This recommendation has not been fully complied with by now. The juveniles detention facility is an exception since the cells there are designed for four people and are compatible with the above-described requirements.

The artificial ventilation system does not adequately function in the residential cells. The Institution does not have an infrastructure for long-term visits.

In November 2014, a Smart Reception Unit was opened in the Institution no. 8. New prisoners are initially allocated in the unit. Natural light in the cells of this unit is insufficient. The ventilation system also does not provide adequate ventilation. Despite the fact that the Smart Reception Unit has been recently renovated, there is moisture on the ceiling and walls in some cells.

Moisture is visible also on the ceiling of cell no. 105 in the 2nd regime building designed for prisoners on hunger strike. The walls are peeling. Natural light and ventilation are insufficient in this cell and the cell no. 223 of the 2nd regime building. According to prisoners on hunger strike, they usually do not use their right to outdoor exercise because they are offered to go out at 7 or 8 o'clock in the morning.

In the Institution no. 8, exercise yards are located on the last floors of the buildings. The exercise yards resemble cells that are covered with a metal net. There is no appropriate equipment in the yards, no chairs, and the general environment very depressing.⁹⁹ Prisoners do not have the possibility of doing physical exercises.

The shower rooms have cloakrooms. Six shower units are separated from each other with partitions. The floor tiles in the shower rooms are damaged. Taps and water sinks

96 See, *inter alia*, *Ramishvili and Kokhreidze v. Georgia*, application no. 1704/06, Judgment of 27 January 2009, par. 86; *Aleksandr Makarov v. Russia*, application no. 15217/07, Judgment of 12 March 2009, par. 97

97 Under Article 15(2) of the Imprisonment Code, the floor area per each convicted prisoner in all types of places of deprivation of liberty should not be less than 4 square meters. Under paragraph 3 of the same Article 15, a residential area per prisoner in a remand facility should not be less than 3 square meters.

98 Report on CPT visit to Georgia on 19-23 November 2012, CPT/Inf (2013) 18, par. 33.

99 Problems related to exercise yards are mentioned in the CPT's report on its visit to Georgia in 2010, ar 81, accessible in English at <http://www.cpt.coe.int/documents/geo/2010-27-infeng.htm> [last viewed 28.12.2014].

in cloakrooms are dysfunctional. Soap holders and shelves for other items of hygiene are not installed in the shower room. In a majority of cloakrooms, there are no chairs.

Investigation rooms are located on the two floors of the administrative building. These rooms are used for meeting with prisoners by not only representatives of investigative authorities but also by lawyers, priests and representatives of international organizations and the Public Defender's Office – persons whose conversation with the prisoners is confidential under law. There are 36 investigation rooms in total. Surveillance cameras are installed in 35 of these 36 rooms. There is no surveillance camera in one room, which is normally used by representatives of international organizations to talk to prisoners.

The investigation rooms are not heated. The rooms have no windows and no central ventilation system. The rooms are lit by electricity. There is an air conditioner in each room but the air conditions either do not work properly or are inoperative. This problem has been persisting since the day the Institution no. 8 was opened.

Almost always when prisoners are having meetings in the investigation rooms in the Institution no. 8, the doors of the rooms are open. Visitors prefer to open the doors because of the cold inside and the lack of air in wintertime (only the corridor is heated) and the heat in summertime. In summertime, it is even more unbearable to stay in the investigation rooms.

It should be noted that open doors during the visits in the investigation rooms raise a concern about confidentiality of the conversation. In particular, with open doors, the conversation can be overheard by those in the next room and by the prison staff who are on duty and are constantly moving around in the corridor. It is for this reason that some prisoners refuse to discuss confidential issues, especially if there are surveillance cameras installed in the room. Hence, the prisoners feel pressured and are unwilling to speak up.

2.4.1.3. WOMEN'S INSTITUTION NO. 5

The penitentiary institution no. 5 is designed for female prisoners. The windows in the cells would not open to the full and the artificial ventilation system operates defectively. For this reason, it is hot in the cells in summertime and the prison administration deals with the problem by temporarily removing the windows in the residential cells. When winter sets in, the windows get re-installed.

The Imprisonment Code allows every prisoner to maintain systematic contact with their families and close relatives by means of visits. Visits are helpful for the prisoners to resocialize and reintegrate into the society.

Presently, the institution has 16 half-isolated areas for visits. Each area is separated with a partition. For years, prisoners had to meet with their visitors over the glass

partition, which was a bad practice. Against this background, it is certainly a positive step that the glass partition has been removed. But a problem now is the small area in the visit rooms, which also raises the issue of confidentiality of conversations. In particular, the reality is that visitors have to see the inmates in the corridor alongside the booths because the area of a partitioned booth on this side of the glass is only 1 meter.

There are four investigation rooms in the women's institution with surveillance cameras installed in all of them. In two investigation rooms there is no artificial light at all. One of these two rooms is sometimes used for short-term visits. In summertime, because of heat, visitors have to open the door of the investigation room – a practice that may violate the confidentiality of the conversation.

The residential buildings in the institution have shower rooms for shared use. In the shower rooms in buildings A, B and C, the consumed water gets stuck in the sewerage system and the shower rooms get flooded. The ventilation system does not function properly. The walls and floors are outdated and need repair.

In the division for mothers and children, the equipment is outdated and the artificial ventilation is not operational at all.

2.4.1.4. INSTITUTION NO. 11 FOR JUVENILES

In the Institution no. 11 for juveniles, residential cells are lit by both natural and artificial light. The cells are aerated by natural means but it would be better if the ventilation system were functional. The Institution has a centralized heating system. Every cell has its own toilet and shower. In some cells, water is leaking from the toilet walls making the cells humid.

There is also a shared shower room in the juveniles' residential building. There are 8 showers in the shower room. Both natural and artificial lights are sufficient in the room. However, the artificial ventilation system is dysfunctional. There is a central heating. The plaster has fallen in the corner of the shower room and repair is needed.

A single room in the Institution designed for short-term visits plays the role of an investigation room too. There are several tables in the room and several prisoners may be meeting with their visitors at a time, which violates the confidentiality of the conversation. Juveniles have the possibility of meeting their family members directly, without barriers – a fact that we would certainly like to welcome. The room is heated through the central heating system. The artificial ventilation system is dysfunctional.

There are also two rooms for long-term visits in the Institution. The rooms are isolated from other buildings. Only one of the two rooms is properly equipped and functional. Repair is needed in the other room.

The institution also has a room for video visits, which has been repaired and has all the relevant equipment.

2.4.1.5. PENITENTIARY INSTITUTION NO. 12

The Institution no. 12 was having infrastructure issues for years, which the Public Defender has been reporting in its 2013 Report to the Parliament. We welcome the fact that a central heating system is already operational in the Institution, including in the investigation rooms and auxiliary areas. There is an infrastructure for long-term visits. A new residential building was built. However, a central ventilation system still does not exist in the Institution.

2.4.1.6. PENITENTIARY INSTITUTION NO. 9

The Institution no. 9 accommodates both remand prisoners and convicted prisoners. The cells have natural and artificial lighting. The residential cells are aerated through windows but an artificial ventilation system needs to be installed. The Institution has a functional central heating system. There is no infrastructure for long-term visits.

2.4.1.7. PENITENTIARY INSTITUTION NO. 3

In the Institution no. 3, the cells are designed for 2, 4 and 6 prisoners and have the area of 10 m², 15 m² and 19.5 m² respectively. At the time of monitoring, the cells for four and six were not operating at their full capacity and hence each prisoner had a floor space of 4 square meters.

Natural light and ventilation are insufficient in the cells. The artificial light is satisfactory. The artificial ventilation system does not function properly. The cells are heated by means of a central heating system. The cells have bunk beds, individual cabinets, tables and chairs. In most cells the prisoners have TV sets. Inside the cells there are isolated sanitation and hygiene compartments and the prisoners can take a shower there too. The institution is having a water supply problem. Sanitation and hygiene in the residential cells are satisfactory. Conditions for sports activities are not adequate in the Institution.

2.4.1.8. PENITENTIARY INSTITUTION NO. 6

Last year, an artificial ventilation system was dysfunctional at the Institution no. 6. The windows in the cells were not providing sufficient natural ventilation. The Public Defender addressed the Head of the Prison Department with its recommendation in the 2013 Report to the Parliament. Repair works are currently being carried out at the Institution no. 6.

2.4.1.9. PENITENTIARY INSTITUTION NO. 14

At the Institution no. 14, building 6, a majority of prisoners in the cells do not enjoy the legally established minimum floor space of 4 square meters. There is insufficient natural and artificial lighting in the cells. A central heating system is operational. The cells have bunk beds, individual cabinets, tables and chairs. There are TV sets in a majority of cells. The cells are not adequately ventilated.

The prisoners use a shared shower room. Partitions are not installed in the shower room and distance between the taps is just one meter. The shower room has a capacity of 6 people. The sewerage system operates with defects which results in the shower room getting flooded and humid. The ventilation system is not operational in the shower room.

Natural and artificial lighting is adequate in the medical unit. The cells are heated through a central heating system. In the medical unit, there is no ventilation system; also there are no taps or a toilette. This is why the prisoners have to use the toilette and the washstand in the corridor. The walls are in a satisfactory condition. At the medical unit, the shower room and the laundry room are located in the same area. Two showers are located next to each other, with no partition in between.

Sanitation in the manipulation room of the medical unit is unsatisfactory. The manipulation room is separated from a reception room merely with a curtain.

The quarantine unit consists of 2 cells having the capacities of 28 prisoners and 38 prisoners respectively. The floor in the cells is made of concrete. There are bunk beds and individual cabinets in the cells. Each cell has 3 windows with iron nets installed on the inner side and iron bars on the outer side, which makes penetration of daylight and movement of air in the cells difficult. The artificial lights in the cells are unsatisfactory. There is no artificial ventilation. There is no heating system in the cells. There are isolated sanitation and hygiene compartments in the cells. Solitary confinement cells and the quarantine unit have their own exercise yard, which is half-roofed and fenced with an iron net fastened to iron poles. According to the prisoners, they are able to spend an hour outdoor every day after the meal.

A residential building no. 5 designed for prisoners employed at the economic unit has two floors. There are residential cells on both floors. The prisoners are not evenly allocated to the residential cells and, as a result, the cells on the first floor are overcrowded. These cells need repair.

The Institution's kitchen is under repair. It should be noted that while on its visit to the Institution no. 14 in February 2014, the National Preventive Mechanism's monitoring group recommended repairing the kitchen because of the unsatisfactory conditions there. We welcome the fact that fulfillment of our recommendation has started and the National Preventive Mechanism hopes that the repair works will be carried out properly and completed in a reasonable time.

Prisoners can stay outdoors, on the fresh air, from the morning till the evening. However, in the view of the monitoring group, the yard of the Institution's building no. 6 is small for the prisoners' recreational purposes. There are not necessary conditions for exercising in the yard. The prisoners have no access to a sports ground.

2.4.1.10. PENITENTIARY INSTITUTION NO. 17

The Institution no. 17 has different types of cells. The cells are designed for 10, 12, 18 and 24 prisoners and have the area of 30.4m², 32m², 47m² and 55m² respectively. The floor area in the residential cells does not always comply with the requirement under Article 15(2) of the Code of Imprisonment.¹⁰⁰

The cells in the residential buildings have two iron-bar windows. Repair is needed in the cells. Natural and artificial light in the cells is sufficient. The residential buildings have a central heating system. The toilets in the residential buildings are small-size and are isolated; the ceiling and walls are humid; no flush tanks are installed.

There are two quarantine rooms in the Institution. If these rooms were used to the full of their capacity, they would be extremely cramped, because of the small area and the beds inside. In particular, if all the 24 prisoners are accommodated in the first room and 32 prisoners in the second room, infection control would be very difficult and infectious diseases could easily spread amongst the prisoners.

Residents of half-open residential buildings can enjoy their right to outdoor exercise, use a telephone and engage in sports activities between 07:00 and 21:00 hrs. Residents of closed-type residential buildings are entitled to 1 hour of outdoor exercise per day.

The exercise yards of half-open residential buildings are equipped with tables, chairs, sports grounds and exercising equipment. There are shared toilets and washstands in the exercise yards. There is no sports and recreational equipment in the exercise yard of the closed-type regime building. At the time of the Special Preventive Group's visit, the sewerage system was damaged in the exercise yard of the 1st and 2nd regime buildings and there was a puddle of water in the yard.

The monitoring group inspected the shower rooms in the Institution's regime buildings. In the shower rooms, there is no heating, the central ventilation system is dysfunctional. The floor tiles are damaged. The sewerage system operates with defects which results in the shower room getting flooded and humid.

The shower rooms in the Institution's closed-type regime building are not isolated. There is no artificial or natural ventilation in the shower room.

100 Under Article 15(2) of the Imprisonment Code, the floor area per each convicted prisoner in all types of places of deprivation of liberty should not be less than 4 square meters.

On the first floor of the administrative building there are two investigation rooms. These rooms are used for meeting with prisoners not only by representatives of investigative authorities but also by lawyers, priests and representatives of international organizations and the Public Defender's Office – persons whose conversation with the prisoners is confidential under law. There are a total of 4 investigation rooms. Surveillance cameras are installed in all of the investigation rooms. A majority of the prisoners believes their conversations are audio- and video-taped by the surveillance cameras. This makes the prisoners feel pressured and unwilling to speak up.

The investigation rooms are not artificially ventilated. Each room has one PVC window which provides adequate natural ventilation. The investigation rooms are equipped with a central heating system. Both natural and artificial lights are sufficient.

2.4.1.11. PENITENTIARY INSTITUTION NO. 15

The floor area of the cells in the Institution no. 15 are 12m², 13m², 17m² and 18m². Each cell is meant to accommodate 6 prisoners. The floor area in the residential cells does not always comply with the requirement under Article 15(2) of the Code of Imprisonment.¹⁰¹

The natural light in the cells is inadequate and an artificial light is always on. The central heating system in the residential buildings does not sufficiently heat the residential cells and the prisoners have to buy electric heaters – which means additional costs for them.

Quarantine cells and solitary confinement cells are located in the closed-type residential building. There are 14 solitary confinement cells in total in three of which surveillance cameras are installed. Each cell has an area of 10 square meters. Each cell has one window with iron bars, which is inadequate to properly provide natural light and ventilation.

There are 5 quarantine cells in the Institution. Each cell has an area of 22 square meters. There are 5 bunk beds in each cell. Sanitation and hygiene in the cells are inadequate. Each cell has one window, which is not enough to provide natural ventilation. It should be noted that if the cells are used to the full, they will become cramped. Placing several prisoners in one quarantine cells works against the objective of controlling infection in the prisons and may result in spreading infectious diseases amongst the prisoners.

There is a sports ground in the exercise yard of the main residential building. Part of the yard (200 square meters) is roofed to keep some sports equipment there. A closed-type building has 4 exercise yards each having an area of 10 square meters.

¹⁰¹ Under Article 15(2) of the Imprisonment Code, the floor area per each convicted prisoner in all types of places of deprivation of liberty should not be less than 4 square meters.

Surveillance cameras are installed in the exercise yards. The yards are not roofed. The sewerage system does not work properly.

On the first floor of the residential building there are 4 shower rooms one of which is dysfunctional. Another one was under repair at the time of monitoring. There are 80 showers separated from each other with partitions. The shower rooms are not ventilated either naturally or artificially. Sanitation and hygiene in the shower rooms are unsatisfactory. Repair is needed in the shower rooms. In the closed-type building there are 2 shower rooms, which are not isolated. Prisoners can take a shower twice a week.

On the first floor of the administrative building there are two investigation rooms. These rooms are used for meeting with prisoners not only by representatives of investigative authorities but also by lawyers, priests and representatives of international organizations and the Public Defender's Office – persons whose conversation with the prisoners is confidential under law. Surveillance cameras are installed in all of the investigation rooms. A majority of the prisoners believe their conversations are audio- and video-taped by the surveillance cameras. This makes the prisoners feel pressured and unwilling to speak up.

The investigation rooms are not artificially ventilated. Each room has one PVC window which provides adequate natural ventilation. The investigation rooms are equipped with a central heating system. Both natural and artificial lights are sufficient.

2.4.1.12. PENITENTIARY INSTITUTION NO.2

The floor area allocated to each prisoner in the residential cells is less than 4 square meters. The natural and artificial lighting in the cells is satisfactory. A central heating system is functional. The ventilation system operates with defects. An extractor fan in the toilet is operational. There are bunk beds in the cells. A sanitation and hygiene compartment is separated in the cells. Women prisoners are not provided with items of personal hygiene.

The quarantine division has 8 cells and a shower room. A central heating system is functional. Artificial ventilation is insufficient. Conditions in the cells are satisfactory, in general. However, each prisoner gets less than 4 square meters of personal space. The natural and artificial lighting in the cells is satisfactory. The cells have bunk beds, individual cabinets, tables and chairs. A sanitation and hygiene compartment is separated in the cells.

Living conditions in the solitary confinement cells, except those in Building D, are unsatisfactory. The solitary confinement cells located in Building D are used only for prisoners from the same building.

RECOMMENDATION TO THE MINISTER OF CORRECTIONS:

- Shut down the Penitentiary Institution no. 7
- Take all necessary measures to ensure uninterrupted water supply at the Institution no. 3
- Equip institutions no. 5 and no. 9 with the infrastructure required for long-term visits
- Ensure that each prisoner in the institutions no. 2, no. 8,¹⁰² no. 14, no. 15 and no. 17 is provided with 4 square meters of floor area
- Remove excessive beds from the residential cells in the institutions no. 3 and no. 8
- Provide proper ventilation at institutions no. 2, no. 3, no. 5 and no. 8
- Install a central ventilation system in the investigation rooms at the Institution no. 5
- Ensure proper natural and artificial ventilation in the residential cells, solitary confinement cells and quarantine cells at the institution no. 14, no. 15 and no. 17
- Ensure proper artificial ventilation in the residential cells, solitary confinement cells, quarantine cells, investigation rooms and shower rooms at the institutions no. 6, no. 9, no. 11 and no. 12
- Install a heating system and repair the existing air conditioners in the investigation rooms at the Institution no. 8; install a central ventilation system in the investigation rooms
- Repair the room for long-term visits at the Institution no. 11 as necessary
- Eliminate the causes of humidity in the residential cells and repair the cells in the Institution no. 11
- Repair the roofs of the regime buildings at the Institution no. 8 to prevent water leakage into the cells located on the last floor
- In the Institution no. 8, give the prisoners the possibility to exercise outside according to the existing schedule
- Arrange an exercise yard at the level of the land surface in the Institution no. 8; install chairs, exercising equipment and other required items in the exercise yard
- Allocate sufficient area to arrange exercise yards at the institutions no. 3 and no. 14; arrange the exercise yards in a way to allow for physical exercising; ensure access to a sports ground

102 Multi-occupancy cells in the Institution no. 8 are meant

- Replace the old equipment with a new one in the mothers' and children's division at the Institution no. 5
- Ensure an environment of confidentiality and a proper room area for visitors at the Institution no. 5
- Repair the sewerage system on the entire territory on the Institution no. 17
- Repair the sewerage and ventilation systems in the shower rooms at the institutions no. 5, no. 15 and no. 17
- Repair the shower rooms and equip them with the necessary equipment at the Institution no. 8
- Install a partition in the shower room at the Institution no. 14 and in the closed-type residential building at the Institution no. 17
- At the Institution no. 14, repair, as soon as possible, the building no. 5 designed for prisoners employed at the economic unit; ensure that these prisoners are provided with appropriate conditions
- At the Institution no. 14, duly separate the manipulation room in the medical unit from the reception room and maintain appropriate sanitation and hygiene
- Provide women prisoners with all the items of personal hygiene at the Institution no. 2
- In the Institutions nos. 2, 3, 5, 6, 9, 11, 12, 14, 15, 17, 18 and 19, allocate a room for the representatives of the Public Defender/Special Preventive Group to meet prisoners at any time, without any surveillance or eavesdropping.

2.4.2. DAILY SCHEDULE AND REHABILITATION ACTIVITIES

In many of its reports has the Public Defender been stating that the conditions at penitentiary institutions must be such as to facilitate to a prisoner's resocialization and reintegration into the society. While serving their sentence, prisoners should receive or deepen their education and skills in the fields they are interested in and should have the possibility to partake in sports, arts, intellectual and other activities. All of these are necessary for the prisoners to become able to go back to the society as full-fledged individuals after they complete their sentence.

The resocialization process requires a multi-faceted approach. This means that a well-thought-through action plan should be developed that will not only articulate general activities but take into consideration avenues for customized approach. Basic resocialization tools applied according to the sentence imposed, offense committed, offender personality, their psychology and behavior are the following: serving the

sentence in compliance with the relevant rules; rehabilitation programs; prisoner employment; general and vocational education; and relations with the outside world.

Recreational and cultural activities shall be provided in all institutions for the benefit of mental and physical health of prisoners.¹⁰³ According to the European Prison Rules, every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.¹⁰⁴

During 2014, a variety of vocational and handicraft courses have been offered and are currently being offered in the penitentiary institutions. Various activities aimed at prisoner resocialization were conducted such as presentations of poem collections, theatrical performances, movie showings, poetry evenings and other activities.

Rehabilitation programs were implemented in the institutions nos. 2, 5, 8, 11, 12, 14, 15 and 17. The prisoners were able to partake in cultural events, attend general and vocational education courses and learn various handicrafts. The best examples in the regard are the institutions no. 5 and no. 11.

Institution no. 5			Institution no. 11	
##	Course title	Number of participants	Course title	Number of participants
11	Guitar course	17	Office software	22
22	Hairdresser course	42	“Biblio therapy”	9
33	Makeup artist course	13	Psychology awareness	3
44	Embroidery	38	Art therapy	12
55	Gardening skills	24	Effective communication	19
66	Plant nursery	12	Behavior and responsibility, social skills, culture of positive behavior	7
77	Doing small business	23	Survival skills	6
88	Leather accessories specialist	18	The EQUIP program: social skills, etc.	20

103 Standard Minimum Rules for the Treatment of Prisoners, Rule 78

104 European Prison Rules, Rule 28.1

99	Tapestry	17	Wood carving	46
110	Hotel management	21	Wood carving, artistic wood engraving and design	19
111	Georgian language course for ethnic minorities	16	Healthy way of life	11
112	Beauty specialist	40	Drawing	14
113	Office software	30	Drafting your CV and motivation letter; preparing for a job interview	12
114	Tailor	29	Guitar course	16
115	Massage	16	“Debate group”	9
116	Thick felt and batik	19	Enamel work	20
117	Training in Bangkok Rules	41	Small business	18
118	Civics training	33	Life values course	24
119	Management of emotional aggression and stress	8	Football training	40
220	Child development and related issues	5	Rugby training	35
221	Healthy way of life	20	Hip-hop training circle	4

No rehabilitation programs were carried out in the penitentiary institutions nos. 3, 7, 9 and 18 during the reporting period. Although the institutions nos. 18 and 19¹⁰⁵ are medical facilities,¹⁰⁶ prisoners get placed in the divisions of medical units for long periods and it is therefore important to offer some activities in those institutions too.

As we found out during our monitoring visit at the Institution no. 3 in October 2014, almost no psycho-social activities are offered in the institution. The institution does not have resources to implement such activities. Despite the lack of resources, the Institution’s psychologist is trying to engage the prisoners in some measures. Conversations between the psychologist and the prisoners usually take place in one of

105 During the year, at the medical facility no. 19 for TB-infected prisoners, a literature competition was held in which 3 prisoners participated. Further, a project entitled “A prisoner’s letter to children” was carried out in which only 2 prisoners were involved.

106 Institution no. 18 is a Medical Facility for Remand and Sentenced Prisoners and Institution no. 19 is a Treatment and Rehabilitation Center for Remand and Sentenced Prisoners

the investigation rooms that does not have an appropriate therapeutic environment. It is virtually impossible to conduct group therapy sessions in the Institution no. 3. In the monitoring group's opinion, the inmates at the Institution no. 3 do not have the possibility to engage in any valuable activity that would be interesting to them – a fact that badly affects their health and well-being. In addition, the existing situation creates an unhealthy and stressful environment negatively affecting both the relations between the prisoners and the prison staff and the maintenance of good order and security.¹⁰⁷

Although the Institution no. 6 was undergoing through a major overhaul during the reporting period, a number of prisoners were serving their sentence there anyway. The Institution offered only one educational program “Christian Talks”, which lasted 2 months and involved 10 prisoners. A table below shows the activities implemented at various penitentiary institutions and the number of prisoners who partook in the activities.

N	Rehabilitation/resocialization projects by institution	2	8	12	14	15	17
1	Project “Read books at the Patriarch’s blessing”	10	0	0	0	0	0
22	Intellectual game “What? Where? When”	34	14	12	0	0	0
3	Etalon	0	11	14	0	0	0
4	Project “Getting ready for liberty”	25	80	36	0	35	45
5	Project “Managing emotional aggression and stress”	0	0	8	0	0	10
6	Program “Psychology talk behind the bars”	7	0	0	0	0	0
77	Computer course	10	0	60	0	0	0
8	Competition “Please like my logo!”	6	0	0	0	0	0
9	Program “Healthy way of life”	0	0	18	0	0	20
10	“Art therapy”	Juveniles	0	0	0	0	0
11	An event dedicated to the Book Day	24	0	0	0	0	0
12	Project “Civic Education”	0	0	11	0	58	0
13	English course	30	0	0	0	0	0
14	Business course	0	0	0	18	29	34

107 The Public Defender’s report on its visit to the penitentiary institution no. 3 <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/angarishi-sasdjelagsrulebis-n3-dawesebulebashi-vizitis-shehexeb.page>

15	Wood carving	12	0	0	0	0	30
16	Icon painting	3	0	0	0	0	0
17	Embroidery course	5	0	0	0	0	0
18	Therapy	0	0	0	29	0	0
19	Poetry evening	0	8	0	0	0	0
20	Guesthouse management	0	0	12	0	0	0
21	Computer course	0	21	60	60	0	0
22	Electrician course	0	0	0	0	34	0
23	Enamel work	0	0	0	0	0	26
24	Plant nursery	0	0	0	0	0	23
25	Hotel management	0	0	0	0	17	0
26	Psycho-social programs	0	0	0	379	0	0

In addition to those listed in the table, some additional cultural and sports activities were held in the institutions nos. 2, 5, 8, 11, 12, 14, 15 and 17: an event dedicated to the Book Day; a meeting with writers and other celebrities; movie showing; tournaments in chess, soccer, checkers and table tennis. Certainly, availability of such programs and events in the penitentiary institutions are welcomed but they should become systematic and there should be a great variety of programs offered. This is particularly important in closed-type institutions.

In its 2013 Report to the Parliament, the Public Defender recommended that the Minister of Corrections introduce and implement different programs aimed at prisoner resocialization at the penitentiary institutions nos. 6, 7 and 8. The Public Defender's recommendation was fulfilled only in case of Institution no. 8 and only partially.

As it is clear from the above table, the level and extent of prisoner involvement in various activities at penitentiary institutions are unsatisfactory. Furthermore, lack of variety of the activities offered is a problem. We believe the prisoners should be surveyed to identify the activities they would be interested in participating in and the activities thus selected should be offered then. Also, incentives should be used more frequently to encourage better involvement in the activities.

2.4.3. REGIME; DISCIPLINARY LIABILITY; ENCOURAGEMENT

2.4.3.1. DISCIPLINARY LIABILITY

According to the European Prison Rules, disciplinary procedures shall be mechanisms of last resort.¹⁰⁸ Prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.¹⁰⁹ The severity of any punishment shall be proportionate to the offence.¹¹⁰ Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.¹¹¹ Importantly, punishment shall not include a total prohibition of family contact.¹¹² Use of disciplinary punishment should be in compliance with the principles of rule of law and the UN Standard Minimum Rules for the Treatment of Prisoners. Conduct constituting a disciplinary offence should be determined by law or regulation.¹¹³

It should be noted that the Georgian legislation does not determine which disciplinary punishment should be imposed upon the perpetrator in which case. This vests prison leaders with too much discretion in choosing the type of punishment and the risk of disproportion application of disciplinary punishment increases. Our monitoring shows that prison administrations are most frequently choosing solitary confinement as a form of disciplinary punishment. This practice confirms once again that it is necessary to have a legal determination of which type of disciplinary sanction should be used in which cases to make sure the sanction selected is proportional to the conduct committed.

Compared to 2013, the use of disciplinary punishment doubled in 2014. In particular, disciplinary sanctions were used in 1,408 cases in 2013 and in 2,972 cases in 2014. In its 2013 Report to the Parliament, the Public Defender recommended the Minister of Corrections to develop guidelines on the use of disciplinary sanctions to help establish uniform practices of sanction application across all of the penitentiary institutions. Unfortunately, the Public Defender's recommendation remains unfulfilled. Presently, the most frequent grounds for imposing disciplinary punishment are the following violations: making noise, shouting, verbally abusing prison staff or other prisoners, disobedience to the prison staff, being late or failure to appear at roll-call and contaminating the prison territory. Analysis of the use of disciplinary sanctions in the Institution no. 8 shows that the prison director has been using the same sanction for different types of disciplinary misconduct. Thus, prisoners making noise were imposed any of the sanctions indicted in the table below, depending on the sole discretion of the Institution's director.

108 The European Prison Rules, Rule 56.1.

109 *Ibid.* Rule 56.2.

110 *Ibid.* Rule 60.2.

111 *Ibid.* Rule 60.3.

112 *Ibid.* Rule 60.4.

113 Standard Minimum Rules for the Treatment of Prisoners, Rule 29.

Months	Reprimand	Taking away a TV set	Restriction on visits	Restriction on shopping	Restriction on parcels	Restriction on telephone calls	Solitary confinement
January	14	0	0	15	0	8	25
February	11	0	0	8	0	12	32
March	10	0	3	20	1	14	44
April	6	0	8	5	0	16	22
May	14	0	0	11	1	9	40
June	17	0	13	25	19	10	42
July	7	0	5	12	2	30	51
August	10	0	5	18	36	52	62
September	12	0	4	26	24	58	70
October	10	43	4	17	37	99	71
November	9	8	6	28	25	80	49
December	8	26	1	3	32	51	57
Total	128	77	49	188	177	439	565

Taking away a TV set as a disciplinary sanction was used in the Institution no. 8 only in October and November, during the period between 1 January and 28 November 2014. Because there is only one TV set in a cell, we think taking away that only TV set may amount to a collective punishment if the other inmates from the same cell are deprived of the possibility of buying a TV set. However, if the inmates buy a TV set, the sanction then no longer makes sense. Use of this sanction¹¹⁴ may have particularly adverse effects on the well-being of isolated prisoners (those who are alone in the cell). Against the background of scarce rehabilitation, sports and cultural activities in closed-type institutions, television is the only entertaining means and the only source of information for the inmates. Therefore, the recently-established practice of using this sanction needs to be reviewed. Furthermore, prison directors should try as much as possible to refrain from applying sanctions related to limitation of contact with family.

It is worth noting that the right to have a TV set is considered a measure of encouragement under the statute of the Institution.¹¹⁵ As regards remand prisoners, they may enjoy watching the television upon the administration's permission.¹¹⁶ We believe it should not depend on the administration's good will whether prisoners watch TV or not. All remand prisoners and sentenced prisoners should have the right to watch television without having to obtain permission from the administration in

¹¹⁴ Can be imposed for up to 6 months, according to Article 82(1)(d) of the Code of Imprisonment.

¹¹⁵ Article 74(f) of the Institution's statute.

¹¹⁶ Article 21(1)(d) of the Institution's statute.

advance. Only in exceptional circumstances, where there are clear pre-determined grounds, should the prison director be authorized to restrict this right for a definite period and based on a reasoned decision.

According to the information received from the penitentiary institutions, solitary confinement is the most frequently used disciplinary sanction. According to statistical data from the Institution no. 14, out of 124 cases of use of disciplinary punishment, solitary confinement was imposed in 120 cases. This practice contradicts Article 88(1) of the Code of Imprisonment, which stipulates that solitary confinement as a measure of disciplinary punishment should be used only in special cases.

The trend of using solitary confinement by penitentiary institutions is shown in the below table:

Institution no.	Solitary confinement	Other punishments	Total
2	127 (60,5 %)	83 (39,5%)	210
3	55 (67,1 %)	27 (32,9 %)	82
5	3 (5,4 %)	52 (94,6 %)	55
6	37 (60,6 %)	24 (39,4 %)	61
7	0	145 (100 %)	145
8	565 (34,8 %)	1058 (65,2 %)	1623
9	0	3 (100 %)	3
11	0	5 (100 %)	5
12	5 (41,6 %)	7 (58,4 %)	12
14	120 (96,8 %)	4 (3,2 %)	124
15	119 (47,6 %)	131 (52,4 %)	250
17	74 (23,6 %)	239 (76,4 %)	313
18	0	48 (100 %)	48
19	27 (65,8)	14 (34,2 %)	41
Total	1132 (38,1 %)	1840 (61,9 %)	2972

Solitary confinement cells were dysfunctional during the year at institutions no. 7 and no. 9 and hence, none of the prisoners was imposed solitary confinement as a disciplinary sanction. There are no solitary confinement cells at the institutions no. 11 and no. 18, due to the profile of these institutions. The data shown in the table demonstrate that solitary confinement occupies the highest share in disciplinary sanctions imposed in the institutions nos. 14, 3, 19, 6 and 2. Further, the share of solitary confinement in sanctions imposed in these institutions exceeds 60%, while it equals 96.8% in case of the institution no. 14.

According to Article 88(2) of the Code of Imprisonment, persons subjected to solitary confinement are restricted from the enjoyment of certain rights such as short and long visits, telephone calls and shopping for food. These restrictions are actually applied in practice. The CPT has recommended the Georgian Government to “take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts. Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts.”¹¹⁷ On this matter, in 2012, the Public Defender addressed the Parliament with a proposal to amend the Imprisonment Code accordingly; in its 2013 Report to the Parliament, the Public Defender reiterated that the above provision needed to be amended. Despite these appeals, Article 88 of the Imprisonment Code remains unchanged.

During its visit to the penitentiary institution no. 14, the monitoring group was informed about lack of access to medical services for those placed in solitary confinement cells. Thus, a prisoner who was serving his 3-day disciplinary punishment in a solitary confinement cell in the institution no. 14 had health problems, including a mental health issue. Due his mental illness, he had been prescribed drugs such as diazepam and tizercin. As the prisoner told us, he had been waiting for the healthcare staff to provide him with his prescription drugs and was making noise by hitting his legs against the cell door as a sign of protest. As a result, he was imposed solitary confinement as a sanction for making the noise. According to the prisoner, the healthcare staff did not visit him in the solitary confinement cell.¹¹⁸

In *Kudla v. Poland*, the European Court of Human Rights has indicated that Article 3 of the Convention obliges the State to protect the physical health of a detained person. In many of its judgments has the Court stated that it is incumbent upon the relevant domestic authorities to ensure, in particular, that diagnosis and care have been prompt and accurate, and that supervision by proficient medical personnel has been regular and systematic and involved a comprehensive therapeutic strategy.¹¹⁹

According to the 2007 Istanbul Statement on the use and effects of solitary confinement,¹²⁰ use of solitary confinement in relation to mentally ill prisoners should be absolutely prohibited. Unfortunately, we revealed a number of occurrences of keeping mentally ill prisoners in solitary confinement cells in the penitentiary institutions nos. 3, 14 and 17. As a result of the monitoring, we found out that prison leaders are less willing to cooperate with and to take into consideration the recommendations of prison healthcare staff in making decision on placing individual prisoners in solitary confinement cells. Such practice seriously endangers the lives and

117 CPT Report on its visit to Georgia during 5-15 February 2010, par. 115 at <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm> [last viewed 12.03.2014].

118 See the Public Defender’s report on its visit to the penitentiary institution no. 14 at <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/angarishi-sasdjelagsrulebis-n14-dawesebulebashi-vizitis-sheaxebe-2014-wlis-19-20-oqtomberi.page>

119 See, *inter alia*, *Jashi v. Georgia*, Judgment of 8 January 2013, par. 61

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

health of prisoners who are mentally ill or have suicidal inclinations. According to the Georgian law, “the administration is obliged to inform the healthcare personnel about placing a person in a solitary cell. Persons detained in solitary cells must be kept under daily and special observation of the healthcare personnel. If necessary, the duration of a person’s stay in the solitary confinement cell may be reduced on the basis of a doctor’s conclusion.”¹²¹

In the reporting period, a total of 2,972 disciplinary sanctions were used against the prisoners in the Georgian penitentiary institutions. Only three prisoners challenged the decisions on imposing disciplinary punishment.¹²² It should be noted, as the monitoring of penitentiary institutions during the recent years has revealed, that prisoners refrain from challenging their disciplinary punishment because, as they say, it makes no sense.

During its visit to the penitentiary institution no. 8 in November 2014, the monitoring group inspected the solitary confinement cells and talked to the prisoners detained there. We should mention that the prisoners in the solitary confinement cells did not have items of personal hygiene; they were provided with such items only after the monitoring group members talked to the Institution’s responsible officer. According to the prisoners, they were not enjoying their rights to take shower and to exercise outside. According to the relevant representative of the Institution, the prisoners in the solitary cells rarely make use of their right to take shower and to take a walk outside but the staff member was unable to show any document confirming either enjoyment or waiver of these rights by the prisoners.

Similar to that, during its visit to the penitentiary institution no. 3 in October 2014, the monitoring group found out that the prisoners did not have access to outdoor exercise and healthcare services, and the conditions in the solitary confinement cells were unsatisfactory. There are 4 solitary confinement cells having the area of 7m², 6.3m², 5.8m² and 6m² respectively. The cells have concrete floors. There are a small table and a chair in each cell. The beds are fastened to the walls. Toilets in the cells are not isolated. Each cell has one small casement window, which won’t open. The cells are not ventilated either naturally or artificially. At the time of inspection, there was no water supply in the cell and the stench was unbearable. The prisoners would not be provided with mattresses and linens and they had to sleep on firm surface.¹²³ According to the Institution’s lawyer, the law¹²⁴ is not clear about whether prisoners detained in solitary confinement cells are entitled to mattresses and linens. We believe

121 Code of Imprisonment, Article 88(6)

122 Institutions nos. 6, 8 and 9

123 *Ibid.* Report on the Public Defender’s visit to the institution no. 3, available at <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/angarishi-sasdjelagsrulebis-n3-dawesebulebashi-vizitis-sheaxebe.page>.

124 The Imprisonment Code, Article 88(4): “A solitary confinement cell should be lit and should be ventilated. An accused/sentenced person shall have a chair and a bed. He/she has the right to have reading materials upon request.”

both facts described above are a violation of the rights under Articles 21¹²⁵ and 22¹²⁶ of the Imprisonment Code of Georgia.¹²⁷

According to information received from the penitentiary institutions of the Ministry of Corrections, in the period between 1 January and 31 December 2014, administrative detention was imposed on 4 sentenced prisoners: 3 prisoners in the institution no. 7 and 1 prisoner in the institution no. 15. The term of detention was 10 days in all the four cases. None of these prisoners challenged the detention before appellate courts. It should be mentioned that administrative detention was used only once in 2013.

According to draft amendments to the Code of Imprisonment authored by the Ministry of Corrections by the end of 2014, a list of grounds on which basis administrative detention may be ordered will expand. In particular, the changes will make it possible to impose administrative detention for up to 90 days upon prisoners in special-risk places of deprivation of liberty for the following violations: 1) disobedience or other resistance to an institution's servant or other authorized person while they are performing their official duties; commission of willful conduct, which endangers the life and/or health of other person or infringement upon the honor or dignity of other person; 3) transmission of any information in an unlawful form from one cell to another or outside the institution.

It should be noted that, for the same disciplinary misconduct described above, prisoners in other, lower risk institutions may be imposed solitary confinement¹²⁸ for no more than 14 days¹²⁹ and administrative detention for up to 60 days may be used only if the prisoner commits another disciplinary misconduct while he/she is still serving punishment for the previous misconduct. So it is clear that the only reason for punishing one and the same conduct with substantially different sanctions is the prisoner's risk status (special risk prisoners). Also, it is hard to understand why the objective of maintaining order and security in a penitentiary institution cannot be achieved in special-risk places of deprivation of liberty with sanctions under Article 80 of the Imprisonment Code. It is further surprising why administrative detention is considered more effective while its enforcement starts only after the sentence indicated in the convicting judgment has been served; why would it not be more effective to use disciplinary sanctions that are enforceable immediately. So, it is clear that the proposed

125 The Imprisonment Code, Article 21: 1. An accused/sentenced person shall have the possibility to satisfy his/her physiological needs and maintain his/her personal hygiene in manner that does not affect his/her honor and dignity. 2. Normally accused/sentenced persons should be provided with the possibility to take shower twice a week and to visit a hairdresser at least once a month. It is prohibited for the administration to have an accused/sentenced person shave his/her head completely unless a doctor requests so or this is necessary for hygienic reasons.

126 The Imprisonment Code, Article 22(3): A prisoner must have a bed and linen in his/her personal possession, which he/she should receive in a clean and undamaged condition. The administration must ensure that the linen is clean.

127 Ibid.

128 Under Article 88(1) of the Imprisonment Code, solitary confinement as a disciplinary sanction should be used only in special cases.

129 The draft changes propose reduction of the duration of solitary detention from 20 days to 14 days – a change we certainly welcome.

draft amendments are trying to introduce manifestly disproportional sanctions for the same types of conduct. Furthermore, the Ministry of Corrections has not provided any reasoned and evidence-supported explanation of why administrative detention would be more effective in maintaining order in special-risk institutions than other disciplinary sanctions. Accordingly, we believe the aforementioned draft proposed by the Ministry of Corrections should not be adopted.

Pursuant to the jurisprudence of the European Court of Human Rights, proceedings for imposing administrative detention are considered criminal charges for the purposes of Article 6 of the European Court of Human Rights.¹³⁰ Accordingly, a person whose administrative detention is considered enjoys the minimum rights guaranteed in paragraph 3 of Article 6 of the European Convention.¹³¹ Among other rights, he/she should have adequate time and possibility to prepare his/her defense. The requirement that accused person must be allowed adequate time to prepare their case is a guarantee against hasty judicial decisions.¹³² In determining the adequacy of time afforded, account should be given to the nature and complexity of the case. If new circumstances arise during proceedings, the accused person should be given additional time to appropriately shape his/her position¹³³ for which reason he/she should have the right to request adjournment of the hearing;¹³⁴ in some cases, where this is in the interests of justice, the court should adjourn a hearing on its own initiative.¹³⁵

Pursuant to Article 90 of the Imprisonment Code, a decision imposing administrative detention should be submitted, within 24 hours after it is made, to the competent court according to the location of the institution. The court (a single) judge will examine the decision at an open hearing within 48 hours after the decision has been lodged with the court. A reasoned judgment of the court must be rendered immediately after judicial examination of the decision is completed. Therefore, it is clear from the procedure envisaged by the Imprisonment Code that a prisoner has 72 hours at most to contact a lawyer, develop a defense strategy, obtain evidence and lodge a complaint with the court. It should also be mentioned that there is no possibility of adjourning a hearing after 48 hours have passed following the lodging of the detention decision with a court because the court must make a judgment within 48 hours anyway. As

130 *Ezeh and Connors v. the United Kingdom; Campbell and Fell v. the United Kingdom.*

131 According to Article 6(3), every accused person has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

132 *Kröcher and Möller v. Switzerland (dec), Bonzi v. Switzerland (dec), OAO Neftyanaya Kompaniya Yukos v. Russia*, § 540.

133 *Miminoshvili v. Russia*, § 141, *Pélissier and Sassi v. France* [GC], § 62, *G.B. v. France*, §§ 60-62.

134 *Galstyan v. Armenia*, § 85, *Campbell and Fell v. the United Kingdom*, § 98.

135 *Sadak and Others v. Turkey (no. 1)*, § 57, *Saknovskiy v. Russia* [GC], §§ 103 and 106.

it follows from the above discussion, the procedure envisaged by the Imprisonment Code is not consistent with the requirements of a fair trial and needs revision.

And finally, if administrative detention as a type of disciplinary sanction is to remain in the Imprisonment Code, the maximum term of detention will need to be reviewed. Also, there must be a uniform standard of applying administrative detention. As a result of changes made to the Administrative Offenses Code in 2014, the duration of administrative detention reduced from 90 days to 15 days – something that we surely evaluate as a positive step. However, it is now needed to apply exactly the same standard to the duration of administrative detention envisaged by the Imprisonment Code so that a maximum term of such detention is set at 15 days in relation to prisoners.

2.4.3.2. PRISONER ENCOURAGEMENT

If a prisoner partakes in various rehabilitation activities, a social worker will then draw up a report about the prisoner’s good behavior. The report will be sent to a prison director who makes decision on which measure of encouragement to use in relation to the prisoner. The director’s decision is inserted into a prisoner’s personal record. The following measures of encouragement may be used: announcing a thank you, additional short or long visit, quashing of a reprimand or of other disciplinary sanction, etc. Statistics of incentives applied during the year are provided in the below table:

Institution no.	2	3	5	6	7	8	9	11	12	14	15	17	19	Total
Number of incentives	209	127	129	85	5	351	16	60	15	90	267	383	41	1,778

As we can see from the above table, measures of encouragement were not used in relation to any prisoner in the Institution no. 18 in 2014. In the Institution no. 7, incentives were used in only 5 cases in a period of 12 months.

We would like to point out that frequent use of incentives can shake the negative impact of the prison sub-culture upon prisoners and facilitate to the prisoners’ resocialization. It is therefore necessary to apply measures of encouragement more intensively in the institutions nos. 6, 7, 9, 11, 12, 14 and 19.

2.4.3.3. PRISONER EMPLOYMENT

According to the European Prison Rules, prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.¹³⁶ Prison authorities shall strive to provide sufficient work of a useful nature.¹³⁷ As far as

¹³⁶ The European Prison Rules, Rule 26.1.

¹³⁷ *Ibid.* Rule 26.2

possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release.¹³⁸

Prisoner employment data for 3 years		
2012	2013	2014
102 prisoners	506 prisoners	804 prisoners

As the above table shows, in 2013 and 2014, the number of employed prisoners has drastically increased compared to the year of 2012. We welcome this fact and believe this positive trend must continue.

Institutions no. 11 (juveniles' institution) and no. 18 (medical facility) were not employing prisoners during the year, due to the special profiles of these institutions. Statistical data of prisoner employment according to institutions in 2014 are shown in the below table:

Institutions	#2	#3	#5	#6	#7	#8	#9	#12	#14	#15	#17	#19	Total
Number of employed prisoners	112	28	31	51	4	192	10	37	99	68	138	34	804

Prisoners employed at penitentiary institutions were cleaning, washing, doing laundry, distributing food and products and performing other tasks, for which they were receiving salaries.

RECOMMENDATION TO THE MINISTER OF CORRECTIONS:

- Develop guidelines on the use of disciplinary punishment so that disciplinary sanctions are used uniformly at all penitentiary institutions
- Use disciplinary sanctions as a measure of last resort
- Develop and introduce in all the penitentiary institutions a logbook to register use of their rights by prisoners placed in solitary confinement cells (taking a shower, outdoor exercise, receipt of items of personal hygiene)
- Take all necessary measures to prevent placement of mentally ill prisoners in solitary confinement cells
- Take appropriate measures to ensure that prisoners in solitary confinement cells get visited by doctors in accordance with Article 88(6) of the Code of Imprisonment

138 *Ibid.* Rule 26.3

- Take all necessary measures to implement a variety of rehabilitation activities in all penitentiary institutions and to offer help, as much as possible, to the social units of penitentiary institutions in planning and conducting various activities with participation by prisoners. In planning such activities, due consideration should be given to areas of interest to prisoners. Measures of encouragement should be used more often to facilitate to prisoner involvement in such activities.
- Offer job opportunities to more prisoners in penitentiary institutions

PROPOSAL TO THE PARLIAMENT:

- Reduce the maximum term of administrative detention to 15 days
- Amend the Imprisonment Code so that prisoners have access to all the guarantees of fair trial in the proceedings related to imposition of administrative detention

2.5. PRISON HEALTHCARE SYSTEM

The right to health is an inclusive right¹³⁹ and involves access to safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information and gender equality.¹⁴⁰

Exercise of the right to health is closely related to preventive healthcare, which implies: facilitation to health and improvement of general living conditions; food; sanitation; intellectual and physical activities; targeted preventive measures in prisons focused on specific problems such as infectious diseases, mental health, drug addiction and violence.

Within the framework of the monitoring conducted in 2014, an emphasis was made on the effective functioning of the prison healthcare system and the existing challenges. In the course of monitoring, we interviewed the prisoners and the prison healthcare staff; we also inspected the conditions in medical units of the penitentiary institutions and the infrastructure at the penitentiary medical facilities.

Statistical reports and information provided by the Medical Department of the Ministry of Corrections and individual penitentiary institutions were used during the research.

The below analysis is based on the national legislation such as laws and bylaws as well as international standards found in hard law and soft law, in particular:

139 Right to Health, Fact Sheet No. 31, Office of the United Nations High Commissioner for Human Rights and World Health Organization, available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> [last visit on 31.05.2014].

140 General comment no. 14 (2000) on the right to health, adopted by the Committee on Economic, Social and Cultural Rights.

- The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1997);
- The Optional Protocol to the above-mentioned Convention (2006);
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987);
- Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”) (United Nations; New York and Geneva, 2001 – 2004);
- Principles and case-law of the European Court of Human Rights;
- 3rd General Report on the CPT’s activities – healthcare services in prisons;
- The UN Minimum Standard Rules for the Treatment of Prisoners (1955);
- The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1989);
- The European Prison Rules (2006);
- Recommendation No. R (87) 3 of the Council of Europe Committee of Ministers (1987);
- Recommendation No. R (98) 7 of the Council of Europe Committee of Ministers to member states concerning the ethical and organizational aspects of health care in prison (Strasbourg, 20 April 1998);
- Consensus Statement on Mental Health Promotion in Prisons, WHO Regional Office for Europe Health in Prisons Project (The Hague, Netherlands, 18–21 November 1998)
- The UN international principles of medical ethics (1982)
- The World Medical Association: Declaration of Tokyo (1975), Declaration of Hamburg (1997), Geneva Declaration (1948), Declaration of Malta (1991, 2006), Helsinki Resolution (2003, 2007);
- A Guide to International Instruments and Mechanisms against Torture, International Rehabilitation Council for Torture Victims (IRCT) (as of 4 July 2007)
- Health in Prisons, A WHO guide to the essentials in prison health;
- The Madrid recommendation: health protection in prisons as an essential part of public health (WHO, 2010).

Reforms implemented in the penitentiary healthcare system and current challenges are discussed below in the relevant chapters.

2.5.1. FUNDING OF THE GEORGIAN PRISON HEALTHCARE; ORGANIZATIONAL ASPECTS; REFORMS CARRIED OUT

According to the information received from the Ministry of Corrections, the Ministry's Penitentiary Department has separate units for primary healthcare, specialized medical assistance, medical activity regulation, healthcare economy and medical logistics.

In 2014, the implementation of the 18-month Penitentiary Healthcare Action Plan was completed. The implementation was positively evaluated by representatives of the European Union and the Council of Europe. Experts from the Council of Europe helped elaborate a Penitentiary Healthcare Development Strategy for 2014-2017. According to the information we received from the Ministry of Corrections, the following activities were implemented within the Strategy:

- Salaries of the healthcare staff increased by 60% (for example, a doctor's salary increased from 750 Lari to 1,200 Lari and a nurse's salary increased from 350 Lari to 750 Lari).
- A primary healthcare model was introduced in one penitentiary institution and is now accessible in all the penitentiary institutions. 214,567 medical consultations were issued at the primary healthcare/outpatient level.
- An electronic medical history (P-HER) and an electronic queue for transferring patients to hospitals were introduced.
- New *"Rules of transferring sick prisoners from pretrial detention facilities and places of deprivation of liberty to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation or to the Institution for the Treatment of Remand and Sentenced Prisoners"* were drafted and approved in 2014.
- A new Central Penitentiary Hospital was opened. There were 1,122 referrals to the Central Penitentiary Hospital (Medical Institution for Accused and Convicted Persons) in 2014.
- When necessary, it is possible to provide medical services to convicted persons in civilian clinics and hospitals. 3,658 referrals were made to the civilian institutions in 2014.
- Standards for penitentiary healthcare medications were developed and approved. Between 2013 and 2014, the expenditure for medications increased thrice: from 64 Lari to 184 Lari.
- Drug-addicted prisoners have access to a methadone detoxication program, a narcologist's consultation and narcological treatment, detoxication and specialized assistance at the Central Penitentiary Hospital and civilian clinics, testing for infectious diseases and related consultation on a voluntary basis. A long-term methadone replacement therapy program is under development.

- The Center for the Treatment of Tuberculosis and Rehabilitation was refurbished and a special ward for accused persons was opened.
- A program for the preventing, diagnosing and treating hepatitis C started; within the program, 8,711 accused persons and convicted persons were screen in 2014. 180 patients completed a hepatitis C treatment course in 2014.
- In 2014, prisoners' nutrition standards were updated, which envisage 12 different rations for prisoners having different physical abilities, health condition and category.
- A suicide prevention program was launched. The program is being implemented in 6 penitentiary institutions.
- Dental infrastructure was renovated. A new dental room was opened in the Central Penitentiary Hospital. Monitoring was carried out in all the penitentiary institutions and needs were identified, on which basis it is planned to purchase sterilizers for all dental rooms.
- Screening for breast cancer, cervical cancer and rectum cancer was conducted in the Institution no. 5 in 2014 to identify risk groups.
- A long-term care division for 57 individuals was opened for disabled prisoners in the Central Penitentiary Hospital.

We would like to note the substantial increase in the funding of the penitentiary healthcare. In 2014, 15,466,000 Lari were allocated for the penitentiary healthcare and 13,300,800 Lari were actually spent. We welcome the sharp increase in the penitentiary budget but, for the sake of optimal use of resources, it is necessary to assess cost-effectiveness of the activities implemented and to take this information into account in planning the next year budget.

2.5.2. MEDICAL INFRASTRUCTURE

2.5.2.1. INFRASTRUCTURE AT MEDICAL FACILITIES

A number of activities were implemented to update the medical infrastructure in the penitentiary system in 2014. Of special importance is the refurbishment carried out at the Treatment Institution no. 18 for Accused and Convicted Persons. After the repair works, the Institution became operational on 1 July 2014. Patient capacity of the Institution is 158 patients (158 beds). Number of beds per Institution's divisions is shown in a table below:

#	Division capacity according to number of beds	
1.	Reception	9
2.	Therapeutic ward	9
3.	Long-term care ward	53
4.	Narcology ward	11
5.	Psychiatric ward	21
6.	Anti-infection ward	10
7.	TB ward	8
8.	Surgery ward	21
9.	Critical medicine ward	16

The diagnostic ward at the Treatment Institution for Accused and Convicted Persons offers X-ray, echoscopy, endoscopy (gastroscopy, colonoscopy, bronchoscopy), elastoscopy (fibrosan), shock room, laboratory (clinical, bacteriological, biochechemical). There are also a sterilization room, a dental room and an observation room in the Institution.

The Treatment Institution provides 24-hour services to patients in the areas of therapy, neurology, endocrinology, psychiatry, infections, tuberculosis, skin and venereology, surgery, cancer, traumatology, urology, ENT (ear, nose and throat), ophthalmology, resuscitation and other areas.

During the monitoring, the Special Preventive Group inspected the premises of the Institution. The ground floor has an area of 746 square meters housing a pharmacy, a room for storing human corpses, a conference hall, chemical and bacteriological labs, a sterilization room, a library and the archives. The area of the first floor is 672 square meters and houses the administration, the reception (5 rooms and 9 beds), a sanitation room, a cast room, a shock room and a diagnostic bloc (X-ray, echoscopy, endoscopy, spirometry). The second floor with an area of 699 square meters houses a TB ward and an infectious diseases ward (7 rooms and 18 beds), a psychiatry ward (8 rooms and 21 beds) and a dental room. The third floor has an area of 726 square meters and accommodates a therapeutic ward (3 rooms and 9 beds) and a long-term care ward (21 rooms and 53 beds). The same floor houses a rehabilitation room equipped with a variety of gym equipment. The rehabilitation room was dysfunctional during the monitoring visit. The area of the fourth floor is 738 square meters. There are a critical medicine ward (5 rooms and 16 beds), a surgery ward (7 rooms and 21 beds) and an operating bloc. The clinic has two operating rooms: one for scheduled and the other for urgent surgical operations. Sanitation conditions in the hospital rooms and wards are generally satisfactory. But no ventilation systems are installed in the operating rooms and the X-ray room.

At the time of monitoring, the Institution had the following medical equipment: one 3-channel ECG (electrocardiograph), one UHF device, one electric stimulator “myorhythm”, five glucometers, 36 blood pressure measuring devices with stethoscopes, three 3-channel electrocardiographs, one echoscopy device, one colonoscopy device, one gastroscopy device, one bronchoscopy device, one cardiac monitor, five electric knives, three defibrillators, five artificial breathing machines, three electric saws, one compressor, two surgery table, 2 surgery lights, two electric surgery machines, forty-five wheelchairs and forty-two adjustable crutches.

In the psychiatric ward, there is an isolation room with a special bed with fastening belts. There is a water closet inside the room. If a patient refuses to take medications and food and disobeys the clinic rules, the relevant minutes are drawn up. On the first day of our visit, only 5 cells could be monitored electronically but, based on the Penitentiary Department’s decision, surveillance cameras were in the process of getting installed in all of the rooms of the psychiatric ward.

2.5.2.2. TB TREATMENT AND REHABILITATION CENTER

The Center’s capacity is 698 prisoners. At the time of the Special Preventive Group’s visit, there were 168 prisoners at the institution. According to the institution’s director, one convicted prisoner had been transferred to “Academician B. Naneishvili National Center of Mental Health”.

Prisoners accommodated in the institution for treatment purposes are placed mostly in the first and second buildings. The first building houses prisoners infected with multi-drug-resistant tuberculosis MGB(+). The building has 18 rooms where there were 8 prisoners by 11-12 December 2014. The other building is a four-story building. On the first floor, there are offices for a chief doctor and a statistician as well as a drug storage and a laboratory. On the third and fourth floors, prisoners infected with sensitive and resistant forms of tuberculosis are accommodated in various wings of the building. One part of the third floor has rooms for newly admitted prisoners who are undergoing initial tests.

TB Treatment and Rehabilitation Center offers X-ray, echoscopy and lab tests. They have a dentist’s room, a small manipulations room and a sterilization room.

2.5.2.3. MEDICAL INFRASTRUCTURE AT PENITENTIARY INSTITUTIONS

Healthcare services in penitentiary institutions are provided by 37 primary healthcare teams. According to information received from the Medical Department of the Ministry of Corrections, each primary healthcare team is equipped with a defibrillator, a pair of scales, a stadiometer, a cardiograph, a glucometer, a blood pressure measurement device and an X-ray viewer. Dental rooms and small manipulation rooms are operational in the institutions.

Healthcare services in the medical units of penitentiary institutions are provided in former cells affecting the quality of the services provided. The surface of the walls and the floor in the doctors' rooms are an issue. In all rooms where diagnostic tests or small surgical interventions are conducted, the floor must be covered with antistatic linoleum. Ventilation is also a matter of concern. The same is true about the quality and technical maintenance of the medical equipment at penitentiary institutions.

RECOMMENDATION TO THE MINISTER OF CORRECTIONS:

- Install an appropriate ventilation system in the operating room and the X-ray room at the Treatment Institution for Accused and Convicted Persons and ensure good working of the Institution's ventilation system
- Review the decision of the Chairman of the Penitentiary Department on installing surveillance cameras in all the rooms at the psychiatry ward and protect privacy of patients
- Make the medical units of penitentiary institutions compatible with the standards applicable in the whole country, including by properly equipping these medical units and controlling the quality of their medical equipment, putting the ventilation systems in good order and laying antistatic linoleum on the floors

2.5.3. ACCESS TO MEDICATIONS

Timely access to appropriate medications is a key to achieving success in treatment. According to Article 24 of the Code of Imprisonment, accused and convicted persons have the right to be provided with the needed healthcare services. Where necessary, accused and convicted persons should have access to medications and items permitted in pretrial detention facilities/places of deprivation of liberty. Upon request, accused and convicted persons have the right to buy, on their own money, medications that are more expensive than the institution-procured drugs or have properties similar to institution-procured drugs.

Monitoring showed that the prisoners cannot enjoy this right because none of the penitentiary institutions except the Institution no. 15 has a pharmacy where prisoners can buy medicines at.¹⁴¹ Pharmacies are not operational in other institutions. The relevant normative acts do not envisage the right of prisoners to receive medicines from their relatives.

Substitution of prescribed medications remains a problem. We understand that, by making a list of basic medications for the use in the penitentiary healthcare system, the Ministry of Corrections determined medications it undertakes to provide to the penitentiary institutions at its own expense. In addition, the Order of the Minister

¹⁴¹ By December 2014, no pharmacies were functional in the following penitentiary institutions: 2, 3, 5, 6, 7, 8, 9, 11, 12, 14, 17, 18, 19

of Corrections dated 30 May 2011 now regulates an exceptional situation when a prisoner may, at the expense of the Ministry, be provided with a medication that is not on the list of basic medications. According to the mentioned ministerial order, where there is a medical necessity, based on a written recommendation of a penitentiary institution's chief doctor to be accompanied with the patient's Form no. IV-100/a and a prescription issued by an attending medical doctor, upon permission of the Chief of the Ministry's Medical Department, a prisoner may be provided with medications, which are not on the list of basic medications approved by the Ministry for the use in the penitentiary healthcare system but which are envisaged in the National Clinical Practice Recommendations (the Guidelines) and State Standard on Clinical Situation Management (the Protocol) approved or recognized by the Ministry of Labor, Health and Social Protection. Medications thus prescribed will be provided to the relevant penitentiary institution by the Ministry of Corrections.¹⁴² Funds spent on medications for penitentiary institutions are shown in the below table:

Institution #	Expenses
2	214,552.074
3	47,124
5	84,475.86
6	112,333.09
7	19,184.24
8	267,371.29
9	17,184.21
11	7,505.244
12	50,662.53
14	473,277,2
15	265,582.59
17	307,660.81
18	182,628.86
19	201,146.81
Total	2,250,688.808

According to our monitoring findings, the healthcare personnel of penitentiary institutions are normally prescribing only generic medications available at the relevant penitentiary institutions at the expense of the State for which reason prisoners are precluded from buying branded medications on their own money. It is important for

¹⁴² Article 28(8) of the statute of pre-trial detention facilities, Article 29(8) of the statute of places of deprivation of liberty

the prisoners to be able, in agreement with the doctor and on the basis of a relevant prescription, to buy a branded medication corresponding to the generic one initially prescribed by the doctor in the penitentiary institution's pharmacy or, where there is no pharmacy, to receive such medications from their family members.

During our monitoring, having studied the documentation and conversed with the prisoners, we found out that patients sometimes do not get medications prescribed by the doctor as part of a complex course of treatment. Also, often times the prescribed medications are later substituted with other medications – something which is heavily frowned at by prisoners and which even becomes a ground for conflict between the doctor and the patient.

RECOMMENDATION TO THE MINISTER OF CORRECTIONS:

- Take measures to ensure that prisoners have unimpeded access to basic prescribed medications; ensure that, in issuing prescriptions, doctors are not limited to issuing only those medications that are available in the penitentiary institution and that prisoners can access branded medications at their own expenses without barriers, upon their request and in agreement with their doctors; elaborate a clear procedure for delivering medications in parcels to prisoners in penitentiary institutions where there are no pharmacies.

2.5.4. ACCESSIBILITY AND QUALITY OF HEALTHCARE SERVICES

2.5.4.1. ACCESS TO A DOCTOR

The European Human Rights Court has stated in *Kudla v. Poland* that Article 3 of the European Convention imposes the obligation upon the State to secure physical health of detained persons. In many of its judgements has the Court stated that it is incumbent upon the relevant domestic authorities to ensure, in particular, that diagnosis and care have been prompt and accurate, and that supervision by proficient medical personnel has been regular and systematic and involved a comprehensive therapeutic strategy.¹⁴³

According to information received from the Medical Department of the Ministry of Corrections, 37 primary healthcare teams are operational in penitentiary institutions. The teams are composed of family doctors. During 2014, family doctors employed at the institutions issued medical advice to the prisoners 214,567 times (this figure was 224,363 in 2013). As for the invited doctors, they issued medical advice in 30,726 cases (33,929 cases in 2013). The statistics show that the number of consultations provided by family doctors and invited doctors has decreased in 2014 compared to 2013; the decrease is not significant though. It should be taken into account that, according to the statistical data provided by the Ministry of Correction, the sickness

143 See, *inter alia*, *Jashi v. Georgia*, Judgment of 8 January 2013, par. 61

rate has increased compared to 2013. Information about the sickness rate is provided in the table below:

#	Diseases	2014	2013	Difference
1.	Cardiovascular diseases	1650	859	791
2.	Respiratory system diseases	5037	1536	3501
3.	Digestive sytem diseases	2721	1708	1013
4.	Urogenital system diseases	6181	1180	5001
5.	Nervous system diseases	1726	958	768
6.	Mental illnesses	2023	1998	25
7.	Endocrinal system diseases	431	182	249
8.	Hematological diseases	53	19	34
9.	Diseases of sense organs	1316	1349	- 33
10.	Infectious diseases	442	168	274
11.	Tuberculosis	136	294	-158
12.	HIV/AIDS (newly detected)	34	7	27
13.	Osteoarticular diseases and diseases of connecting tissues	1121	416	705
14.	Skin and venereal diseases	525	285	240
15.	Self-injuries and traumas	3086	3051	35
16.	Dental diseases	15860	15857	3
17.	Accute surgical diseases	377	230	147
18.	Oncological diseases	37	40	- 3
		Total 42,756	Total 30,137	Total 12,619

As regards the number of doctors and nurses envisaged by the staffing tables of penitentiary institutions, according to the information received from the Medical Department of the Ministry of Corrections, the number of family doctors and nurses decreased in 2014 compared to 2013.¹⁴⁴ Against the background that the number of prisoners in penitentiary institutions was 9,093 in December 2013 and 10,372 in

¹⁴⁴ 119 doctors were employed at penitentiary institutions in 2013 and only 103 in 2014. Also, the number of nurses was 169 in 2013 and 136 in 2014.

December 2014, the Special Preventive Group considers it unreasonable that the number of healthcare staff was reduced despite the increased prison population and the increased sickness rate. It should be mentioned also that, with the number of doctors reduced, the number of medical consultations issued by the doctors decreased by 4,4% compared to the previous year. The number of doctors and nurses according to penitentiary institutions is shown in the table below:

#	Institution no.	Doctor	Nurse	Other assisting personnel
1.	2	12	13	1
2.	3	6	5	1
3.	5	8	9	1
4.	6	8	12	1
5.	7	2	3	1
6.	8	24	37	2
7.	9	5	7	1
8.	11	4	4	1
9.	12	3	5	0
10.	14	10	11	1
11.	15	12	15	2
12.	16	8	7	1
13.	17	9	15	2

Based on the information received from the Medical Department of the Ministry of Corrections, below we provide a ratio of doctors and nurses envisaged by the penitentiary institutions' staffing tables to the number of doctors according to institutions in 2014:

#	Penitentiary institution no.	Prisoner to doctor ratio	Nurse to prisoner ratio
1.	2	137	116
2.	3	47	47
3.	5	38	29
4.	6	16	10
5.	7	35	23
6.	8	120	74

7.	9	12	7
8.	11	15	11
9.	12	81	48
10.	14	112	67
11.	15	164	120
12.	17	224	119

The figures in the above table have been calculated by dividing the number of prisoners in each institution by the number of doctors and nurses according to the institution's staffing table. These data are valid for 2014. The table does not take into account the duty schedule of doctors and nurses but, nevertheless, it is clearly visible that the number of nurses is clearly insufficient in the institutions nos. 2, 8, 14, 15 and 17.

Our monitoring visits carried out in 2014 revealed that it is difficult for the inmates to access staff doctors both in the daytime and at night, in some of the institutions. Also, the penitentiary healthcare personnel have been mentioning problems related to overcrowding and hard working conditions. Thus, in the penitentiary institution no. 17, one family doctor in the day shift and one family doctor in the night shift have to serve more than 400 prisoners; likewise, one nurse serves more than 200 prisoners. In the Institution no. 8, there are up to 300 prisoners per each primary healthcare doctor. The number of nurses is clearly insufficient: one nurse per 430 prisoners. In the Institution no. 14, 3 primary healthcare doctors, 3 nurses and 1 doctor on duty work in the day shift. Accordingly, one doctor and one nurse have to serve more than 250 and 340 prisoners in the day shift, and one doctor and one nurse have to serve more than 1,000 prisoners in the night shift.

The doctors and especially nurses have hard working conditions at Institution no. 3. During a whole day, the institution is served by only one primary healthcare doctor and one nurse. In this situation, it is simply impossible for the doctor to provide full-fledged healthcare services to the patients in the medical unit and the residential cells while properly maintaining the required medical documentation at the same time.

Dental services in the penitentiary institutions are a matter of concern. Dentists do not have assistants and have to serve 25 to 30 patients each day. Orthopedic services are provided with some impediments.

During our visits to the institutions no. 2 and no. 3, the monitoring group revealed a somewhat new practice of provision of healthcare services to prisoners: in particular, for a prisoner to receive treatment, he/she writes up an application for medical services and hands the application in to the controlling officer on duty. The controlling officer collects such applications during the day and files them with institution's chancellery where the applications get registered and get sent to the institution's

doctor later. Only in urgent cases will the controlling officer deliver an application for medical services to the chancellery immediately. It is unclear, however, how a prison controlling officer who does not have medical knowledge will evaluate whether or not an individual prisoner's medical condition is urgent. The above-described procedure constitutes an additional barrier in the process of provision of healthcare services in prison and a breach of the principle of confidentiality. We therefore believe that the above-described practice needs to stop immediately.

According to the information received from the Medical Department of the Ministry of Corrections, invited doctors issued 30,726 medical consultations during 2014. The number of medical consultations issued monthly is between 2,000 and 3,500. Below we describe some examples of common problems revealed by the Special Preventive Group during its monitoring at several penitentiary institutions in regard to timely availability of invited doctors.

The monitoring has shown that the invited doctors are not visiting the penitentiary institutions regularly and frequently. Thus, in the institution no. 3, an echoscopy specialist last paid his/her visit on 1 October; by 23-23 October, 12 prisoners were awaiting his/her next visit. A urologist visited the Institution on 14 August and 10 prisoners were waiting for him/her since then. An X-ray specialist was in the Institution on 16 September and 34 prisoners were awaiting his/her next visit. A proctologist's last visit dates back to 8 September and 2 prisoners were in queue for his/her consultation.

In the Institution no. 2, a patient wore the Ilizarov frames on his left shank to keep his broken bone fixated for as long as 2 months. Despite the fact that, according to the medical record entered on 1 September 2014, it was necessary for the patient to see a traumatologist, no services were provided even after 2 months. The same patient had been X-rayed a week before but did not know the result of the X-ray.

As our monitoring at the Institution no. 14 showed, prisoners enlisted for an appointment with invited doctors have to wait for extended time periods to see the doctor. This contradicts the standard of timely provision of healthcare services. Some examples from the Institution no. 14 are described below:

- One patient complained to us that he had been waiting for an endocrinologist's consultation for 5 months already with no avail. Endocrinologists are not visiting the institution at all.
- A patient who was in the medical unit because his wound opened after the surgery was waiting for a surgeon's consultation for 2 weeks.
- A patient was put on the list awaiting an appointment with a specialist on 6 September but the relevant journal (log) does not contain any information about provision of consultation by the doctor.
- A patient suffering from a hemorrhoidal disease has been enlisted for an appointment with a doctor on 16 September 2014 but no records of consultation rendered by the doctor can be found in the documents.

- Two other patients were put on the list for an appointment with the relevant doctor on 17 September 2014 but no record of consultation provided could be found.
- One prisoner with mental health problems was saying he had been waiting for a psychiatrist's consultation several months. According to the prisoner's medical files, the last time he had an appointment with a psychiatrist was 27 March 2014. Since we did not find the prisoner's name on the appointment form, the monitoring group asked for an account from a primary healthcare doctor. The doctor explained he/she had forgotten to put the prisoner on the list for a psychiatrist's consultation and would make good the problem right the next day.

As the monitoring carried out at the institution no. 14 showed, 40 prisoners received a psychiatrist's consultation on 16 October 2014, 32 prisoners on 9 October and 38 prisoners on 2 October. Such a high number of prisoners taking a psychiatrist's consultation in just one day raises a reasonable doubt about the content and quality of such consultations.

During its monitoring visit to the Institution no. 8 in December 2014, the Special Preventive Group talked to the prisoners and the healthcare personnel. It turned out that timely access to a neurologist's services is an issue because only one neurologist is serving all the penitentiary institutions in the eastern Georgia. One of the most spread diseases in the Institution no. 8 is digestive system diseases but it is hard to timely get an appointment with a gastroenterologist. It is also difficult to timely get a consultation of an ENT (ear, nose and throat) doctor.

Mental health remains a serious matter of concern in the Institution no. 8. Many prisoners want an appointment with a psychiatrist. According to the reports provided by the healthcare staff, 140 to 185 prisoners get a psychiatrist's consultation each month. A psychiatrist's services were not normally available in September and only 68 prisoners were able to get an appointment. The healthcare personnel explained that a list of prisoners wishing to get an appointment with a psychiatrist will be handed over to a psychiatrist by primary healthcare doctors. The primary healthcare doctors, however, refuse to put some prisoners on the list because they think the prisoners are malingerers. We believe, because of the general depressing and unhealthy environment in the Institution, a psychiatrist's services should readily be available in order to timely identify any psychic problems and timely provide adequate psychiatric assistance.

As a result of our inspection visit to the Institution no. 17 in December 2014, we found out that it takes too long for prisoners listed for an appointment with invited doctors specializing in narrow areas to actually obtain consultation of these doctors. The time the patients have to wait for the doctor is inconsistent with the standard of timely provision of medical services. Here are some examples:

- According to Form 200-5/a – a medical examination paper – of prisoner G.B., the prisoner needs an echoscopy of his abdominal cavity and a colonoscopy. By the date of our visit, none of the indicated medical measures were carried out.
- According to the results of a doctor’s consultation on 29 October 2014, prisoner V.B. needs a visit to a neurologist. The prisoner did not have a chance to visit a neurologist by the time we monitored the institution.
- According to a doctor’s consultation on 8 July 2014, prisoner D.T. needed to have his waist scanned with MRI (micro resonance imaging). The patient was registered in the appropriate database but the MRI was not performed.
- Prisoner T.G. was asking for a neuropathologist’s consultation for 6 months in vain.

The prisoners we interviewed in the Institution no. 17 complained of rare visits by a gastroenterologist. According to their statements, they have to wait 3 to 4 months to see the gastroenterologist. Due to prevalence of gastrointestinal diseases in prisons, long intervals between the visits of gastroenterologists negatively impact the health of prisoners.

2.5.4.2. MEDICAL REFERRAL

Primary healthcare teams at penitentiary institutions are the ones who decide whether specialized medical services are needed. Accordingly, they are the ones to request patient referral. Patients are registered electronically. After a request for referral gets registered, it is then processed by the Medical Department of the Ministry of Corrections. If the request is well-founded and complies with the national guidelines (plus international guidelines where necessary), it will get approved and assigned a list number.

After a request is approved, depending on the number of the request in the list, a medical services provider is contacted and the patient is referred to the provider. If a request is rejected, the rejection is registered in the system and the relevant primary healthcare team is informed about the reasons of rejection.

Only those patients are put on an electronic queue whose medical services are pre-planned. Urgent cases are not subject to a queue. There are separate electronic queues for eastern and western parts of Georgia and they are regulated independently. Referrals to outpatient clinics and inpatients clinics are regulated separately as well.

According to explanations obtained from the representatives of the Medical Department of the Ministry of Corrections, scheduled referrals are impeded by barriers such as prisoners injuring themselves, going on hunger strike or arbitrarily stopping a treatment course. Another problem in regard to medical referrals is the

capacity of civilian hospitals to deal with prisoners. According to the information received from the Ministry of Corrections, prisoners are contractually served by 51 civilian clinics. In addition, prisoners are served by the Center for the Treatment of Tuberculosis and Rehabilitation (the Institution no. 19) and the Treatment Institution for Accused and Convicted Persons (the Institution no. 18). It should be noted that the temporary closure of the Treatment Institution for Accused and Convicted Persons due to a major overhaul created problems in terms of timely access to medical services. However, the re-opening of the Institution should strongly affect the capacity of the penitentiary healthcare system in a positive sense. The tables below show the number of healthcare personnel in the relevant units of the above-mentioned penitentiary medical facilities.

INSTITUTION NO.18

Division	Number of staff	Division	Number of staff
Chief doctor	1	Reception	
Deputy chief doctor	1	Chief doctor	1
Long-term care unit		Doctor (on duty)	4
Chief of unit	1	Nurse	7
General practitioner	1	Radiology division	
Doctor	3	X-ray specialist	1
Doctor (on duty)	1	Endoscopy specialist	1
Cardiologist	1	X-ray assistant	4
Neurologist	1	Nurse	1
Epidemiologist	1	Lab	
Endocrinologist	1	Chief of lab	1
Skin specialist	1	Lab doctor	6
Chief nurse	1	Lab assistant	4
Nurse	8	Thereapeutic division	

Assistant nurse	5	Chief doctor	1
Psychiatry division		Doctor (on duty)	4
Chief of division	1	General practitioner	1
Psychiatrist	4	Chief nurse	1
Psychologist	1	Nurse	5
Nurse	4	Critical medicine division	
Orderly	4	Chief doctor	1
TB and infectious diseases division		Doctor (on duty)	1
Chief of division	1	Nurse	3
TB specialist	1	Surgery division	
Infectious diseases doctr	3	Chief doctor	1
Nurse	4	General surgeon	4
Dentistry		Proctologist	1
Neurologist	1	Urology surgeon	1
Dentist	1	Traumatology surgeon	1
Nurse	1	Otorhinolaryngologist	
Aesthesiology unit		Nurse	14
Chief doctor	1	Assistant nurse	5
Aesthesiology nurse	3	Sterilization unit	
Nurse (on duty)	1	Nurse	4
Nurse	1		

INSTITUTION NO. 19

Division	Number of staff	Division	Number of staff
Chief doctor	1	Inpatient unit	
Chief nurse	1	Chief doctor	1
Nurse	3	Doctor	9
X-ray specialist	1	Nurse	9
X-ray assistant	1	Assistant nurse	2
Dentist	1	Intensive therapy unit	
Resistent TB unit		Chief doctor	1
Chief of unit	1	Doctor	4
Doctor	1	Nurse	8
Nurse	17	Lab	
Outpatient ward for sensitive tuberculosis		Chief of lab	1
Chief of ward	1	Lab doctor	3
Doctor	6	Lab assistant	3
Nurse	8		

According to the information we received from the Ministry of Corrections, in 2014, there were 1,122 referrals to the Treatment Institution for Accused and Convicted Persons and 3,658 referrals were made to the civilian hospitals and clinics.

The Public Defender's 2013 Report to the Parliament has described how the electronic database governing medical referrals functions. The Report has emphasized that the functioning of the database was not regulated by a normative act and the Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 was outdated. Accordingly, the Public Defender recommended the Minister of Corrections to cancel the abovementioned Order and to approve new regulations governing medical referrals.

We note with satisfaction that the Minister of Corrections cancelled its Order 38 with its newer Order no. 55 dated 10 April 2014 approving the “*Rules of transferring accused and convicted persons to general-profile hospitals, the Treatment Institution for Accused and Convicted Persons and the Center for the Treatment of Tuberculosis and Rehabilitation*”. According to paragraphs 2 to 4 of Article 1 of the new Rules, a prison doctor drafts a reasoned request for transferring a patient to the Treatment Institution and Center and sends the request to the Medical Department of the Penitentiary Department. The prison doctor’s reasoned request shall be registered in the Medical Services Electronic Software (hereinafter, “the Software”). The prison doctor must inform the prison director about the request in writing. The Medical Department will examine the request within a reasonable time on the basis of the National Clinical Practice Recommendations (the Guidelines) and State Standard on Clinical Situation Management (the Protocol) approved or recognized by the Ministry of Labor, Health and Social Protection; where necessary, the request will also be examined against international guiding documents. If the request is granted, a patient who requires a scheduled medical service will be assigned a list number in the Software and a recommendation on his/her transfer to the Treatment Institution or the Center will be sent to the prison director and the prison doctor at least a day before the actual transfer.

Paragraph 5 of Article 1 of the Rules determines how a waiting list is made. In particular, the Medical Department determines the list according to the location and the type of services requested (inpatient or outpatient). It is unfortunate that the Public Defender’s recommendation on improving the medical referral system for avoiding delayed provision of medical services as much as possible was rejected. In particular, we offered to take into consideration when constructing a waiting list the different grounds such as acute and chronic diseases, progress of the disease, aggravation of a patient’s health and other factors. We believe the electronic database of medical referrals needs to be improved because the current procedure of constructing the waiting list does not take into account patients’ individual needs and the patient’s number in the list depends not on clinical factors but on other criteria such as the number of waiting patients and the capacity of the relevant medical institution.

A medical referral procedure for planned treatment is defective: it does not take into consideration a situation where the health condition of a patient on a waiting list is deteriorating but the condition has not achieved the intensity level warranting the provision of urgent medical services under Article 3(s¹) of the Law on Health Protection. It should be noted that some diseases develop very quickly and it may be too late to provide the urgent healthcare service when a person’s life is in danger already. The medical referral procedure does not envisage the possibility of sorting patients with such diseases as a priority in determining their number on the list.

The Public Defender’s 2013 Report to the Parliament also emphasized the circumstance that it depended on the will of a prison director and the Chairman of the Penitentiary Department – individuals who are not health professionals – whether a medical referral

would take place or not. The Report viewed this as a shortcoming of the procedure of providing prisoners with medical services. The Public Defender therefore issued a recommendation to cancel this rule and vest the Chief of the Medical Department of the Ministry of Corrections with the right to decide on prisoners' medical referral, upon consultation with the Chairman of the Penitentiary Department. Unfortunately, the Rules approved by Order 55 of the Minister of Corrections grants the decision-making power to prison directors if a prisoner is to be transferred to penitentiary medical facilities, and to the Chairman of the Penitentiary Department if a prisoner is being transferred to a civilian hospital. Both prison directors and the Chairman of the Penitentiary Department may refuse to transfer prisoners to the aforementioned medical facilities. Further, the Rules do not specify, in case of refusal, what additional measures should be taken to provide the prisoner with timely and adequate healthcare services. We believe these shortcomings must be made good, by inserting appropriate changes in the Rules governing medical referrals.

One of the recommendations indicated in the Public Defender's 2013 Report to the Parliament was not to make a prisoner wait for his/her turn on the list if he/she had been incompletely examined in an outpatient clinic or has been examined but requires additional tests or examination shortly after the visit to the outpatient clinic. We believe the Order of the Minister of Corrections no. 55 must regulate this issue so that there is a legal ground for transferring those in need to medical facilities without having to wait for their turn on the list.

2.5.4.3. EQUIVALENT AND QUALITY MEDICAL SERVICES

According to the European Prison Rules, medical services in prison shall be organised in close relation with the general health administration of the nation. Health policy in prisons shall be integrated into, and compatible with, the national health policy. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. Prisoners should have access to all necessary medical, surgical and psychiatric services including those available in the country.¹⁴⁵

Unfortunately we did not see any steps towards substantial integration of the penitentiary healthcare with the national civilian healthcare system in 2014. These two healthcare sectors – penitentiary and civilian – are developing separately, each on its own. Standards applicable to the civilian healthcare system have not been fully implemented in the penitentiary healthcare system yet. Although in organizing the prison healthcare system consideration should be given to the differences and difficulties inherent in the penitentiary system, implementation of the basic civilian healthcare standards in the penitentiary as soon as possible is of crucial importance for raising the penitentiary health services to a level equivalent to civilian health services. Furthermore, an effective mechanism for controlling the quality of medical

¹⁴⁵ The European Prison Rules, Rules 40.1 – 40.5.

services should be introduced. Some of the essential problems discovered as a result of our monitoring are discussed below.

The Order of the Minister of Health no. 01-63/N dated 12 September 2012 “on improving the quality of medical services provided by inpatient clinics and the functioning of the internal system of patient safety evaluation” stipulates that inpatient clinics must set up their own internal structures to control quality and to ensure provision of patient-oriented, quality and effective services.

The Quality Department monitors high priority matters such as permissions; functioning of physical infrastructure and medical equipment; personnel qualifications; sanitation, hygiene and epidemiology watching regime; implementation of the National Recommendations (the Guidelines) and Standards (the Protocols); nosocomial (hospital-acquired) infection control; maintenance of medical documents including statistics and referrals. Unfortunately, the requirements envisaged by the said Order are not being fulfilled in the penitentiary system yet.

The Order of the Minister of Health no. 01-25/n dated 19 June 2013 “on determining classification of medical interventions and approving minimum requirements for primary healthcare institutions” establishes minimum requirements to be met by primary healthcare institutions. It should be noted that the requirements envisaged by Order no. 01-25/n apply to and are mandatory for only those primary healthcare institutions that are involved in the Insurance Program for All; however, it would certainly be a step forward if some of the standards established by the mentioned Order were implemented also in the penitentiary healthcare system with a view of meeting the principle of equivalency of penitentiary healthcare services. The scope of the Order may be extended to cover the penitentiary healthcare system except certain issues that are specific to the prison setting, which should be regulated separately such as special rules for sterilization, use of safe boxes and appropriate containers to collect sharp objects and syringes, disinfection and sterilization of medical tools, items and materials for multiple usage. Requirements of maintaining medical and statistical information should also be articulated separately.

Government Resolution no. 359 dated 13 February 2014 “on approving Technical Regulations for High-Risk Medical Activities” regulates high-risk medical activities. Such activities that are also implemented in the penitentiary setting are related to infectious diseases such as tuberculosis, hepatitis and HIV/AIDS. The monitoring results have shown that the requirements established by the said Government Resolution are not fully observed in the penitentiary system. Problems remain in terms of proper management of medical waste, control of the disinfection and sterilization process and lack of ventilation equipment in manipulation rooms.

A key factor in assessing equivalency of healthcare services available to individuals in the penitentiary system is whether a prisoner has access to timely and adequate treatment, including medications.

According to Article 3(s¹) of the Law on Health Protection, medical assistance is urgent if without such assistance a patient's death, disability or serious aggravation of health is inevitable. According to the Order of the Minister of Health no. 01-25/n dated 19 June 2013 "on determining classification of medical interventions and approving minimum requirements for primary healthcare institutions", there are 4 classes of medical intervention: an urgent (critical) intervention is an intervention to save a life, an organ or an extremity involving resuscitation and the intervention usually starts several minutes after the decision has been made. An emergency (without delay) intervention means intervention when a life-threatening medical condition has already started and/or deteriorated acutely. Such medical conditions are those that may entail a loss of life, organ or extremity, while the actual intervention could be fixating a fracture, pain management and relieving other heavy symptoms. Normally a decision on intervention should be made within no later than 24 hours after the first-category preserving treatment is completed. Emergency (without delay) intervention is an early intervention while a patient's condition is stable and his/her life, organ or extremity is not under urgent threat but the intervention has to be carried out in several days (2-5 days). A scheduled intervention is the one scheduled for a date that is convenient for the patient, the doctor and the medical institution. In the relevant sub-chapter above we discussed a medical referral procedure and provision of healthcare services by invited doctors in the penitentiary institutions. Unfortunately, the standard established by the above-mentioned ministerial order (01-25/N) is often times unfulfilled and appropriate healthcare services are not accessible timely. Hence, we recommend that the penitentiary healthcare staff be guided with the aforementioned ministerial order in planning their medical interventions.

Although a substantial progress has been made in terms of organization of the penitentiary healthcare, the process of provision of medical services within the penitentiary system is still full of various defects. In many cases, the principle of continuity of required medical assistance is not observed. Thus, a paper confirming provision of medical consultation by a surgeon cannot be found in the deceased prisoner D.G.'s medical documentation; no records of medications requested for and issued to the deceased prisoner were found in the prison documents for registration of use of medications. Also, the healthcare personnel of the Institution no. 17 received the necessary medical documents of prisoner Ts.A. with delay.

No medical file was found in prisoner G.K.'s personal folder and the prison healthcare staff had to produce a new medical file for the entire period the prisoner had been admitted to the prison, for the purpose of control and evaluation of his health condition. Prisoner Kh.R.'s medical file does not include his backbone X-ray result.

As a result of an inspection visit paid to the penitentiary institution no. 12 by the representatives of the Medical Activity Regulation Agency of the Medical Department of the Ministry of Corrections, often times the patients' medical papers are illegible, the patients' general information sections are not completely filled out, dates of medical consultations and the names of invited doctors are not indicated. The Special

Preventive Group identified similar problems in other penitentiary institutions too.

In the Institution no. 18, the numbering in the patient admission and discharge journals and in the inpatient files have been arbitrarily “corrected” by the healthcare staff.

The monitoring group revealed that patients are not given the prescribed treatment. Thus, in the Institution no. 17, a prisoner was prescribed treatment with electrophoresis but, because there is no such device in the Institution, no treatment was provided. Also, another prisoner who was diagnosed with occluded veins on the lower extremities at the “Aversi” Clinic back in 2012 while serving his sentence and was recommended to undergo a relevant angiological surgery, has not been operated on yet and experiences difficulty in movement.

Timely access to appropriate medications is a key to achieving success in treatment. Provision of generic medications to prisoners in penitentiary institutions is, in general, satisfactory but the prisoners are unable to buy the so-called branded medications because there are no pharmacies in the institutions. The only exception is the Institution no. 15 which has a pharmacy. We believe the principle of equivalency is therefore breached in the sense of accessibility of medications.

It should be stated that the Medical Activity Regulation Agency of the Ministry of Corrections conducted inspection visits to penitentiary institutions and revealed flaws in the provision of medications. Thus, it was with difficulties that prisoner E.M. managed to receive a branded medication prescribed by the doctor. Prisoner N.M. was not provided with a neuroleptic drug prescribed before his detention. Hence, a recommendation was issued urging the Medical Department to buy and provide this drug to the prisoner.

G.N. was receiving the following medications for post-surgery treatment: Nucleo-forte, Solkoseryl, Mildronate, Neuromidin and Omega. Drug named “Gangleronum” is not on the list of basic medications approved by the Ministry of Corrections; despite this, the Logistics Unit of the Medical Department tried to buy this drug for the prisoner in observance of the relevant procedure but none of the contracted pharmaceutical companies had the drug in stock at that moment. Gangleronum does not have a registration code at the pharmaceutical market presently. For this reason, the Medical Department could not provide the patient with Gangleronum. Prisoner G.N. was offered to buy the drug on his own money instead.

In case of prisoner Z.Kh., the existing documents did not contain a confirmation that the prisoner was provided with some of the medications.

Prisoner V.Ts.’s medical file does not contain a prescription paper to help find out whether the treatment prescribed after the surgery was complied with.

In the interests of fairness, we have to mention that the Medical Activity Regulation Agency of the Ministry of Corrections is itself making efforts to rectify the flaws in provision of healthcare services within the penitentiary system. This was one of

the Public Defender's recommendations that went in the PD's 2013 Report to the Parliament. However, the quality control system, in a contemporary sense of this phrase, is not yet operational in the penitentiary healthcare system. We believe it is necessary to enhance the mechanism of controlling the implementation of civilian healthcare standards in the penitentiary system, to introduce an effective system for statistical data collection and analysis, to pay more attention to statistical analysis results in designing the penitentiary healthcare action plans, and to effectively manage the procurement process and evaluate its cost-effectiveness. The quality of penitentiary healthcare services should be assessed using pre-determined and relevant indicators.

RECOMMENDATION TO THE MINISTER OF CORRECTIONS:

- Ensure that each penitentiary institution has adequate number of doctors and nurses so that healthcare services can be provided timely and adequately
- Ensure that invited doctors visit the penitentiary institutions at proper intervals to timely and adequately provide the required medical services; ensure timely provision of their consultations by neurologists, gastroenterologists and psychiatrists
- With a view of ensuring timely provision of healthcare services, in determining a patient's list number in the medical referrals electronic database, take into account the disease's nature and dynamic of its development; incorporate this new principle in the Order of the Minister of Corrections No. 55 dated 10 April 2014
- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 so that only the Chief of the Medical Department of the Ministry of Corrections, after consulting with the Chairman of the Penitentiary Department on issues of security of patient transfer, is authorized to make decisions on transferring patients to both penitentiary medical facilities and civilian hospitals.
- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 so that prisoners do not wait for their turn on the list if they had been incompletely examined in an outpatient clinic or had been examined but require additional examination shortly (a few days) after their visit to the clinic.
- Take all measures to enhance a mechanism for controlling the implementation of civilian healthcare standards in the penitentiary system; introduce an effective system for statistical data collection and analysis; pay more attention to statistical analysis results in designing the penitentiary healthcare action plan; effectively manage the procurement process and evaluate its cost-effectiveness. The quality of penitentiary healthcare services should be assessed using pre-determined and relevant indicators.

RECOMMENDATION TO THE MINISTER OF CORRECTIONS AND THE MINISTER OF LABOR,
HEALTH AND SOCIAL PROTECTION:

- By mutual collaboration, develop a plan for full integration of penitentiary healthcare into the national healthcare system

2.5.5. INDEPENDENCE AND COMPETENCE OF PRISON DOCTORS; CONFIDENTIALITY; PATIENT AWARENESS

According to the Recommendation of the Committee of Ministers of the Council Europe, doctors who work in prison should provide the individual inmate with the same standards of health care as are being delivered to patients in the community. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.¹⁴⁶ A doctor shall not be involved in an activity whose purpose is not protection of the prisoner's health.¹⁴⁷ As we found out as a result of our monitoring in 2014, there are issues related to independence and competence of the penitentiary healthcare personnel. Thus, in the Institution no. 3, the monitoring group witnessed how a prisoner stated he had swallowed sharp-tinned metal screws sized 4-5 centimeters each but the doctor on duty could not independently decide to call an X-ray specialist or an echoscopist to locate the screws in the intestines and determine the actual or possible injury to the prisoner's health. The doctor on duty tried to contact the chief doctor who was not in the institution at that time. Because the prisoner was under an imminent threat, the monitoring group obtained the prisoner's consent to inform the deputy prison director about the incident. It was only then that the chief doctor was contacted and a permission to call an X-ray specialist was obtained. The monitoring group has gotten an impression that prison doctors are unable to independently make decision in specific cases – something that puts their independence and competence under a question mark.

In deciding whether to refer a prisoner to a medical facility, the penitentiary healthcare personnel depend on the will of the prison director and the Chairman of the Penitentiary Department because these two have the right to reject a prisoner's transfer to a hospital. It is necessary to eliminate the possibility of such undue interference by non-medical staff in the provision of medical services by amending the Order of the Minister of Corrections no. 55 dated 10 April 2014 accordingly.

As a result of our monitoring during 2014, we revealed that it is a routine practice to place prisoners in solitary confinement cells as a measure of discipline on the basis of a doctor's recommendation. Moreover, it is not always clear whether the doctor's

146 Recommendation no. R (98) 7 of the committee of ministers to member states concerning the ethical and organisational aspects of health care in prison (Strasbourg 1998, 20 April), paras. 19-20

147 United Nations Principles of Medical Ethics (1982), Principle 3 is available only in English at <http://www.un.org/documents/ga/res/37/a37r194.htm> [last viewed 18.03.2015].

recommendation is based on the doctor's examination of a prisoner's actual health condition. The Special Preventive Group's impression was that doctors are, in fact, partaking in the enforcement of disciplinary punishment and it is the doctor who determines for how long a prisoner can be held in a solitary confinement cell. It may seem at a glance that a prisoner feels relieved knowing that a doctor endorsed his confinement as safe for his health but, on the other hand, a routine application of such practice may cause resentment in other prisoners who did not receive a positive recommendation from the doctor. We believe such practice may cast doubt on the independence of prison doctors.

With a view of raising the independence and competence of the penitentiary healthcare personnel, it is necessary to ensure professional independence of the healthcare staff. The medical ethics principles must fully be incorporated in the legal framework regulating the penitentiary system. Further, the healthcare personnel should be provided with continuous professional training; existing training modules should be enhanced. Finally, an effective mechanism should be created to evaluate and supervise the sustainability of training results. Clear job descriptions should be elaborated for the healthcare personnel.

It is an established practice in remand facilities and places for deprivation of liberty that prisoners request an appointment with the doctor through the prison staff who are not healthcare personnel and often times doctors examine prisoners and provide their consultation in the cells. This procedure contravenes the principle of confidentiality of the patient/doctor relations because the patient's medical complaints become known to non-healthcare staff of the prison and to other inmates.¹⁴⁸ Save urgent cases, any medical examination and consultation should be performed in privacy, in observance of the confidentiality principle, in a doctor's office.¹⁴⁹

The principle of confidentiality is breached also by Article 24(2)¹⁵⁰ of the Georgian Imprisonment Code, which states that a medical account of a prisoner's mandatory medical examination carried out on admission must be kept in the prisoner's personal (non-medical) file.

The confidentiality principle is not always respected when prisoners undergo their mandatory medical examination on admission to a penitentiary institution. Thus, the members of the Special Preventive Group who were inspecting a prisoner admission process at the Institution no. 3 witnessed that a woman prisoner's external inspection was not attended by a doctor-on-duty at all; instead, the doctor was getting the information about prisoner injuries from a controller who was searching the prisoner. Examination of male prisoners' injuries was limited to very shallow visual observation and asking some general questions of the prisoner; the process was attended by a controller (who does not belong to the healthcare personnel). The described procedure

148 Par. 51, passage from the General Comment of the Committee for the Prevention of Torture (CPT/Inf(93)12).

149 *Ibid.*, par. 35

150 *Ibid.* paras. 50-51

of prisoner medical examination contradicts the principle of confidentiality the doctor/patient relationship. In its 2013 Report to the Parliament, the Public Defender recommended the Minister of Corrections to cancel the Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the *“Rules of transferring sick prisoners from pretrial detention facilities and places of deprivation of liberty to general hospitals, the Penitentiary Department’s Center for the Treatment of Tuberculosis and Rehabilitation or to the Institution for the Treatment of Remand and Sentenced Prisoners”* and to reinforce the principle of confidentiality of medical information in a new normative act governing medical referrals.

Order 38 was cancelled and replaced by Order 55, pursuant to which prison doctors no longer have to obtain the consent of not only the Medical Department but the prison directors to a transfer of prisoners to medical facilities. Prison director will receive a mere notification that a prisoner’s transfer to a medical facility has been requested. This new rule ensures protection of confidential information.

Sometimes prisoners are unaware of the medical services to be provided to them. In some cases we observed a clear lack of communication between the prisoners and the institution’s healthcare staff. Thus, before his transfer to the Institution no. 14, a prisoner was informed by the healthcare staff that he might have been put on the electronic list but he did not know that the request for his surgery was approved. With the prisoner’s consent, members of the monitoring group talked to the Institution’s chief doctor on this matter who stated that the prisoner had been registered in the electronic database but the chief doctor did not inform him thereabout. It is important for prisoners to be involved in the provision of healthcare services to them as much as possible. Prisoners should also have access to information about health protection in general, including preventative health protection measures.

RECOMMENDATION TO THE MINISTER OF CORRECTIONS:

- Ensure professional independence and competence of the penitentiary healthcare personnel by fully incorporating the medical personnel’s professional independence principle and the medical ethics principles in the legal framework regulating the penitentiary system, providing the healthcare personnel with continuous professional training, enhancing various training modules for them, creating a mechanism for evaluating and supervising the sustainability of training results and elaborating clear job description
- Make sure that a prisoner can contact the healthcare staff directly, without having to involve non-medical staff, including by installing calling buttons and obliging the healthcare staff to go round and inspect the cells every day in closed-type institutions
- Take necessary measures to ensure that any medical examination and medical consultation takes place in privacy, respecting the principle of confidentiality, in a doctor’s office, unless the situation is urgent and exceptional

- Take all necessary measures to involve patients in the provision of health-care services to them by properly informing them about the services to be rendered; ensure prisoner access to health protection information, including information related to preventative health care

PROPOSAL TO THE PARLIAMENT:

- Amend Article 24(2) of the Code of Imprisonment cancelling a provision, which states that a medical account of a prisoner’s mandatory medical examination carried out on admission must be kept in the prisoner’s personal (non-medical) file.

2.5.6. MENTAL HEALTH, DRUG ADDICTION AND SUICIDE PREVENTION IN THE PENITENTIARY SYSTEM

2.5.6.1. MENTAL HEALTH

Care for mental well-being of prisoners is one of the serious challenges for the penitentiary healthcare system. According to the information received from the Ministry of Corrections, 2,020 prisoners have mental health problems, which figure makes 4.7% of all of the sickness cases revealed. Since prevalence of mental illnesses in penitentiary institutions equals roughly 70% according to the international statistical data, the low figure of 4.7% might be an indication of insufficient identification of cases of mental illness. In 2013, the prevalence rate of mental illnesses was 6.6%, which is by 1.9% higher than the analogous index for 2014. However, it is in the interests of fairness to say that there was a substantial improvement in revealing mental illnesses in October, November and December 2014.

As the prison healthcare personnel have explained, a psychiatrist gets a list of prisoners wishing to get an appointment with the psychiatrist from the primary healthcare doctors. The primary healthcare doctors, however, refuse to put some prisoners on the appointment list because they think the prisoners are malingerers. We believe, because of the general depressing and unhealthy environment in the prisons, a psychiatrist’s services should readily be available in order to timely identify any psychic problems and timely provide adequate psychiatric assistance.

Identification of prisoners with personality disorders is a matter of concern. Hence, it is crucial to improve access to psychiatric services as well as to deepen collaboration among prison psychiatrists, psychologists and social workers. These efforts should help improve the mental illness identification rate and provide adequate psychiatric assistance to mentally ill prisoners taking into account their individual needs. Patients suffering from acute psychosis should be treated not in penitentiary institutions but in psychiatric facilities. At the same time, adequate outpatient services will have to be made available.

According to the information received from the Ministry of Corrections, 174 prisoners were placed in inpatient facilities for involuntary psychiatric assistance in 2014. It is worth noting that this figure was only 76 in 2013. We therefore welcome the increased number of patients transferred to inpatient facilities.

Special attention should be paid to evaluating each prisoner's mental health at the time of admission to a penitentiary institution, during his/her initial medical examination. Prisoners inclined to commit self-aggression or suicide and drug-addicted prisoners should be target groups for mental health screening. In addition, prisoners who systematically demonstrate asocial behavior and there is a doubt that such behavior may be caused by their mental condition must also be subject to mental health assessment.

Because there is no effective mechanism for identifying mental health problems, prisoners who injure themselves, breach the prison regime or commit other disciplinary violations are punished with disciplinary sanctions instead of being provided with timely and adequate psychiatric assistance. A change in the Imprisonment Code which obliges a prisoner to reimburse treatment expenses if he/she willfully or negligently injures himself/herself¹⁵¹ extends also to prisoners with mental problems who injure themselves. We believe the right approach to prisoners with mental problems who injure themselves is treatment but not punishment.

Prevalence of mental illnesses among the prison population is mostly caused by drug addiction and overuse of psychoactive substances in penitentiary institutions. In its 2013 Report to the Parliament, the Public Defender emphasized the urgent nature of the issue and the need for taking measures to resolve the problem. As a solution, the Public Defender recommended to amend the *Joint Order of the Minister of Labor, Health and Social Protection and the Minister of Justice No. 266/N-298 dated 12-15 December 2008 on "Rules of implementing replacement therapy programmes to deal with opioid addiction in penitentiary institutions"* with a view of introducing a preservation replacement treatment in the penitentiary system. According to the information we received from the Ministry of Corrections, efforts to introduce such replacement treatment in the penitentiary system have commenced. In addition, a psycho-rehabilitation program "Atlantis" has been developed to be launched in 2015.

According to the information received, 382 prisoners were involved in the methadone programme in 2014, while the same index in 2013 was 311. We welcome that more prisoners were involved in the methadone programme in the reporting year but, considering the scale of drug addiction in the penitentiary system, this number of prisoners covered is not really sufficient to meet the demand.

¹⁵¹ According to Article 29(2) of the Imprisonment Code, an accused or convicted persons shall reimburse the costs of treatment in case of self-injury or injuries inflicted upon other persons deliberately or with gross negligence. They shall also reimburse any damages inflicted upon the remand facility or the place of deprivation of liberty and any additional expenses related to suppression of his/her escape from the relevant institution.

When it comes to psychic health, of paramount importance is the protection of an individual's interests, respect for his/her dignity and provision of care in as humane environment as possible. According to the General Comment of the UN Human Rights Committee,¹⁵² prolonged solitary confinement of the detained or imprisoned person may amount to torture or other cruel, inhuman or degrading treatment. According to a report of the UN Subcommittee on Prevention of Torture, prolonged solitary confinement may amount to an act of torture and it should not be used in the case of minors or the mentally disabled.¹⁵³ According to the 2007 Istanbul Statement on the use and effects of solitary confinement,¹⁵⁴ use of solitary confinement in relation to mentally ill prisoners should be absolutely prohibited.

Contrary to this prohibition, the Special Preventive Group revealed instances of keeping mentally ill prisoners in solitary confinement cells. Thus, in the Institution no. 17, prisoner O.G. with mental problems who attempted to kill himself was held in a solitary confinement cell for 5 days. In the Institution no. 3, a prisoner who demonstrated clear signs of mental illness such as inclination to injure himself, unmotivated aggressive behavior and difficulty to make contact with other people was placed in a solitary confinement cell. According to his medical file, the last time he received a psychiatrist's consultation was June 2014. According to his documentation, he has not been consulted by a psychiatrist since his admission to the Institution no. 3 on 16 September 2014.

During our monitoring visit to the penitentiary institution no. 3 on 11 December 2014, our group got interested in the personal file of prisoner L.Q. According to the documents, the prisoner was admitted to the Institution no. 3 on 17 September. Since his admission, he spent time in a solitary confinement cell thrice (4 days on the first occasion, 15 days on the second occasion and 10 days on the third occasion). According to the prisoner's medical file, the prisoner has not received a psychiatrist's consultation since the day of his admission to the Institution regardless of the fact he clearly needed psychiatric assistance. The prisoner injured himself four times during his stay at the Institution no. 3. On 20 September 2014, the prisoner was subjected to a special means – a restraint bed. However, the prison director did not draw up a report on the use of special means and did not send it to the Minister of Corrections and the Chairman of the Penitentiary Department as required by Order of the Minister of Corrections no. 145 dated 12 September 2014. For this reason, the Inspectorate-General of the Ministry of Corrections started an internal inquiry.

Deriving from these reasons, we believe all measures should be taken to avoid placing mentally ill prisoners in solitary confinement cells and to ensure timely and adequate psychiatric assistance to such prisoners.

152 CCPR, General Comment 20/44, April 3, 1992.

153 UN Subcommittee on Prevention of Torture (2010), report on the visit of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment to the republic of Paraguay (par 184).

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

2.5.6.2. SUICIDE

The 2013 parliament report referred to increased cases of suicide. Sadly, 2014 saw even higher number of suicide. The dynamics clearly indicate that there have been problems related to the implementation of preventions measures. This part of the report provides brief information on each case of suicide.

N.S.

On September 17, 2014 at around 13:40 a body of a convict who had been on a hunger strike was found in cell 26 located in the special building of Penitentiary Institution N17. An injury incurred by a penetration wound was observed in a neck area of the body.

Based on documents submitted to a medical examination, it is evident that N.S. was placed in Penitentiary Institution 17 on October 10, 2014. During an examination upon the admission declining excoriations were identified in the area of the blade-bone of the convict. In addition, old penetration wounds were observed on the internal surface of both forearms and extravasations and excoriations on both eyelids. A declining blunt force trauma was identified on the edge of the forehead hairline.

According to the report 004024314 prepared by the National Forensics Bureau, N.S.'s death was caused by acute anemia induced by a straight-edge wound in the right half of the neck as a result of cut on the jugular and the carotid artery. In addition to the above described wounds, smooth-edge wound covered with crust was observed on both blade-bones, extravasations in the areas of right shoulder and near the right lower eyelid. The injuries were induced by a blunt force trauma 10-11 days prior to death. Psychotropic drug Diazepam and anti-epileptic substance Carbamazepine were found in the blood and intestines of the deceased.

According to the information provided by the Ministry of Corrections, in November 2012 the convict was placed in a psychiatric unit of Penitentiary Institution N18 where he was diagnosed with organic, emotionally labile (asthenic) disorder, epilepsy, degradation of intellectual functions. The patient was prescribed Konkurant, Diazepam, Optimal, Drimolin, Hepato Riz, Leron and sleeping pills.

The convict had suffered from self-inflicted injuries on several occasions. On February 4, 2014 the patient inflicted 5-6 superficial and one deep wounds in the neck area. It should be noted, that the convict had gone on a hunger strike before committing suicide and for this reason s/he was placed in a cell alone without electric surveillance. In spite of the fact that both medical and non-medical staff knew about the patient's inclination towards inflicting self-injuries, absence of appropriate observation led to a fatal outcome. Importantly, no psychiatric or psychological consultations had been rendered to the patient while s/he was on a hunger strike.

J.I.

A convict diagnosed with a depression and suicidal thoughts was transferred from Penitentiary Facility 8 to Healthcare Facility for Offenders 18 on December 1, 2014.

During the admission to the healthcare facility the patient was anxious, perplexed and stating that s/he was sick and reluctant to communicate. S/he complained about 'noise inside the head' and voices. 'Kill yourself, I want to have some rest, I see insects, fears are clinging on me'. According to the staff, the patient would often throb the head against a wall and express suicidal thoughts.

According to the patient, s/he used to abuse substances and take psychotropic drugs. S/he had swallowed a nail-clipper and a toothbrush before, which was confirmed by an X-ray. The convict would insist that s/he be transferred to the National Centre of Mental Health where s/he claimed s/he was feeling good.

In the Institution N18 the patient was diagnosed with emotionally instable personological disorder – depression, mental and behavioral disorder caused by simultaneous use of various substances and psychotropic drugs. The patient was prescribed Neurolepsin, Diazepam, Truxal, Sophanax, Tizercin and Fevarin.

On December 2, 2014, at 14:35 the patient committed suicide by strangling. Based on the information outlined above, the patient had been asking for psychiatric help but to no avail. In order to prevent such grave incidences in the future, it is critical that adequate psychiatric assistance be rendered to patients in a timely manner, in particular in cases when patients themselves ask for and there is a medical record corroborating such need.

L.M.

According to information provided by the Ministry of Corrections the convict had repeatedly inflicted self-injuries including a period he spent in the Penitentiary Institution N17. On December 10, 2014 s/he amputated the nail phalange of the first finger on the right hand. S/he had confirmed a long time abuse of drugs (Heroin and Subutex since s/he was a child) and suffered from schizophrenia. S/he would insist on Diazepam and was reluctant to adhere to a doctor's recommendation.

A consultation note completed by a psychiatrist on March 29, 2014 says that '[the patient] is skeptical to treatment recommendations, asks for revision of his/her case, complains that s/he is constantly being cheated and s/he will go from one hell to another'. At the consultations held with the psychiatrists on October 20 and November 20, the patient did not express suicidal thoughts.

The convict went on a hunger strike on several occasions during 2014 to protest against his/her illegal imprisonment. On December 10, 2014 at 9:20 am the staff on a morning checkup discovered in a cell toilet hanging on a wall with a rope noose. He had already been dead.

It is worth noting that in spite of suicidal thoughts expressed by the offender in the past, the two last consultations by psychiatrists were rendered with a month's interval. During these consultations the patient did not voice any suicidal thoughts. Sadly, the information does not specify when the next consultation was scheduled and whether or not the convict had been put under a special observation.

Z.S.

According to the information from documentation submitted to a forensic investigation, on September 16, 2014 at approximately 8:15 AM a doctor on a day shift in Penitentiary Institution N6 discovered the body of Z.S. hanging on a bed with a sheet in Cell 31.

According to a forensic report 004991614 prepared by the National Forensic Bureau, the death was caused by manual asphyxiation induced by pressure of a noose. The body had a single, open diagonal strangulation fissure in an upper third of the neck inflicted by pressing of a noose. A bruised wound, a scar and extravasation on the upper left limb inflicted by a blunt force trauma either very shortly before the death or at the moment of dying.

According to the information obtained from the Ministry of Corrections, while being placed in the penitentiary facility, the convict stated that he had been suffering from a high blood pressure since 1996 and internal bleeding in the stomach long ago. Because of high arterial pressure s/he was on Clofeline. S/he did not mention any other complains. A visual examination identified declining marks on both blade=bones. S/he did not have a previous record of applying to a psychiatrist. Nor did s/he abused alcohol or drugs.

During a consultation on August 25, 2014, the convict did not have any complaints. A mental status seemed normal. The convict could orientate well in time and the space. S/he talked in a calm manner.

Based on provided information, a consultation rendered to the convict few days prior to suicide did not reveal any problems related to mental health. It should also be kept in mind that, the corpse shows damages to the head and the upper limb. Therefore, an independent and impartial investigation must be carried out to ascertain any possibility of violence towards the convict and/or forced suicide.

A.M.

According to the case records, on March 23, 2014, at approximately 8:10 AM an offender named A.M. committed suicide by strangulation in a toilet of Cell 312 located in Regiment Building 6 of Penitentiary Institution N14.

According to a forensic report 001465314 submitted by the National Forensics Bureau, the death was caused by manual asphyxia induced by blocking upper respiratory tract by a noose. An examination of the body revealed the following marks and signs which

were all in causal relation with the death of the convict: in injury in the upper third part of the neck above the thyroid cartilage diametrical on the front surface, diagonal on the side surfaces ascending from the front backwards and upwards, extravasations in a pattern of a double premortem strangulation fissure in soft tissues induced by pressing a noose in the above mentioned area.

In addition, the body had the following injuries incurred before her/his death: multiples scars on the left side surface of the nose (upper third) and on the internal and external surfaces of the right shin (in upper and lower thirds), multiple extravasations on the front surface of the right knee joint, on the front surface of the right foot in a projection area of the navicular bone and on the front surface of the nail phalange of the right foot's first finger; extravasations on the tip of the tongue and in the area of the lower lip on right and left mucosae incurred by an impact from a blunt item (items). Such injuries as extravasations had incurred immediately before the death while other injuries were inflicted long before the death. Such injuries on a live body are qualified as light and they not cause death.

Extravasations and defects of mucosae inflicted by a blunt object where also found inside the anus sphincter mucosae. Such in injuries on a live body are qualified as light and do not contradict the date indicated in the report.

According to information provided by the Ministry of Corrections a psychiatrist consulted the convicted on November 27, 2012 and the latter was diagnosed with personological disorder and prescribed Tizercin and Zolomax. Repeated consultations were also rendered on March 6 and 20, 2014 and the patient was prescribed Diazepam, Fevarin and Atarax.

Based on the above said and considering a nature and the specifics of the bodily injuries as indicated in the forensic report, it is necessary that an independent and impartial investigation be carried out to look at potential acts of violence including sexual abuse against the convict.

A.C.

According to the medical note, the offender had been previously treated under the diagnosis of personological disorder with prescribed Diazepam and Fenazepam. In the past s/he used to consume Subotex and heroin and was a beneficiary of the methadone programme. A visual examination revealed scars on the forehead, both forearms and the front wall of the abdomen of the convict (no recent injuries were observed). According to the convict, the injuries were self-inflicted.

On June 27 and 30, 2014 the convict was rendered psychiatrist's consultations and diagnosed with psychotic depression with suicidal thoughts. S/he was advised to join a suicide prevention programme and recommended that psychiatric consultations be continued.

On July 28, 2014 the convict was rendered another consultation with a psychiatrist and diagnosed of unstable personological disorder without suicidal thoughts. S/he was prescribed Citomax (1/2 tablet once a day), Truxal (one tablet once a day for three weeks).

A doctor on a shift was called to Penitentiary Institution N14 on November 25, 2014 at approximately 20:10. The convict was unconscious with a strangulation mark in the area of the neck, in particular on the right side, no pulse was found on the carotid artery. In spite of attempts and rendered medical assistance, vital functions could not be regained. Biological death was confirmed at 20:40.

The examination of relevant materials and documents revealed that the convict A.C. was temporarily transferred from Penitentiary Institution N8 to the Quarantine Unit of Penitentiary Facility 15 on October 16, 2014. Further to the Order 14 issued by Director of the facility, the convict was transferred to a safe place isolated from other inmates for 30 days. This period was further extended for 30 more days based on the order of the Director. It should be noted that no psychiatric consultation was provided to the patient even though s/he had a record of medical disorder and had repeatedly expressed suicidal thoughts. As established by representatives of the Public Defender of Georgia the last time the convict was provided with a medical consultation was July 28. As explained by a prison doctor, the convict had never referred to medical staff and therefore, no medical service had been provided. The above said raises questions regarding the responsibility of the medical staff working in Penitentiary Institution N15. Therefore, it is recommended that an impartial and independent investigation be carried out on the case.

J.F.

According to medical notes a doctor called in Cell 7 of the Penitentiary Institution N6, the first building at 00.15 found the inmate J.D. lying on the floor and covered in blood. The inmate was immediately transferred to a medical unit. A large cross-section cut was observed on the neck, there was no pulse, the arterial pressure equaled zero and pupils widened. An ambulance called at the place of the incident confirmed the death. The attempts of IV catheterization turned out to be unsuccessful.

The death was caused by severe anemia induced by damages to the right jugulars and the external carotid artery as a result of a cross-sectional in the neck area. The following injuries were identified on the body: diagonal cross-section wounds which damaged the right jugulars and the right external carotid artery caused as a result of an impact by a sharp object immediately before death; also, extravasations in the areas of the right lower limb, right upper limb and the right underarm caused by a blunt object(s) 1-2 days ago. The cross-section cut and the damage to the vascular are qualified as severe, life threatening injuries when performing an examination on a living body. Such injures could cause the death while other injuries were light. No injuries were identified in the area of the anus. The area of the neck were the wounds were sustained was accessible by the deceased.

Based on the medical records the convict was examined by a doctor on March 4, 2014. The patient did not have any complaints and had never seen a psychiatrist before. Nor did s/he take psychotropic medication. There was no known attempt by the deceased to inflict self-injuries. The patient did not consume much alcohol, never abused drugs and therefore he was diagnosed as *practically healthy*.

It should be noted that even though no health related problem which could trigger suicide was indicated in a medical record, a forensic report indicates that extravasations on the lower and upper limbs as well as in the area of the underarm were observed on the body which may have been sustained as a result of violence. Therefore, an independent and impartial investigation must be carried out to rule out violence against the deceased or any possibility of bringing him/her to the point of suicide.

The Ministry of Corrections provided information on inmates enrolled in suicide prevention programme. Based on the information 99 inmates participated in the programme throughout 2014. The table below shows the breakdown of the institutions and months.

Month	N8	N11	N2	N3	N18	N5
January	15	2	2	0	0	0
February	6	1	0	0	0	0
March	2	0	0	0	0	0
April	6	1	0	0	0	0
May	4	2	0	0	0	0
June	14	0	0	0	0	0
July	3	1	0	3	0	0
August	6	1	0	1	2	0
September	2	0	0	3	1	0
October	0	1	0	0	2	0
November	3	0	1	1	4	1
December	3	0	0	0	3	2
Total:	64	9	3	8	12	3

In light of widespread tendency of drug abuse, excessive usage of psychotropic medicaments and severe problems related to mental health, the number of inmates enrolled in the suicide prevention programme is strikingly low. For instance, the special prevention group members while monitoring Penitentiary Facility 2 in October 2014 established that only two inmates were enrolled in the suicide prevention programme since January 2014 while 50 cases of suicide were reported to have taken place in the facility.

Also, it should be noted that the programme does not function in every facility. Nor is there a legal framework to regulate the programme. It is evident that measures for preventing suicide are insufficient and further steps need to be taken to strengthen efforts in this direction.

RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:

- To ensure screening of health conditions of inmates and provide those with mental health problems adequate and timely psychiatric support
- To ensure treatment of inmates diagnosed with severe psychosis in a mental health facility and develop adequate out-patient services
- To take all necessary measures to prevent isolation of inmates with mental health problems in a solitary confinement
- To implement opioid replacement therapy
- To implement suicide prevention programme in all penitentiary facilities
- To develop legal criteria for the participation in suicide prevention programme and set rules for a multidisciplinary team working on the programme

PROPOSAL TO THE PROSECUTOR GENERAL:

- To ensure independent and impartial investigation of all cases of suicide

2.5.7. MANAGEMENT AND PREVENTION OF HIGH RISK INFECTIOUS DISEASES

According to the information provided by the Ministry of Corrections TB screening was carried out on 64 672 cases and 131 inmates are registered as TB patients (to compare with 293 inmates registered in 2013) with 63 new and 58 relapse cases.

36 inmates have been diagnosed with multi-drug resistant TB (57 inmates in 2013) while the number of default treatment amounted 18 (20 cases in 2013). In 2014 in order to carry out test on or treat co-infections 10 inmates were transferred to various medical facilities. Based on the data provided above, there has been significant progress towards controlling TB.

A visit to the TB Treatment and Rehabilitation Centre 19 on December 11-12, 2015 revealed that the centre faced certain problems related to infection control measures and treatment of co-infections. More specifically, the patients move around without a mask, there are no special containers for sputum and hands are not fully sanitized. As for the treatment of co-infections, it was ascertained that there is a long waiting period for patients scheduled for consultations. The referral procedures to civic health facilities were applied to only in 10 cases while the same figure totaled 202 in 2013. A

report submitted to the Parliament in 2013 contained a recommendation on studying the cases of those patients who had refused to continue with anti-TB medication either because of side effects of the drug or because they had been asking for treatment of one of co-infections. The recommendation also called on relevant stakeholders to ensure the timely treatment of co-infections if such need would be established. Sadly, the recommendation has never been implemented and the number of referrals has decreased by 192 cases in 2014.

Side effects of the anti-TB drugs have negative effects on TB treatment and therefore, psychological support to patients during the treatment and control of their mental condition is of utmost importance. However, there is no psychiatrist or a psychologist working in the centre. Moreover, the examination of relevant documentation revealed that there has been no consultation provided by a psychiatrist in the centre from May to November 2014.

A recommendation of the Public Defender to refer every prisoner diagnosed with TB to the TB Treatment and Rehabilitation Centre for better management has never been considered.

In 2013 report the Public Defender issued a recommendation to amend the Decree 01-5/N of the Minister of Labour, Health and Social Affairs of January 31, 2014 on *Approving the Programme on Prevention, Detection and Treatment of Hepatitis C in Prisons and other Detention Institutions* so that anti-viral treatment be provided to every inmate/accused based on medical evidence. The Public Defender welcomes the implementation of the recommendation as a result of which the provision of the decree allowing anti-viral treatment to those inmates who were sentenced to more than 18 months had been abolished. Nowadays, there are no restrictions in terms of lengths and duration of a sentence.

Based on the information provided by the Ministry of Corrections 8711 inmates were tested for hepatitis in 2014 and 289 of them were treated against the disease. Importantly, a recommendation of the Public Defender to provide an anti-viral treatment to patients based on relevant medical evidence has not been implemented.

9081 inmates were tested for HIV/AIDS in 2014. 56 inmates were involved in anti-viral treatment of HIV/AIDS throughout 2014.

The monitoring revealed that the penitentiary system experiences problems related to full compliance to the infections control requirements, provision of a cold change as per the legislation, disinfection and sterilization of multi-use medical instruments, items and materials, allocation of safety boxes and containers to collect sharp objects and syringes. The problems related to lack of information on preventative healthcare among inmates are also striking.

RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To fully comply with the infection control measures outlined in a TB Management Guideline in TB Treatment and Rehabilitation Centre
- To transfer all inmates diagnosed with TB to the TB Treatment and Rehabilitation Centre to ensure appropriate and adequate management of TB cases
- To review every case of default caused by side effects of anti-TB drugs and ensure timely treatment of co-infections of TB patients based on medical evidence and a request from a patient.
- Ensure full adherence to requirements for infection control
- Ensure that inmates have an access to information pertaining to preventative healthcare

RECOMMENDATIONS TO THE MINISTER OF LABOUR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA:

- Amend Resolution 01-5/N, 31 January 2014 by the Minister of Labour, Health and Social Affairs on *approving the rules for approval and Implementation of the programme on prevention, detection and treatment of viral Hepatitis C in penitentiary facilities* so that inmates have an access to an antiviral treatment based on medical evidence.

2.5.8. DECEASED INMATES

27 deaths of inmates were reported in 2014. In order to examine each of these cases, the National Prevention Mechanism requested information on medical services rendered to the deceased as well as forensic reports. 16 forensic reports were provided by the Levan Samkharauli National Forensics Bureau¹⁵⁵. In addition, the National Prevention Mechanism also received information from the Ministry of Corrections. 11 cases of death are reviewed below¹⁵⁶.

D.G.

On January 2, 2014 at approximately 13:20 a convict D.G passed away in the TB Treatment and Rehabilitation Centre N19 of the Penitentiary Department. According to a medical record, the patient had been diagnosed with HIV and chronic Hepatitis C and later on, on December 19, 2013 with AFB(-) lung disseminated TB, a primary case in Penitentiary Facility 2 of the Penitentiary Department.

155 Letter MCLA 2 15 00244911, dated March 11, 2015 signed by a head of Medical Department of the Ministry of Corrections

156 4 out of 16 forensic reports attached to a letter by a head of administration at Samkharauli National Forensics Bureau on January 23, 2015 concern cases of suicide while one report refers to violent death of an inmate and therefore are not covered in the present section

On December 27, 2013 the patient was transferred to the TB Treatment and Rehabilitation Centre N19 of the Penitentiary department for anti-TB treatment. On December 31, 2013 at 5.30 AM the patient reported an abdominal pain and asked for a painkiller. S/he did not complain about nausea. According to a medical record the abdomen was of medium rigidity; there was a pain in the right flank and in the area of the waist. The patient did not report a pain on the surface of the thigh. The patient vomited. By 2 pm the pain started to decline. The patient was administered an injection of Ketz, No Spa and Platilin. In about an hour the patient asked for a sleeping pill as he could not fall asleep because of dull pain. S/he was administered an injection. The stool was liquid.

According to the medical records, on January 2, 2014 at 1:20 PM a call was registered from Cell B-406. A doctor responding to the call found the convict prone in bed in vomit (with a consistency of coffee-grounds) and pronounced biological death with preliminary diagnosis of aspiration with vomited substance, asphyxia.

According to a report N000006514 prepared by the National Forensics Bureau, the death was induced by purulent diffusive peritonitis resulted from the dissemination of miliary tuberculosis to the digestive tract and perforation of the inner wall of the small intestine. The following injuries were found on the body of the deceased: an extravasation on the front surface of the right shoulder (the lower third) and a scar in the area of the same shoulder and the elbow (the back surface) inflicted by a blunt object in the interval of one to three days prior to death. These injuries, when observed on an alive individual, are qualified as light and are not related to the cause of death.

The forensic report states that the cause of death was the dissemination of lung miliary tuberculosis in the esophagus, stomach, intestines, lymph nodes, omentum, also, by disintegration of tubercular structures in the esophagus, stomach and small intestines, defects, gastric and esophageal varices, perforation of the inner wall of the small intestine and development of diffusive purulent peritonitis. A post mortem examination also revealed that the deceased suffered from the accumulation of greyish-yellowish-greenish liquid up to 2000 ml in the abdomen and a large quantity of fur of the same colour, brain and soft coat edema, focal arachnoiditis, lipomatosis of epi-myocardium, chronic cholangitis, chronic aggressive hepatitis, HIV/AIDS. The blood of the deceased contained Analgin and Diazepam.

Importantly, the information provided by the Medical Department of the Ministry of Corrections did not contain any note by a surgeon which would recommend an operation on the patient. Nor did the documents contain any records on drugs and medication requested by and allocated to the deceased. Therefore, there is evidence that medical service provided to D.G. was of poor quality and that the assistance was delayed and inadequate.

T.C.

A convict T.C. who had been transferred from the Institution N2 of the Penitentiary Department to the Tskhakaia National Medical Centre on January 26, 2014 at 10:20 died two days later on January 28, 2014 at 04:30. According to the medical documentation the patient was transferred by an ambulance. According to the information provided by the medical staff of the ambulance the patient had been vomiting blood. The review of the medical records also reveals that the patient had been dismissed from the Hospital of Infectious Diseases on January 25, 2014. According to the medical documentation the patient was posthumously diagnosed with chronic Hepatitis C, liver cirrhosis, liver insufficiency, hepatic coma, gastroduodenal bleeding, acute respiratory insufficiency, hypovolemic shock, artificial lung ventilation, cardiac arrest.

According to the forensic report N000481714 by the National Forensics Bureau, the death of T.C. was caused by anemia of the internal organs induced by esophageal varices resulted from liver cirrhosis. The examination of the body revealed the following injuries inflicted before death: a scar on the cheek to the right and in the area of the upper lip (central and to the left), extravasations in the area above the left eyebrow, on the outer surface of the left shoulder (mid third) and outer surface of the right shoulder (mid third) induced by a blunt object(s) long before the death. The injuries are qualified as light and could not have caused death.

T.C. also had scars on the outer surface of the left thigh in the upper, mid and lower thirds, on the front surface of the left thigh in the lower and mid thirds, on the front surface of the left thigh in the mid third and on the front surface of the left knee joint extending to the front surface of the left shin's upper third.

The following diagnosis is indicated in T.C.'s forensic report: chronic Hepatitis C with extensive inflammatory infiltrations and presence of necrotic strains, multiple rigid connective tissues with the formation of false lobes, liver cirrhosis and esophageal varices. The examination of the body revealed the presence of 0.4 cm fraction on the enlarged vein in the third part of the esophagus with dark reddish extravasations in the esophageal mucosae, internal bleeding with blackish blood conglomeration of up to 2500 ml in the stomach, masses of black in the lumens of the small and large intestines, anemia of internal organs, ascites (presence of peritoneal liquids), presence of pleural liquids in both cavities of up to 100 ml, post hemorrhage anemia, atherosclerotic coronary sclerosis, myofibrillogenesis, aortal atherosclerosis. Psychotropic substance - Diazepam and painkiller Lidocaine, also Norketamine were found in the blood sample of the deceased.

R.C.

A convict R.C died in a cell of the Institution N2 of the Penitentiary Department at about 5:20 PM on March 8, 2014. A record made by a doctor on shift, reveals that R.C. had pulsation on the carotid arteries, the skin was pale and the body temperature low. The doctor performed an indirect cardiac massage but to no avail.

According to the report N001228614 by the National Forensics Bureau the death was caused by a brain swelling with brainstem dislocation and embedment inflicted by a non-traumatic extravasation in the brain as a result of acute disorder of blood circulation. The examination of the body did not reveal any external mechanical injuries.

The postmortem report indicates the following diagnosis: acute disorder of blood circulation in the brain as a result of brain vessels atherosclerosis: diffusive hemorrhage in the brain-tunic in a form of congelation, diffusive extravasation in the soft tunic of cerebellum, intracerebral extravasation in the right hemisphere extending to right side ventricle (presence of up to 100 ml blood congelation in the ventricle), swelling of brain-tunic and substances with brainstem dislocation and embedment, athero-arterial sclerosis of the brain-tunic, atherosclerotic coronary sclerosis, aortal atherosclerosis, swelling in the lungs, focal emphysema, bronchitis, pneumosclerosis, hepatitis, athero-arterial sclerosis of IV blood vessels.

Based on the information provided by the Medical Department of the Ministry of Corrections it is not clear whether or not R.C. had been provided with a consultation with a cardiologist or any tests on cardiovascular system or the brain in either 2013 or 2014 even though the patient had undergone hypertonic crisis in 2012 and was taking treatment in accordance to the diagnosis (hypertonic disease, second stage).

G.U.

On February 11, 2014 at approximately 13:30 a convict G.U. born in 1972 died in the Institution N8 of the Penitentiary Department. According to the medical records, G.U. had been placed in the facility on January 23, 2014. Upon admission the convict complained about a pain in the area of both shins and difficulties while walking. The convict was also diagnosed with chronic viral Hepatitis C and had an extensive record of drug abuse.

The convict was examined by a doctor in his/her cell on February 11, 2014 at 12:50 PM. The convict was complaining about fatigue, dizziness, shortness in breath. According to the fellow inmates the convict knocked out at the attempt to get up. Because of low arterial blood pressure, the patient was administered Cordiamin and caffeine. After the injections the convict started feeling better. However, after 10 minutes from the injection the symptoms reoccurred. The patient was given Validol but the situation got worse as the peripheral pulsation faded away and the patient lost consciousness. An intensive care therapist was called and both the doctor and the intensive care therapist tried to revive the patient. An ambulance was also called to the place but to no avail. Biological death was pronounced at 13:50. Diagnosis: declining breakage of the upper third of the left shin and the distal fragment of the right shin, post-osteochondrosis period, chronic viral Hepatitis C (according to the medical record).

According to the report N000716414 of the National Forensics Bureau, the death was

caused by acute myocardial infarction. The examination of the body revealed several small, oval shaped, dark maroon scars with 0.2, 0.1 and 0.3 cm in diameter covered with dry crust in the area of the upper lip, on the projection of the nose-lip wrinkle and next to the chin. The examination did not find any traces of external injuries. The injuries are inflicted by a blunt force trauma from three to four days before death. All the injuries are qualified as light traumas and could not have induced death.

The forensic report indicates the following medical diagnosis: chronic cardiac ischemic disease, acute myocardial infarction, atherosclerotic coronary sclerosis, myocardial fibrosis, post-infarction scars in the myocardium, hypertrophy of miocardiocitis, lipodystrophy, aortal atherosclerosis, chronic interstitial pneumonia, chronic bronchitis, and chronic pleuritis with pleural fibrosis, chronic hepatitis, kidney cyst, and kidney glomerular sclerosis.

It should be noted that a letter received from the Medical Department of the Ministry of Corrections does not provide any proof that tests and treatment regarding vascular and other diseases indicated in the postmortem report were provided to the convict. Importantly, an intensive care therapist arrived only after an hour to attend to the unconscious patient.

R.M.

A convict R.M. born in 1983 was transferred to *Rustavi Clinics* from the Institution N6 of the Penitentiary Department on June 22, 2014. However, R.M. died on the way to the hospital. The medical documentation shows that a medical report was filed on June 13, 2014 after a doctor and a nurse visited the convict in his/her cell. The convict had a cross-section cut on the right lower limb. According to a medical record the patient sustained the injury from hitting the limb against a sink. The convict refused to be examined by a surgeon.

According to the report N003186414 by the National Forensic Bureau, the death was called by acute vascular insufficiency inflicted from acute ischemic damage to cardiomyocitis. The body shows straight-edge wound on the internal surface in the mid third of the shin induced by a sharp blade object during lifetime eight to ten days prior to death. These injuries are qualified as light and could not have caused death.

The forensic reports indicates the following diagnosis: acute vascular insufficiency, cardiac ischemic disease, acute focal ischemic disease of cardiomyocitis, coronary atherosclerosis, cardioscrelosis, swelling of brain-tunic and the matter; lung TB with the hyperplasia of peribronchial lymph nodes and the mediastinum (A15;2). The blood sample examination confirmed the presence of Diazepam and Clozapine.

It is worth noting that a letter received from the Medical Department of the Ministry of Corrections does not indicated that the patient had been administered any tests related to cardiovascular diseases. Also, in spite of the two tests on TB (the last test was administered two days prior to death) the diagnosis of TB was not confirmed.

However, the forensic report points out that at the moment of death the deceased had lung TB with the hyperplasia of peribronchitis and mediastinum (A15.2).

P.R.

A convict P.R. died the night of August 18, 2014 of acute liver insufficiency in Imereti Regional Clinical Hospital. According to the medical documentation, P.R. was provided with medical assistance on April 4, 2014. S/he was diagnosed with viral Hepatitis C. On April 17, 2014 the convict was enrolled in the Hepatitis C Programme and prescribed Pegferon and Ribovirin. The first injection was administered on July 17, 2014 and by August 7 the condition of the patient was satisfactory. The patient complained about dizziness and fatigue. The complaints started after an injection of Pegferon. Vesicular breathing normal, cardiac sounds of low intensity, weak filling condition of the pulse, the stomach was soft, a pain was reported when palpated, the spleen and the liver could not be found, Pasternack syndrome negative. The patient did not report any complaints during an examination on August 8 and the overall condition was evaluated as satisfactory.

On August 14, 2014 the patient was administered a Pegferon injection. S/he complained about dizziness and fatigue, sweatiness. After an hour from the Pegferon injection the patient starting feeling sick with weak ventricular breathing in the lungs, weak filling condition of the pulse, cardiac sounds of low intensity, arterial blood pressure 90/70 mm, pulsation 70, the stomach soft and without pain. The patient was given an IV diffusion after which s/he felt better.

On August 15, 2014 P.R. was transferred to the Imereti Regional Clinical Hospital with a preliminary diagnosis of acute liver insufficiency, chronic Hepatitis C, hepatic encephalopathy. Upon the admission to hospital, the convict was inadequate, disoriented and struggled with answering questions. In spite of medical assistance rendered to the patient, s/he died on August 18, 2014.

According to the report N004432414 of the National Forensics Bureau, the death was caused by pneumo-cardiac insufficiency resulted from double purulent lobar pneumonia and chronic cardiac ischemic disease. The forensic report indicates the following diagnosis: chronic cardiac ischemic disease, atherosclerotic coronary sclerosis, post-infraction scars in the myocardium, myofibrils, epicardial lipomatosis, aortal atherosclerosis, cardiac hypertrophy, the wall of the left ventricle 2.0 cm thick, double lobar pneumonia with purulent sections, bronchitis, focal emphysema, chronic hepatitis, hepatosis, atherosclerosis of IV vessels, tubulointerstitial nephritis, swelling of the brain-tunic and matters, full-bloodiness of internal parenchyma organs, swelling. The blood sample showed the presence of psychotropic substance Diazepam.

It is worth noting that the information provided by the Medical Department of the Ministry of Corrections does not contain any evidence that the patient was tested for cardiovascular (except for EKG) and pulmonary diseases.

M.M.

According to the medical documentation, on June 29, 2014 an ambulance was called to the Institution N6 of the Penitentiary Department. A doctor responding to the call found a convict M.M. unconscious, in a terminal condition. There was no pulse on carotid artery and the periphery, breath disorder, negative reflexes on the pupils. The patient was administered Adrenaline, Atropine and Naloxin. However, in spite of interventions and continuous resuscitation for 45 minutes, the patient was pronounced dead at 16:00.

According to the report N003326514 by the National Forensics Bureau, in order to establish the cause of M.M.s death a medical examination involving a commission must be arranged. The examination of the boy revealed the presence of reddish cuts without crust on both earlobes, greyish-brownish cuts on the back surface of the radiocarpal joint covered with crust and induced by a blunt object. These injuries are qualified as non-lethal and could not have caused death. The cuts on the earlobes had been inflicted immediately before death, while the cuts on the radiocarpal joint were sustained 8-10 days prior to death.

The forensics report contains the following medical diagnosis: acute swelling of internal organs, intensive swelling of brain and brain-tunic (G93.6), weak coronary atherosclerosis, epicardium lipomatosis, pulmonary TB (A15.2). The blood and internal organs contained psychotropic substance of Diazepam (100.3 ng/ml)

Z.S.

On October 19, 2014 at 19:30 a convict Z.S. died in an intensive care unit of Facility 18 of the Penitentiary Development. The medical documentation indicates to presence of a large size tumours in the area of the back, neck and infrascapular. The tumours were soft, of elastic consistency and mobile. The patient complained about the pain and discomfort in the above described area. The patient had been repeatedly seen by a surgeon who issued a recommendation on operational intervention. The preliminary diagnosis: tumour formations in the area of the neck and the back (lipomatosis). The patient underwent leg tests, echoscopy and X-ray of thoracic vertebra.

On October 19, 2014 at 16:50 the patient underwent an operation under a general anesthesia. The operation aimed to eliminate subcutaneous formations. The operation concluded without any complications. At 17:30 the patient opened the eyes, restored breathing and followed instructions. However, there was a wave of sudden convulsions followed by a cardiac arrest. The medical staff immediately began resuscitation and repeatedly administered defibrillation. A catastrophe medicine brigade was called to arrive at 19:00. Against all efforts to save the patient, Z.S. died at 19:30.

According to the report N005667314 of the National Forensics Bureau, the death was caused by the acute vascular insufficiency as a result of an acute ischemic damage to cardiomyocitis. The body showed the following traces of a medical manipulations

performed during the lifetime: marks of defibrillation as result of resuscitation measures and broken left third and fourth and right sixth, seventh and eighth ribs (inflicted during resuscitation)

The forensic report indicates the following diagnoses: coronary atherosclerosis, cardiosclerosis, myofibrosis, post-infarction scars on the myocardium, acute ischemic injury to cardiomyocytis, aortal atherosclerosis, focal extravasations in paraortal soft tissues, focal emphysema, focal pneumosclerosis, arterial nephrosclerosis, chronic interstitial nephritis, nephric cysts, extravasations in operated soft tissues, operational substance – lipoma, post-operational conditions after the removal of lipomas in the area of the back.

It is worth noting that according to the information provided by the Medical Department of the Ministry of Corrections, the convict underwent EKG and consulted with a cardiologist, as a result of which it was concluded that s/he did not suffer from any pathological changes. It should also be noted that an emergency arrived 90 minutes after convulsions and a heart arrest started.

D.A.

According to the documentation submitted for examination, on September 15, 2014 at about 18:05 in the Institution N17 of the Penitentiary Department a convict D.A. asked for a doctor. The convict was complaining about a pain in the muscles in the chest which started right after the patient had taken a cold shower. The patient was consulted by a GP: pulse 72, rhythmic, of normal filling and intensity, arterial blood pressure 140/100 mm, palpated pain in the chest area. A medical record of the patient did not indicate any cardiovascular pathology. After the consultation with the GP, the patient was transferred to a medical unit of the facility with a preliminary diagnosis of chest myositis. The patient was immediately administered Diclac and Nozit. Within the next minutes the patient reported an improvement. S/he went out to the yard of the medical unit but while talking to a guard the patient passed out. The doctor immediately resuscitation as no pulse was observed. The patient suffered from cyanosis around the lips. The doctor started indirect heart massage with a resuscitation device. Rustavi ambulance and a brigade from the Catastrophe Centre were both called. In spite of resuscitation measures, the patient died at 19:00. A preliminary cause of death was acute cardiovascular insufficiency, acute myocardial infarction.

According to the report N004973114 of the National Forensics Bureau, D.A's death was caused by the myocardial infarction as a result of chronic ischemic disease of the heart.

The forensic report indicates the following diagnosis: acute vascular insufficiency, chronic ischemic disease of the heart, coronary atherosclerosis with thrombosis, myocardium infarction in the final phase of reparation, newly occurred infarction of myocardium, atheroarteriosclerosis of the brain-tunic, swelling of brain-tunic and

lungs, acute bronchitis, pulmonary emphysema, hepatitis with inflated infiltrates and proliferation of the connective tissue, atheroarteriosclerosis of nephric blood vessels.

It is worth noting that according to the postmortem examination of the body, the deceased had undergone myocardium infraction, the information provided by the Medical Department of the Ministry of Corrections does not contain evidence that the convict was tested for cardiovascular diseases. Importantly, the doctor based in Facility 17 preliminarily diagnosed the deceased with cardiac myositis which proved to be inaccurate. It is not clear why the doctor ignored the possibility of cardiac pathology in light of the complaints by the convict.

V.N.

Based on the documentation submitted for an examination the convict at different times had been diagnosed with: hemorrhoid disease (IIIB stage), chronic Hepatitis B and C, lipotoma on the back surface of the neck, recurrent bubonocoele, simple bubonocoele, arterial hypertension of I degree. The patient underwent an operation. On November 3, 2014 the patient went on a hunger strike. A doctor consulted him/her on November 4. The doctor indicated that the pulse was rhythmical, arterial blood pressure – 140/90. According to a medical record the patient did not have any complaints. On November 5 the doctor found the inmate deceased. The supposed cause of the death is thromboembolia.

According to the report N006037114 of the National Forensics Bureau, the death was caused by acute cardiovascular insufficiency as a result of the acute ischemic damage to cardiomyocitis.

The forensic report indicates to the following diagnosis: acute ischemic damage to myocardium, coronary atherosclerosis, cardiosclerosis, myocardial fibrosis, aortal and central vascular atherosclerosis, pulmonary miliary tuberculosis, cicatrized sections of upper left and right pulmonary lobes, alveolar emphysema, pleural fibrosis, hepatomegaly, chronic persistent hepatitis, steatosis, adenoma of bile ducts, nephric carcinoma, polycystocis of both kidneys, arterial and arteriosclerotic nephrosclerosis, focal chronic arachnoiditis with fibrosis of brain tunic, purulent sections on the rectal mucosae, a scar in the area of the anus, multiple scars on the body, a pergameneous section in the centre of the forehead inflicted after the death, a scar in the area of the right cheek, a dotted scar on the right side of the mouth, an extravasation in the area of the right cheek, at the lip-nose wrinkle.

It is worth noting that according to the findings of the examination, the deceased was additionally diagnosed with miliary pulmonary tuberculosis, adenoma of the bile ducts, nephric carcinoma and other diseases which provides a ground to conclude that the deceased suffered severe health conditions. However, the documentation provided by the Medical Department of the Ministry of Corrections does not corroborate that the convict ran through complex tests and was subject to the treatment appropriate for these diseases.

E.K.

On November 6, 2014 a convict E.K. died in the Institution N18 of the Penitentiary Department. According to the records submitted for an examination the convict was placed in a treatment facility 18 for the convict and accused on November 3, 2014. Upon the admission, the patient reported a pain in under the right side of the abdomen in the area of the bile. According to E.K he had suffered from pains for the past 10 years. S/he also stated that he suffered a myocardial infraction in 2011. The patient was tested with EKG, chest X-ray, abdominal echoscopy, EDG (esophagogastroduodenoscopy), biochemical blood test. A cardiologist paid a visit to the patient. The preliminary diagnosis was calculus cholecystitis, post-operational ventral hernia, post nephrectomy and gastrectomy period, post myocardial infraction, arterial hypertension of II degree.

The patient was transferred to a surgical unit for a scheduled operation. The patient underwent the operation under endotracheal anesthesia, upper-mid laparotomy, sinechiolisis, cholecystectomy, sanitation of the abdominal cavity. After the operation the patient was transferred to an intensive care unit. In about half an hour after the completion of the operation, bleeding started through the drainage with nasogastric fluid. The doctors concluded that the patient was suffering from intra-abdominal bleeding and proceeded with an urgent intervention, relaparotomy. The medical staff operating on the patient observed that the bile duct and the artery were still attached and that there was bleeding in the area of bed. The patient was administered necessary manipulations and the wound was stitched. According to the medical record, the patient's condition gravely deteriorated in about an hour with cardiac arrest. Resuscitation did not yield desired outcomes and the patient died at 21:40.

According to the report N006078514 of the National Forensics Bureau, the death was caused by an acute cardiovascular insufficiency resulting from an acute ischemic damage to cardiomyocitis.

The forensic report indicates the following diagnosis: vascular atherosclerosis of the brain-tunic, swelling of the brain and brain-tunic, coronary atherosclerosis, post-infraction scars on the myocardium, an acute ischemic damage to cardiomyocitis, myofibrosis, aortal atherosclerosis, pulmonary emphysema, inflammation of the bile ducts, extra- and inter Glisson's capsule extravasations, nephric atheroarteriosclerosis, post cholecystectomy condition.

Even though a letter from the Medical Department of the Ministry of Corrections corroborate the record of myocardium infraction sustained by the patient in 2011, the same letter does not provide a proof that the deceased was tested for cardiovascular diseases (except for EKG before the operation).

Based on the above said, it is evident that there are problems related to timely and adequate medical services which require immediate resolution. We find it critical that particular attention be paid to screening of cardiovascular and respiratory diseases in

order to ensure early detection and timely treatment. In addition, the health condition of inmates should be checked at least once a year.¹⁵⁷

RECOMMENDATION TO THE MINISTER OF PROBATION:

- Ensure complex examination of inmates at least once a year with a strong focus on screening of cardiovascular and respiratory diseases for early detection

2.6. HUMANITARIAN SUPPORT - SPECIAL CATEGORIES

2.6.1. JUVENILE PRISONERS

The special preventive group at the Public Defender's Office together with its Centre of the Child's Rights monitored penitentiary facilities to look into the status of the rights of juvenile inmates. The monitoring was carried out within the frames of the National Preventive Mechanisms. The section provides the findings of the monitoring mission.

A juvenile convict who has not reached the age of 18, must be placed in a rehabilitation institution for juveniles.¹⁵⁸ Under age convicts/accused are also placed in Facilities 2 and 8 of the Penitentiary Department. By the end of the reporting period 48 juvenile convicts were placed at Facility 11.

Article 21 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) sets the rules for placement of the juvenile offenders in a detention facility, while Recommendation (2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures¹⁵⁹ holds that the placement of juveniles in institutions shall be guided in particular by the provision of the type of care best suited to their particular needs and the protection of their physical and mental integrity and well-being. According to the United Nations Standard Minimum Rules for the Treatment of Prisoners must be kept separately from adults¹⁶⁰. The same refers to the separation of untried prisoners from the convicts.¹⁶¹

Unlike the Institutions N2 and N8, the Institution N11 homes only juvenile offenders. Separation of juvenile and adult inmates in the Institutions N2 and N8 still remains a problem. In spite of the fact that the juvenile convicts are placed in a separate building,

157 According to Article 120, Paragraph 2 of the Imprisonment code of Georgia, the state of the health of an accused/convict shall be checked at least once a year. Ill accused/convict shall be provided with emergency treatment

158 The Imprisonment Code, Article 68, Part I

159 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [last accessed 24.03.2015].

160 The UN Standard Minimum Rules for the Treatment of Prisoners, Article 8, Paragraph D

161 The UN Standard Minimum Rules for the Treatment of Prisoners, Article 8, Paragraph B

they still have means of communication with adult inmates, for instance, when the former are taken to a lawyer or a legal representatives. In the Institutions N2 and N8 juvenile prisoners can meet with adults while being transferred. In addition, both juvenile and adult prisoners are taken to a court hearing in the same vehicle which enables them to communicate to each other.

According to Article 49, II Part of the Imprisonment Code, a convict must be immediately notified of his or her rights and rules for treatment, receiving information and filing a complaint, disciplinary and other requests in a language that is understandable by him or her.

Inmates in the Institution N11 are introduced to their rights mostly by a social work or a head of the department. However, children do not fully understand their rights which may indicate to the fact that the information is not provided in full or in a language that they can comprehend. For instance, a majority of the juvenile convicts do not know what the procedures for appealing are.

While examining directions on imposing disciplinary punishment, it was revealed that such form of punishment was imposed for five times in 2014 including four reprimands and a restriction of phone conversations for a month (two cases of assault, one case of trespassing the restricted territory and disobedience, one case of disturbing a teacher during classes, one case of throwing an apple by a juvenile towards a watchtower).

Juveniles are expected to keep their personal items, clothing and sleeping accommodation clean and tidy and the authorities shall provide them with the means for it.¹⁶² The UN Rules for the protection of juveniles specify that authorities of an institution are responsible for providing juveniles with clothing suitable for weather and necessary for health¹⁶³ while the Committee of Ministers recommends that *juveniles who do not have sufficient clothing of their own be provided with such clothing by an institution.*

It is worth noting that the administration of the institution distributes hygienic items once a week which are not delivered personally but according to cells which makes it possible for juveniles to protect hygienic measures especially in those cases when a cell is shared by three, four or more juveniles. Importantly, juvenile inmates do not often have such a basic item as a toothbrush. In addition, provision inmates with clothing and linen is a serious challenge.

Provision of prisoners with basic hygienic and everyday items still remains a problem.

162 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: Article 65.4. Available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [last accessed 24.03.2015].

163 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: Article 66.2; Available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [last accessed 24.03.2015].

For instance, one of the convicts was only provided with a pillow and a blanket upon placement while linens were given by other children. The convict does not have linens to change as his/her family lives in a devastating financial condition and cannot afford it.

During the reporting period 30 convicts were transferred from the Institution N11 to the treatment facility N6 out of which were further transferred to the treatment facility N18 for the untried and convicts. Treatment facility 11 is of out-patient type which contains an office of a chief doctor and a dentist's cabinet as well as a room for medical procedures, storage rooms for drugs and medicaments.

None of the convicts were involved in the Anti TB Programme in 2014 while 9 inmates were enrolled in the Suicide Prevention Programme. However, it is worth noting that there has not been any attempts of suicide in Institution 11 during the reporting period.

Even though mental and behavioral disorders of various types are widely-spread among the youth and require continuous supervision of both a psychiatrists and a psychologist, there is one psychologist in the institution which is far from being sufficient considering the needs and the specifics of the institution.

It is worth noting that four psychologists and one social worker resigned from their positions throughout 2014. Therefore, effective functioning of a psychological service comes under a threat as only one psychologist will unlikely to handle the provision of juveniles with all rehabilitation programmes. If new staff are to be hired, there will be the need to build their capacity through providing necessary knowledge and skills for working in a penitentiary system which is time and resource consuming.

According to a recommendation of the Committee of Ministers of the European Council¹⁶⁴ a juvenile in an institution, shall enjoy various activities and events as per an individual plan which aims to prepare a juvenile for a release through less severe custody and his/her integration in a community. It is worth noting that rehabilitation programmes in the institution are implemented by the institution's social services and non-governmental organisations. At the time of the monitoring, most of the juveniles were engaged in wood-carving workshops and various arts and crafts activities and practiced football and rugby.¹⁶⁵

A recommendation developed by the Committee of Ministers of the Council of Europe¹⁶⁶ specifies key directions of activities to be carried out by a regime: schooling, vocational training, work and occupational therapy, citizenship training, social skills

164 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 79.1 and 79.2. Available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [last accessed 24.03.2015]

165 For detailed information please refer to the chapter on rehabilitation programmes

166 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 77. Available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [Last accessed 24.03.2015].

and competence training, aggression-management, addiction therapy, individual and group therapy, physical education and sport.

Juvenile convicts participated in a series of recreational and educational activities in 2014. However, there are prisoners who do not participate in any of these activities. For instance, as one of the inmates stated s/he has never expressed willingness to engage in the activities, nor has the social service offered him/her any rehabilitation or other programme.

A standard minimum rule for the treatment of prisoners specifies that juvenile education should be obligatory and authorities of an institution must pay special attention to its administration. According to the rule *so far as practicable the education of prisoners shall be integrated with the education system of the country so that after their release they may continue their education without difficulty*.¹⁶⁷

According to Article 35 of the Constitution of Georgia ‘everyone shall have the right to education and the right to free choice of a form of education. Article 7, Paragraph 4 of the Law of Georgia on General Education obliges the state to ‘provide general education in penitentiary institutions in compliance with the rules set out in the Imprisonment Code’ while Article 14, I part, Paragraph B the Imprisonment Code states that ‘an accused/convict shall have the right to receive general and vocational education’.

There is a school at the Institution N11 affiliated with one of Tbilisi’s general schools. The school implements a sub-programme of general education for juveniles. The programme provides opportunities for juveniles to not only complete general education through equivalency examinations but also to obtain a certificate (attestat) after passing attestation examinations. The school premise, which is a separate building, also homes library and a social workers’ office. The programme covers all 12 grades with maximum 5 thirty minute classes a day. There is a five minute break between the classes. The difference in the schedule is to prevent juveniles from overburdening with schooling. Considering the fact that attendance to classes are voluntary, the administration tries to develop certain incentives to encourage juveniles to undertake the programme. The teachers focus more on getting students do core tasks and do not oblige them to do homework. There were 27 registered students by the end of the reporting period. Unlike Institution 11, general education programmes running in Institutions 8 and 2 are not affiliated to any public schools and therefore, no document certifying the completion of the programme is issued. The main objective of the programmes offered by these institutions is to ensure continuity of the education process as long as a juvenile has a status of a convict. As a result, the offenders do not demonstrate strong interests towards the programme and often skip classes.

It is worth noting that juvenile prisoners often face problems when it comes to the enrollment in classes as it entails a series of procedures and requires parent’s active

167 The Standard Minimum Rules for the Treatment of Prisoners, Rule 77

participation. Often parents cannot afford commuting to Tbilisi to sign a document. Also, in some cases the schools where juvenile offenders had attended classes prior to entering the system, are reluctant to accelerate the process and refrain from partnering with a school affiliated to Institution 11.

The UN Standard Minimum Rules for the Administration of Juvenile Justice promulgate the importance of a contact with the outside world for juvenile offenders and specify that: 'all measures must be taken to ensure juveniles' contact with the outside world which is an integral part of fair and human treatment and of great importance for their reintegration into the society'.¹⁶⁸ In the Institution N11 juvenile offenders enjoy the legal right to short and long term visitations, video and phone visitation. There are two furnished rooms designated for long term visitations. However, a fee related to exercising the right to long term and video visitations represent a barrier in this regard.¹⁶⁹ 19 long term and 3 video visitations were registered in the institution during the reporting period.

One of the critical problems faced by the Institution N11 is a violence among the juveniles. There are leader who oversee the situation and often misuse their authority to intimidate others and use their cards. There have also been cases of insults and physical abuse. It has also been observed that there are individual leaders for school, canteen and the library who take the responsibility for punishing others for inappropriate behavior including being late in classes, leaving behind crumbs on a dining table etc.

In light of insufficient linen and hygienic items for some inmates, there are also those who enjoy certain privileges. The cells of such privileged offenders are well furnished, they have several mattresses, linens, rugs and the basic items that are limited for other inmates in the same institution.

3 foreign citizens, 22 representatives of ethnic minorities including 8 Azeri, 7 Armenians, 4 Yeside, 1 Syrian Kurd, 1 Roma and 1 Ossetian were registered in Institution 11 by the end of the reporting period.

The right to communicate with the respective diplomatic and consular representatives and the freedom to exercise religious beliefs is of utmost importance for prisoners who are the nationals of foreign countries.¹⁷⁰

There were 6 Muslim and 3 Gregorian juveniles placed at the institution during the reporting period. There is an orthodox church on the premises of the institutions while followers of other confessions can organize a corner for their respective rituals. During posts the menu of the institution contains appropriate meals. As for the representatives of other confessions, there is only one restriction, which is absence of pork, is effective.

168 The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Rule 59

169 Article 4, I Part of Order 132 of the Ministry of Corrections of Georgia adopted on July 22, 2014, on *Approving the Rules for a Long-Term Visitations for the Convicts'*

170 The UN Standard Minimum Rules for the Treatment of Prisoners, Rule 38

RECOMMENDATION TO THE MINISTER OF CORRECTIONS OF GEORGIA

- Ensure all juvenile prisoners with appropriate clothing
- Provide all juvenile prisoners with hygienic items
- Explain the rights and responsibilities to juveniles in a language which is understandable for them
- Take necessary measures to engage as many juvenile prisoners as possible in recreational and sports activities
- Ensure sufficient number of psychologists in the juvenile institutions

2.6.2. FEMALE OFFENDERS

The Special Preventive Group under the National Preventive Mechanism and the Department of Gender Equality of the Public Defender's Office carried out a monitoring in special institutions for females. The findings of the monitoring are dealt with in the sub-chapter below.

Female prisoners are placed in the Penitentiary Institution N5 which contained 270 inmates by the end of the reporting period. The Public Defender welcomes a promising tendency of paroling of female prisoners, which is in line with Rule 63 of the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules). 43 women serving in the Institution N5 were paroled during 2014. It is also worth noting that female inmates largely benefited from various education programmes and cultural and recreational activities implemented in the institution.

Within the frames of the National Preventive Mechanism at the Public Defender's Office and with the support from UN Women the Institution N5 for female offenders have been monitored based on a specially developed methodology informed by local and international legal framework. In order to adequately reflect on specific needs of women prisoners the monitoring team looked at the compliance with the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders.

Overall situation in the Institution N5 is satisfactory. However, the monitoring team revealed few serious problems including personal searches upon admission during which women are to get completely naked. In addition, what is particularly traumatizing for them is that they are asked to do squats.¹⁷¹ It is worth noting that such searches are conducted when prisoners leave the facility. Because of this practice which many

171 Decree 97 of the Minister of Corrections of May 30, 2011 on *Approving the Statute of re-trial Detention, Semi-open and Closed-type Prisons, Medical Establishment and Tuberculosis Treatment and Rehabilitation Centre*, Article 32, Part 9

prisoners find beyond their dignity, female inmates often refuse to receive medical care outside the facility or attend court hearings.¹⁷²

A practice of placing prisoners in a solitary confinement in the Institution N5 as a form of disciplinary punishment has decreased, which is undoubtedly a positive development. Since January 2014 disciplinary punishment were imposed on 55 prisoners including 3 cases of the placement in solitary confinement, 8 cases of the placement in a closed confinement while 5 prisoners were restricted an access to the outside world (restriction on family visitation – 2, restriction of phone conversation – 3). Other cases entailed reprimands and warnings.

There were 75 cases of a hunger strike from January 1, 2014 to December 31, 2014. The grounds for these strikes were claims and complaints related to health services, revisions of criminal proceedings and fairness of pardoning procedures.

There were 3 attempts of suicide in the Institution N5 during 2014. None of them yielded fatal outcomes. It is worth noting that Institution 5 joined the Suicide Prevention Programme in the summer 2014. According to the latest data 7 female convicts have been enrolled in the Programme.

219 prisoners were transferred to various medical facilities during the reporting period; 37 of them were referred to the penitentiary medical facility while 182 were transferred to hospitals outside the system. The Institution N5 homes a doctors' office, also the cabinets of surgery, gynecology, a dentist's, a room for manipulations and intensive observation. Also, the medical staff are qualified to take samples for TB and HIV/AIDS tests.

Female prisoners are a special category with specific requirements and therefore it is critical that these needs be assessed regularly and special programs developed on a regular basis. Prisoners have an access to showers from 10 AM to 8 PM. Cells in the institution are not heated adequately and in spite of the fact that the convicts have to do dishes and wash clothes, also take care of their personal hygiene during late hours, they do not have hot running water in their cells. There are significant problems related to the lack of hygienic items. More specifically, the administration fails to provide female inmates with pads which are only allowed in small quantities as a part of a parcel. The ones available in a shop are reportedly of poor quality. Often prisoners use unhygienic items which may cause a serious threat to their health. There are restrictions on other hygienic items as well.

The monitoring team also looked at the conditions of mothers and children. There are 12 rooms and a playroom in the institution. There were 6 mothers and 6 children

172 According to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rules 19 and 20 effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures. Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

during the monitoring mission. Separation of mothers and children after the latter reach the age of 3 is a critical problem.¹⁷³ Existing procedures are particularly painful for both children and their mothers. In order to protect the best interest of the child, it is crucial to ensure that the system will ease the procedures for children leaving the institution at the age of three. Separation should be flexible and needs based rather than rigid as the child's best interest must be the first priority while making such decisions.¹⁷⁴

Women prisoners must be able to undertake various measures to ensure guardianship of their children. The Bangkok Rules stipulate the possibility for a parole within reasonable timeframe. A balance between the child's best interests and public interests promulgated by a penitentiary system must be the priority while making any decision.¹⁷⁵

It is worth noting that female convicts placed in a building designated for convicted mothers often complain about the lack of products to prepare adequate meal for themselves and their children. There are cases when they take food for other prisoners. According to the staff working in the canteen explained that mothers are due a prisoner's allowance, but they often turn it down. It is important that issues related to child nutrition are in line with the existing standards of the country as the State is responsible for taking care of children who are placed in a state institutions.

Authorities must ensure that women prisoners have maximum contact with the outside world. In this regard, it is important that female prisoners enjoy the right to long term visitations exercised by male inmate. These issues are dealt in detail in a sub-chapter dedicated to long term visitations.

According to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) prison administration must acknowledge that women prisoners representing various religions and cultures have specific needs.¹⁷⁶ Prison administration should ensure the availability of those programmes and services which meet the special needs. A process of the development of such programmes must be designed in a participatory manner with an active participation of beneficiaries.

A prison environment should be comfortable rather than disturbing for such prisoners. Understandingly, a prison may cause discomfort in general but the environment should not violate religious or other beliefs or restrict beyond reasonable limits. It must be kept in mind that women prisoners do not have only gender-specific needs and therefore authorities must consider all the individual specifics which requires special treatment of female prisoners.

173 The Imprisonment Code of Georgia, Article 72

174 The UN Convention on the Rights of the Child, Article 3

175 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 52.2 and 3

176 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 54

When it comes to women prisoners who are foreign citizens the right to communication with relevant consular representatives and exercise their religious beliefs are of particular importance.

68 female prisoners placed in the Institution N5 belong to religious minority group including 41 Muslims, 23 Gregorian, 1 Catholic and 3 Yesides.

Issues related to conditions of LBT prisoners deserves special attention. It is worth noting that the situation in regards to female LBT prisoners is strikingly different from that of male LBT prisoners. One of the key differences is related to practices of placement and acceptance by other inmates. LBT prisoners are placed separately and other inmates have restricted communications with them, while in the institution for female offenders there is no separation as there are no security and safety threats which would require such a type of intervention.

It should be noted that neither prison administration nor inmates speak of any conflicts occurring on the grounds of gender identity or sexual orientation, or of any cases involving discrimination or inappropriate treatment. In fact, the prison administration does not have sufficient information for assessing risks. A social worker do not work with LBT inmates to provide special assistance. The monitoring mission found that the risk of self-damage is higher among LBT prisoners, however, there are no specialized schemes developed by a psychologist in place.

RECOMMENDATION TO THE MINISTER OF CORRECTIONS OF GEORGIA

- Take all necessary measures to implement personal searches without insulting dignity of inmates
- Provide inmates with hygienic items reflecting on their gender specifics
- Ensure that women inmates have an access to heating and hot running water in their cells
- Revise and improve separation procedures involving convicted mothers and their children so that the child's best interests are protected through adaptation with the outside world and minimizing trauma of separation for children
- Revise a nutrition standard for mothers and children so that there is a sufficient amount of food
- Improve an access to psychological and social services for inmates with foreign citizenship and seek the assistance from relevant language specialist so that such prisoners overcome language barriers
- Undertake measures to raise the awareness of prison staff on LBT rights, international standards and potential risks related to placement in closed institutions
- Ensure that the administration of the penitentiary institution pays attention

to the participation of LBT prisoners in programmes available in the institutions and contribute to creating safe and violence free environment of LBT inmates

- Intensify the interaction between a psychologist and a social worker on the one hand and LBT and other prisoners on the other to foster acceptance among non LBT prisoners and prevent potential risk of self-isolation and damage.

2.6.3. LIFE SENTENCE PRISONERS

Life sentence prisoners belong to a particularly vulnerable group of prisoners and therefore, their treatment should promote their dignity and strengthen a sense of responsibility.¹⁷⁷ The Public Defender in his reports have repeatedly underlined that existing conditions within the penitentiary institutions do not accommodate to their adequate resocialisation and reintegration into the wider community.

According to the Rules 20-23 of the Committee of Ministers the prison administration should seek to ensure that prisoners are explained the prison rules and routine and their duties and rights, including the right to make personal choices in as many of the affairs of daily prison life as possible. In addition, life sentence prisoners should be offered adequate material conditions and opportunities for physical, intellectual and emotional stimulation and have a maximum contact with the outside world.¹⁷⁸

The Institutions N6, N7 and N8 designated for life sentence prisoners stand out as the most problematic facilities which fail to implement diverse and regular rehabilitation activities. Moreover, there was no programme targeted on psychorehabilitation implemented in the Institution N7 during the reporting period while Institution 6 offered only one recreational programme *Talks about Christian Themes* involving just 10 inmates for two months. In general there is no service available to male prisoners in penitentiary institutions.¹⁷⁹ They only have an access to a DVD player.

It is worth noting that a long term imprisonment, and in particular life sentence, is unlikely to achieve its objectives unless adequate measures are undertaken to ensure the transition of convicts to major directions and steps of public life.¹⁸⁰ Importantly, Georgian legislation does not promulgate specific approaches required for resocialisation and reintegration of life sentence prisoners. Therefore, there are

177 Standard Minimum Rules for the Treatment of Prisoners, rules 65 and 66.

178 Management by Prison Administrations of Life-sentence and Other Long-term Prisoners, Recommendation REC (2003) 23 adopted by the Committee of Ministers of the Council of Europe on 9 October 2003, Para. 21-25

179 Referring to Institutions 6, 7 and 8

180 The Economic and Social Council, in its resolution 1992/1 of 6 February decided to dissolve the committee on crime prevention and control and to establish the Commission on Crime prevention and criminal justice as a functional commission of the Council, as requested by the General Assembly in its resolution 46/152 of 18th December 1991. The commission held its first session from 21 to 30 April 1992.

no practice of developing individual action plans and set of indicators for life sentence prisoners. According to a recommendation by the Committee of Ministers of the Council of Europe, member states must ensure that individual plans are developed for life sentence and long-term prisoners.¹⁸¹

It is important that life sentence prisoners, under relevant supervision, have communication with their families and friends with regular intervals both in writing and visitations.¹⁸² The Georgian Imprisonment Code provides rules that life sentence prisoners have the right to 2 long-term visitation annually and the possibility for two more long-term visitations as an incentive. It is worth noting that in some of penitentiary institutions there is no adequate infrastructure for long-term visitations and prisoners are transported to other facilities. There were cases when requests for long-term visitations were turned down because of the absence of adequate infrastructure.¹⁸³ As stated by the European Committee for the Prevention of Torture, member states should undertake all necessary measures to support family relations prohibition of which, in its turn, will negatively affect emotional and health conditions, as well as motivation of the prisoner and prevent him or her from positively use the time spent in an institution.¹⁸⁴

RECOMMENDATION TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- Develop action plans tailored on individual life sentence prisoners for their resocialisation and reintegration in the society
- Ensure that prisoners participate in diversified activities focused on rehabilitation
- Ensure full support to life sentence prisoners to maintain ties with their families

2.7. CONTACT WITH THE OUTSIDE WORLD

The European Committee for the Prevention of Torture emphasizes the importance of maintaining regular contact with the outside world for every prisoner serving a life sentence: ‘a guiding principle here is the support to maintaining contact with the outside world. Any decision to restrict such contact must be determined by gave security risks or issues related to material resources.’¹⁸⁵

181 Recommendation (2006)2 of the Committee of Ministers to Member States on European Rules for Prison (adopted on January 11, 2006 by the Committee of Ministers). Available at: <http://www.ombudsman.ge/uploads/other/1/1225.pdf> [last accessed 27.03.2015].

182 The Imprisonment Code of Georgia, Article 65, Paragraph D

183 These issues are reviewed in detail in a sub-chapter dealing with contact with the outside world

184 Recommendation (2006)2 of the Committee of Ministers to Member States on the European Prison Rules

185 Resolution parts of the general reports of the European Committee for the Prevention of Torture (CTP), Strasburg, August 18, 2000. P. 37

Rule 61 of the UN Standard Minimum Rules for the Treatment of Prisoners emphasizes the importance of maintaining contact between prisoners and communities outside an institution. More specifically, the treatment of prisoners should emphasize their continuing part in it. Community agencies should assist the staff in the task of social rehabilitation of the prisoners and support them to maintain relations with their families. Steps should be taken to safeguard the rights relating to civil interests, social security rights and other interests of prisoners.

Rule 79 of the Standard Minimum Rules for the Treatment of Prisoners highlights the maintenance of relations between prisoners and their families. More specifically, special attention should be paid to improvement of such relations between a prisoner and his family as are desirable in the best interest of both.

According to Rule 24.4 of the European Prison Rules the arrangement of visit should be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

According to Article 46, Part III of the Imprisonment Code a convict shall serve a sentence in an institution closest to his/her place of residence or to that of a family member. Exceptions are made if the placement is impossible because of overloading of the institution, or when the placement in another institution is preconditioned by a health condition of a convict, for the protection of his or her safety or upon a consent of a convict.

Monitoring missions to penitentiary institutions in the west of Georgia by the special preventive group members have found that the right of prisoners to visitations cannot be fully exercised because of various reasons. More specifically, one of the most common barriers is the presence of glass partitions and absence of conditions for the protection of confidentiality during family visits in penitentiary institutions. Also, ignorance of a place of residence while placing convicts is yet another of crucial problems.

2.7.1. SHORT-TERM VISITS

Well-being of prisoners and their reintegration after having served their sentence are largely determined by an extent to which they maintain relations with their families and friends. Direct contact and communication with families greatly contributes to rehabilitation of ex-convicts.

Article 17, Part II of the Imprisonment Code determines a limited circle of those persons who are allowed to visit convicts upon a written request filed by the latter. Persons who are allowed to visit a convict for a short-time include: close relatives (child, spouse, a partner, a parent (adoptive parent), stepmother, stepfather, in-laws, stepchild, adopted children and their descendants, grandchildren, sister, brother, niece, nephew and their children, grandfather, grandmother, great grandparents (both

paternal and maternal), uncles (maternal and paternal), aunts, cousins, also a person with who a convict lived with in a same household for a year before imprisonment).

It is worth noting that according to an amendment to the Imprisonment Code of April 16, 2014 (2¹ part was added to Article 17 of the Code), a convict has the right to meet with an individual who does not fall in the above mentioned circle upon a consent of a head of the penitentiary department. The amendment will contribute positively to a resocialization process of convicts.

The Imprisonment Code regulates matters related to the right of convicts to short-term visits. More specifically, according to Article 61, Paragraph B a convict serving in a semi-closed institution has the right to two short-term visits per month and to one more short-term visit as an incentive. Article 64, Clause 1, Article B grants the right to a convict serving in a closed institution to have one short-term visit per month, while additional visit may be allowed as a form of an incentive.

The Imprisonment Code also regulates the right of women and juvenile offenders to short-term visitations. According to Article 72, Part 3, female convicts have the right to 3 short-term visits per month and one additional short-term visit as an incentive. According to Article 70, Part 2, Paragraph A, a juvenile offender has the right to 4 short-term visits per months and two additional short-term visits per month as an incentive.

According to Article 17, Part VII of the Imprisonment Code of Georgia a long-term visit should be implemented under solely a visual control. Exceptions are allowed only under the terms stipulated by the Georgian legislation.

Article 50 of the Decree 97 of the Minister of Corrections of Georgia defines the terms for short term visits. More specifically, short term-visits are allowed in specially designated rooms. Based on the specifics of an institution, visits may take place as a face to face meetings through glass partitions.

It is worth noting that in most penitentiary institutions such visits are implemented in spaces with glass partitions. In such cases prisoners are deprived opportunities for physical contacts with their family members. Exceptions may be allowed upon a consent of a director of an institution when such circumstances as a convict's severe health condition, meeting with an underage child of a convict arise. Although physical partitions are necessary for specific cases, it is important to acknowledge physical contact a norm. In addition, any decision on restricting physical contacts must be reasonable, justified and proportionate to the reason behind such restrictions. Importantly, decisions to restrict physical contact must be subject to regular revisions. Otherwise such interference in prisoners' personal and family affairs shall not be justifiable.

The European Court of Human Rights deliberated on this issue while hearing a case *Messina v Italy*.¹⁸⁶ The case originated in an application filed by a citizen of Italy Antonio Messina (the Applicant). The Applicant alleged in particular infringement of his right to respect for his family life on account of the restrictions on family visits while he was a prisoner, of his right to respect for his correspondence on account of the fact that it was intercepted by the prison authorities, and of his right to an effective remedy against the decisions to extend the period for which he was to be subject to the special prison regime (which stipulated the restriction on the number of visits by the Applicant's family members with maximum two visits for a month). The restrictions also implied supervision on visits (prisoners were separated from visitors by glass partitions). The Court holds that these restrictions represent interference in the Applicant's right to family life promulgated by Article 8 of the Convention. The Court notes that the regime laid down in section 41 *bis* is designed to cut the links between the prisoners concerned and their original criminal environment, in order to minimize the risk that they will maintain contact with criminal organisations. In particular, it notes that as the Government point out, before the introduction of the special regime imprisoned Mafia members were able to maintain their positions within the criminal organisation, to exchange information with other prisoners and the outside world and to organise and procure the commission of serious crimes both inside and outside their prisons. In that context, the Court takes into account the specific nature of the phenomenon of organized crime, particularly of Mafia type, in which family relations often play a crucial role. Moreover, numerous States party to the Convention have high-security regimes for dangerous prisoners. These regimes are also based on separation from the prison community, accompanied by tighter supervision.

In its judgement the Court holds that the Italian legislature reasonably considered such measures to be necessary to achieve the goal. This refers to the critical circumstances of the investigations of the Mafia being conducted by the Italian authorities. However, the Court considered that the extension of the special regime may have violated the right of the Applicant guaranteed by Article 8 of the Convention.

European Court of Human Rights ruled that the right of the Applicant guaranteed by Article 8 of the Convention was not violated by imposing restrictions over visits of his family members. However, interception of the Applicant's correspondence did breach the above mentioned right.

According to Article 121¹, Part III, Paragraph A of the close relatives of convicts/accused (child, spouse, a partner, a parent (adoptive parent), stepmother, stepfather, in-laws, stepchild, adopted children and their descendants, grandchildren, sister, brother, niece, nephew and their children, grandfather, grandmother, great grandparents (both paternal and maternal), uncles (maternal and paternal), aunts, cousins, also a person with who a convict lived with in a same household for a year before imprisonment) may be granted the right to visits upon recommendation of a physician in charge and a consent of a head of the department under the terms ruled by the Minister.

¹⁸⁶ *Messina v Italy*, Judgement of September 28, 2000

THE CASE OF T.P.

A counselor representing the interest of a convict T.P. filed an application to the Public Defender. According to the application and attached materials, the convict has been placed in the Centre of Cellular Technologies and Therapy (K. Mardaleishvili Medical Centre) since October 22, 2013. The convict suffers a serious and incurable illness. In spite of this circumstance, the convict is not allowed to be visited by the family. In the correspondence dated March 24, 2014 and July 29, 2014 (MCLA31400131729 and MCLA11400358221 respectively) the Unit of Legal Regime at the Lead Unit of Security at the Penitentiary Department justified such restrictions with security protection.

It is worth noting that on September 24, 2014 the Public Defender's Office addressed in writing (letter #03-2/12006) the Penitentiary Department of the Ministry of Corrections to follow up with the above described issue.

With the correspondence MCLA91400497739 dated September 27, 2014 the Penitentiary Department notified the Public Defender's Office that as the convict was still in the Centre of Cellular Technologies and Therapy, there was no relevant infrastructure for short-term visits, the Department could not provide security and therefore had to refuse the convict the possibility to meet with the family.

With regard to T.P.'s right to respected personal and family life, the Public Defender's Office appealed to the Ministry of Corrections (recommendation 048/14884). As a response to the recommendation the Ministry notified the Public Defender that granting the right to the convict to a short-term visit was found inexpedient on the security grounds.

A decision on the restriction of rights must be subject to accurate and in-depth revision. In addition, due attention must be paid to a prisoner's right to maintain a certain type of contact with his/her family members in light of protecting important and sensitive public interests. The state bears the responsibility to undertake relevant measures for the protection of security not infringing at the same time prisoners' rights to family life.

In addition, due attention must be paid to measures for the protection of privacy during visitations. More specifically, family members and friends of prisoners should be able to visit prisoners in adequate conditions considering prison conditions and maximum protection of confidentiality. Findings of the monitoring missions indicated to infringement of confidentiality because of inadequate infrastructure in short-term visitation rooms.

According to the Article 46, Part III of the Imprisonment Code of Georgia, a convict shall serve a sentence in an institution closest to his/her place of residence or that of his/her close relative except for the cases outlined in Clause 4 of Article 46.

One of the impediments to the realisation of the right to visits is the ignorance of places of residence while making decisions on placement of prisoners in penitentiary institutions. Prisoners from Eastern Georgia who serve their sentences in penitentiaries located in Western Georgia are the ones who most often experience problems related to the rights to visitations. This category of prisoners also have problems with meeting their lawyers. It is worth noting that the monitoring by the National Preventive Mechanisms found that a massive transfer of prisoners to west Georgia's penitentiaries took place during the reporting period. Normally, neither transferred prisoners nor Public Defender's representatives are notified on the grounds for the transfer from one institution to another. This issue has been repeatedly raised in many reports prepared by the Public Defender's Office.

According to Rule 24.1 of the European Prison Rules should be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons while Rule 24.5 states that prison authorities must assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so. Due to the fact that because of the absence of adequate infrastructure in most of closed institutions prisoners are not able to exercise their right to long-term visits. Nor is one short-term visit in a room divided with glass partitions sufficient to support prisoners to maintain full contact with their families. Therefore it is of utmost importance that the legislation be amended so that prisoners serving their sentences in closed institutions are allowed extra short-term visit.

Overall 44 631 short term visits were paid in penitentiary institutions during 2014. The table below shows the breakdon of this figure according to the institutions:

Institution	Number of Visits
Institution N2	6020
Institution N3	276
Institution N5	1374
Institution N6	2077
Institution N7	345
Institution N8	7950
Institution N9	552
Institution N11	909
Institution N12	1690
Institution N14	2940

Institution N15	7863
Institution N17	12067
Institution N18	35
Institution N19	533

2.7.2. LONG-TERM VISITS

According to Article 8, Part I of the European Convention on Human Rights everyone has the right to respect for his private and family life. Article 23 of the International Covenant on Civil and Political Rights states that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. The right of prisoners to long-term visitations is a part to the right of protection of family. Importantly, maintaining close relations with their families helps prisoners in smoother reintegration with their families and society after the release.

According to Article 17¹, Part I of the Imprisonment Code, a long-term visit is a co-habitation of convicts with persons defined by Part II¹⁸⁷ of the same article in a room located on the premises of an institution. According to Article 62, Clause 2, Paragraph E a convict serving in a semi-closed institution has the right to three long-term visits per, while two more long-term visits may be granted as an incentive.

An amendment to Article 65 of the Imprisonment Code of Georgia enacted on April 16, 2014 is considered undoubtedly positive development. More specifically, according to newly added paragraph D a convict placed in a closed institution has the right to two long-term visits per year and to additional long-term visit per year as an incentive.

There is no adequate infrastructure for long-term visits in Institution 8 and only life sentence prisoners exercise their right to long term visits. As a rule, life sentence convicts are transported to Institution 6 once a month for long-term visits upon prior arrangements with family members.

Similar to Institution 8 there is no infrastructure in Institution 7 to accommodate to long-term visits. It is worth noting that, the life sentence prisoners serving in this institution are not able to exercise their right to long-term visitation.

THE CASE OF V.A.

A.A mother of a convict V.A. serving a life sentence in the Institution N7 of the Penitentiary Department has repeatedly applied to the Public Defender's Office in regards to the infringement of her son's right to long-term visits.

187 'A convict may be granted the right to long-term visits by son/daughter, adopted son/daughter, grandchild, spouse, a partner with who s/he had a child, parents (adoptive parents), grandmother, grandfather, sister and brother'.

The Public Defender's Office reviewed V.A.'s case and concluded that the convict has not exercised the right to visits granted by the law since 2012. To follow up with the case, the Public Defender applied to a director of the Institution N7 (letter 03-3/9073) on July 10, 2014 and to a deputy head of the Penitentiary Department of the Ministry of Corrections on August 4, 2014 (letter 03-3/9788). According to a feedback correspondence (a letter MCLA 41400370176) of August 4, 2014 from the director of the Institution N7 there is no adequate infrastructure in the institution to accommodate to long-term visits, while the Penitentiary Department (correspondence MCLA914003650569 dated July 30, 2014) informed the Public Defender's Office that a decision to grant a right to long-term visits is to be made by a director of a facility.

It is worth noting that V.A. has not exercised his right to long-term visits on August 1, 2012 when the convict was transferred to the Institution N6 to receive a long-term visit from his mother due to the absence of adequate infrastructure for long-term visits in the Facility N7.

With a recommendation 03-3/12102 of September 29, 2014 to allow V.A. to exercise his right to long-term visitation Public Defender applied to the Ministry of Corrections of Georgia but to no avail.

It is worth noting that a recommendation outlined the Public Defender's 2013 report the latter called on the Minister of Corrections to provide the Institutions N7, N8 and N12 with adequate infrastructure for long-term visitations. The Public Defender welcomes the construction of infrastructure in the Institution N12 to accommodate to long-term visitations. Prisoners in the Institutions N5, N18 and N19 are also affected by the absence of infrastructure for long-term visits. Importantly, the Institution N18 homes convicts who are placed under long-term care unit and unable to meet with their relatives because of absence of facility for long-term visitation.

It must be underlined that according to amendments of April 16, 2014¹⁸⁸, the Imprisonment Code of Georgia does not stipulate the right to long-term visits for prisoners placed in high-security institutions. For instance, Article 17², Part VI states that convicts placed in high-risk facilities shall not have the right to long-term visitations.

According to 24.2 of the European Prison Rules communication and visitations may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact. Prohibition of long-term visits for convicts serving in high-risk institutions is more of a punitive character rather than a security measure. Therefore, there is no justification for such a restriction.

Article 17², Part VI restricts the right to long-term visits for convicts under a quarantine regime, also those who are subject to disciplinary punishment or administrative detention.

188 Law of Georgia on 'Amendments to the Imprisonment Code' April 16, 2014 N2241-III.

During the reporting period the Special Preventive Group members were informed by the social service staff of the Institution N14 that a convict placed in a solitary confinement was not allowed to receive long-term visits as per Article 17¹, Part VI of the Imprisonment Code.

This case indicates that the legal norm has been misinterpreted as, in fact, it refers to such cases when a convict is subject to a disciplinary punishment (still into force) and the restriction must not be extended to those cases, when the term of disciplinary punishment is exhausted.

According to Clause 4 of Decree 132 of July 22, 2014 of the Minister of Corrections, costs of long-term visits are paid by a convict or his/her visitor via bank transfer. Fee of a long-term visit amounts 60 GEL for adult convicts and 30 GEL when juveniles are concerned.

It is worth noting that severe economic conditions of a convict and his/her family impede the right of prisoners to long-term visits and prevent the latter to maintain strong relations with their families. The Public Defender welcomes an amendment to Article 17² as a result of which 'long-term visits may be exempt from fees under the terms specified by the Minister. According to Article 4, Clause 4 of Decree 132 of July 22, 2014 of the Minister of Corrections visitors who are registered beneficiaries in the unified registry for socially unprotected households are exempt from paying fees for visits. The Table below provides the breakdown of long-term visits carried out in 2014.¹⁸⁹

N	Penitentiary Institution	Number of Long-term Visits
1.	Institution N2	705
2.	Institution N3 ¹⁹⁰	31
3.	Institution N6 ¹⁹¹	343
4.	Institution N11	19
5.	Institution N12 ¹⁹²	73
6.	Institution N14	722
7.	Institution N15	1559
8.	Institution N17	1780

189 Institutions 5, 7, 8, 18 and 19 have no adequate infrastructure for long-term visits

190 Long-term visits in Institution 3 started in May 2014

191 Including those prisoners who had been transferred to another institution for long-term visits

As for the accused, Article 17, Part X of the Imprisonment Code of Georgia grants them the right to only short-term visits. At the same time, according to Article 123 of the transitional provisions, the accused have the right to maximum four short-term visits a month up to January 1, 2016 upon a consent of a prosecutor or an investigator. This restriction limits contact of the accused with their family members and there is no justification for the prohibition of long-term visits for the accused during a pre-trial period as maintaining contacts and relations with families for this category of individuals is critically important.

The Public Defender's Office requested the information from Tbilisi City Court on the numbers of the accused who were granted the right under Articles 123 and 124 of the Imprisonment Code as well as the number of denials (Correspondence 04-8/1205 of February 17, 2005) for 2014. According to a response dated February 18, 2015 (correspondence 1-04373666) Tbilisi City Court does not run this statistics.

According to Rule 99 of the European Prison Rules, untried prisoners shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners, also they may have additional access to other forms of communication unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

Based on the above said, the Imprisonment Code should be amend in a way to define the rules for untried prisoners to be able to receive long-term visits paying due attention to the interests of investigation.

According to Article 72 of the Imprisonment Code of Georgia women convicts have the right to one family visit per month. Article 17³, Part II of the Code women convicts have the right to receive visits from son/daughter, adopted son/daughter, parents (adoptive parents), sister and brother. Visits shall take place in a specially designated room on the premises of an institution for maximum 3 hours.

According to Rule 27 of the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules), women prisoners must have the right to family visits the same way as male prisoners as the Imprisonment Code grants women convict the right to only 3 hour family visits while male prisoners enjoy 24 hour long long-term visits.

The terms and conditions defined by the Imprisonment Code of Imprisonment contradict the Bangkok rules and are against the inspiration conveyed by the UN Convention on the Elimination of All Forms of Discrimination against Women. According to Article 124¹ of the Imprisonment Code of Georgia, the Ministry of Corrections shall ensure there are adequate conditions in women's and closed institutions for long term visits. Such must be in place before December 31, 2015 latest. It is important that authorities take all relevant measures for creating an environment whereby women prisoners will be able to exercise their right to long-term visits. With this regards the

192 Long-term visits in Institution 12 started in October 2014

Georgian Public Defender in his 2013 report recommend the Minister of Corrections. However, the recommendation is yet to be implemented.

2.7.3. VIDEO VISITS

According to Article 171 of the Imprisonment Code a convict placed in a penitentiary institution has the right to video-visits (direct audio and visual telecommunication) visit with any individuals. Exceptions are convicts serving their sentences in high-security prisons and shoes defined by Article 50, Part I, Paragraph F.

Video-visits play an important role in maintaining relations between prisoners and their family members and positively contributes to the processes of recosialistion of the former. Video visits are of particular importance as both family members and friends and other persons closer to a convict may take part.

According to Clause 2 of Decree 55 of the Minister of Corrections dated April 5, 2011 convicts are eligible to one video visit per ten calendar days from 10:00 to 18:00 and with the maximum duration of 15 minutes.

According to Article 17¹ of the Code video-visits are subject to fees to be paid to a bank account of the National Bureau of Probation and accommodates to the goals and objectives of the Bureau. As per the Minister's decision video-visits may be exempt from a fee. However, Part IV¹ of the same Article provides a condition under which persons defined by Article 17, Part II registered in a unified registry for socially unprotected households and having with the assessment score lower than an official marginal rating are exempt from a fee.

Fees for video-visits are paid by a convict, his/her legal representative or a person willing to participate in a video-visit. The Minister of Corrections makes a decision on selecting the institutions to provide video-visits to convicts, number of video-visits, duration, the amount to be paid for such visits and procedures for the implementation.

It is worth noting that adequate infrastructure for video-visitations is available in only four penitentiary institutions¹⁹³ (Institutions N5, N11, N15 and N17). The table below provides information on video-visits implemented in 2014.

N	Penitentiary Institution	Number of Video-Visits
1.	Institution N5	9
2.	Institution N11	3

193 Institution 16 underwent rehabilitation throughout 2014

3.	Institution N15	106
4.	Institution N17	136

In his 2013 report the Public Defender recommend the Minister of Corrections to provide necessary infrastructure video-visits in all penitentiary institutions. However, the recommendation has not been implemented.

2.7.4. TELEPHONE CONVERSATIONS

Right to telephone conversation is one of the fundamental rights for the convict/untried prisoners which supports to maintaining strong relations with their families and friends. According to Article 14, Part I, Paragraphs A-D, convicted/untried prisoners have the right to telephone conversation and correspondence.

A convict serving a sentence in a semi-closed institution is eligible to four telephone conversations per month each with the duration of maximum 15 minutes at his/her own expense and may also have unlimited telephone conversations of maximum 15 minutes each as an incentive. According to Article 65, Clause 1, Paragraph C, a convict serving in a closed institution is eligible to three telephone conversations each of maximum 15 minutes per month at his/her own expense, while s/he may be granted to right to unlimited number of telephone conversations each of maximum 15 minutes at his/her own expense as an incentive.

It is worth noting that is a prisoner fails to spend a total credit on his/her card, s/he can no longer use the remaining credit for telephone conversations and therefore there is a need to purchase a new card, which incurs additional expenses.

A telephone card is blocked if a prisoner cannot manage to have a conversation within the telephone calls (because of termination of phone connection, dialing a wrong number etc). The monitoring mission found out that there is a constant deficit of telephone cards in a prison shop which restricts prisoners to exercise their rights.

As for untried prisoners, according to Article 124 of the Imprisonment Code they have the right to correspondence at their own expenses and under the administration's supervision and are allowed to have three telephone conversations three times a month upon a consent of a prosecutor or court.

2.7.5. CORRESPONDENCE

According to Article 16, Part I, convicted/untried prisoners have to the right to send and receive correspondence without any limit under the rules defined by the Code except for cases provided in the same Code. According to Part IV correspondences

run by convicted/untried prisoners are subject to scrutiny implying visual examination without reading a content. However the administration has the right to read the content of correspondence and ban sending out provided that there is a reasonable doubt that the dissemination of information provided in the correspondence may threaten public order, security or undermine rights and freedoms of other individuals. Such a decision shall be immediately convey to a sender.

According to Article 16, Part VI of the Imprisonment Code, a representative of the administration has no right to suspend and/or check the correspondence of a prisoner if the addressee is the president of Georgia, the spokesperson of the parliament or the prime minister, member of the parliament, court of law, the European Court of Human Rights, an international organization created in accordance with an international agreement or covenant ratified by the government of Georgia, a Georgian ministry, department, the Public Defender of Georgia, advocate, prosecutor.

It is worth noting that according to Article 79, Part II the prisoner may be restricted in his/her rights stipulated by Paragraph C of the same article upon a justified decision of an investigator or a prosecutor.

Protection of confidentiality pertaining to correspondence by the Public Defender's Office of Georgia is of particular importance. However, the Special Preventive Group revealed cases involving the infringement of correspondence of the Public Defender's Office. For instance, during a visit to the Institution N17, the group members discovered that the correspondence received from the Public Defender's Office had been delivered in opened envelopes by one of the convicts working in the institution's library. In addition, during a visit to the Institution N2, a member of the Special Preventive Group discovered that a staff member of the chancellery had opened the correspondence from the Public Defender's Office and made a copy of the letter. According to the staff member, this was a normal routine in the institution. Therefore, all measures must be undertaken to eliminate this illegal practice.

Correspondences from penitentiary institutions are sent with help of social services. Data obtained from the Penitentiary Department suggest that¹⁹⁴ 3 135 letters of complaint was sent via a complaints box during the reporting period. It is worth noting that 50 per cent of letters were sent from the Institution N17 while Institution 15 accounted for 47 per cent of the correspondence. Prisoners in other institutions do not normally use this mechanism.

194 Written response (128288) from the Ministry of Penitentiary on February 2, 2015

RECOMMENDATIONS

TO THE MINISTER OF CORRECTIONS:

- Ensure the access to short-term visitations without glass partitions
- Ensure the construction of adequate infrastructure for long-term visitations in all penitentiary institutions
- Ensure the construction of adequate infrastructure for video-visitations in all penitentiary institutions
- Ensure a full access to telephone conversations as per the right granted by the legislation
- Undertake all necessary measures to ensure the confidentiality of correspondence granted by the law

TO THE HEAD OF THE PENITENTIARY DEPARTMENT

- Consider a place of residence of family members of a prisoner while making a decision on the placement in a penitentiary institution to ensure that prisoners are able to exercise their right to visitations

A PROPOSAL TO THE PARLIAMENT OF GEORGIA

- Amend the Imprisonment Code to reflect on the need of untried prisoners for long-term visits with due consideration of interests of an investigation
- Amend the Imprisonment Code so that prisoners serving in closed institutions are allowed to increased number of short-term visits

3. SITUATION IN THE AGENCIES UNDER THE CONTROL OF THE MINISTRY OF INTERIOR OF GEORGIA

3.1. INTRODUCTION

The present report provides a review of findings resulting from the monitoring missions by the National Preventive Mechanism at the Public Defender's Office to police departments and agencies under the control of the Ministry of Interior of Georgia.

It is worth mentioning that during the monitoring the members of the National Preventive Mechanism were not impeded by any means and obstruction and moved freely within the district departments and detention facilities under the control of the Ministry of Interior. During the visits all staff members of the departments and detention facilities fully complied with the law and cooperated with the representatives of the Public Defender thus enabling the latter to implement a full-scale monitoring.

According to the Minister of Interior's Decree 108 of February 1, 2010¹⁹⁵ 'the following registration-identification logs of various purposes, electronic systems and documentations will be used to facilitate smooth operation of detention facilities: a) unified electronic database for registering detainees in detention facilities b) detainees registration log c) registration log for detainees' medical assistance d) communications registry e) parcel registry f) protocols of detainees' external examination g) list of prisons subject to guarded transfer h) watches' paper i) protocol of personal examination j) archive card

The monitoring team examined the registry of detainees and the logs of those transferred to detention facilities. The monitoring revealed that often registry and log entries were incomplete and inaccurate. More specifically, it is always clear when a person was detained by the police, when s/he was brought in the police department. Nor was follow up information provided. In addition, numbering tends to be incorrect and no indication of details pertaining to the breach of law. There are many cases when sections are left blank in the logs.

Registries and logs run by the departments of Baghdati, Zestaponi, Tsageri, Sachkhere, Chiatura, Ambrolauri, Tkibuli, Samtredia and Terjola contained the most errors, while Vani, Khoni and Lentekhi district police departments turned out to be most consistent and accurate.

3.2. PROTECTION FROM INAPPROPRIATE TREATMENT

The right to protection from torture, inhuman and degrading treatment is one of the fundamentals of a democratic state, enshrined in Article 3 of the Convention for the

195 Decree 108 of February 1, 2010 of the Minister of Interior of Georgia on *Approving Additional Instructions for Standard By-laws, Statutes of Detention Facilities and Operations of Detention Facilities under the Ministry of Interior*. Annex 3, Article 5

Protection of Human Rights and Fundamental Freedoms.¹⁹⁶

The 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of my kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’¹⁹⁷

The Ministry of Interior has a key role for protecting public security and order in a democratic society. The Georgian legislation defines forms, methods and means of the Police’s operation. More specifically, the law states that ‘a police officer shall protect the principles of the protection of and respect for fundamental human rights and freedoms, the right to non-discrimination, commensurability, exercise of discreet competences, political impartiality and transparency of its operations.’¹⁹⁸ ‘Forms and methods of the Police’s operation shall not violate human respect and dignity, the right to life and physical inviolability and property ownership as well as other basic rights and freedoms. Nor shall he inflict unjustifiable damage to environment.’¹⁹⁹

N	Annual Data	2013	2014
1	Number of placed individuals	16553	17087
2	Placed individuals with injuries	7095	6908
3	Claims against the Police	111	198

There were more than 87 registered cases of filing claims by detainees against the Police in 2014. It is worth noting that during the monitoring visits no complaints or concerns were voiced by the detainees in regards with mistreatment by the staff of detention facilities.

The Special Preventive Group also examined the protocols of external observation of the detainees in detention facilities. In some cases individuals did not raise any claims against the Police noting at the same time that s/he received injuries while being detained. In few cases the degree of described injuries and their location raises doubt

196 The Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, November 4, 1950, Article 3: ‘No one shall be subjected to torture, inhuman treatment and degrading treatment or punishment.’

197 UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (1984), Article 1

198 Police Law of Georgia, Article 8, Part I

199 Police Law of Georgia, Article 9, Part I

that an individual(s) may have been exposed to inappropriate treatment.

During the monitoring mission in October 2014, the members of the Special Preventive Group examined cases of 956 detainees 150 out of which was selected for closer scrutiny. The members found violations of various types in 41 cases. In 17 protocols there were no indications of injuries which were described in the protocols of external examinations upon admission. The table below provides information on these cases.

N	Detention Protocols	protocol of external examination in temporary detentioin facilities ²⁰⁰
1.	No injuries found	Redness on the face
2.	No injuries found	Excoriation on the upper limb and the face
3.	No injuries found	Redness and excoriations on the face, back and upper limb
4.	No injuries found	Scratches on the neck, face and upper limb
5.	No injuries found	Hyperemia in the area of the face
6.	No injuries found	Wound in the area of the face and upper limb
7.	Blank	Excoriation and hyperemia in the areas of face and the back
8.	Blank	Hyperemia in the areas of the neck and the back
9.	Blank	Hyperemia in the areas of the neck and the back
10.	No injuries found	Excoriations in the upper and lower limbs
11.	No injuries found	Hyperemia in the areas of the neck, the back and upper limb
12.	No injuries found	Hyperemia in the areas of the neck, the back and upper limb
13.	No injuries found	Excoriations in the areas of the neck, the back, and lower and upper limb
14.	No injuries found	Excoriation on the lower limb
15.	No injuries found	Hyperemia in the area of the neck and on the lower limb
16.	No injuries found	Excoriations on the lower limb and the face
17.	No injuries found	Extravasation on the upper limb

It is worth noting that in seven cases the injuries in the area of the face indicated in the external examination protocols could not have gone unnoticed by the police officer. Therefore, there is strong presumption that in 17 cases indicated above detainees had sustained physical injuries before they were placed in a detention facility. In addition, in these 17 cases, unlike protocols filed in the detention facility, detention protocols do not provide full information about injuries found on the bodies of the detainees.

In regards to the above said, the European Court of Human Rights states that if a person sustained injuries in custody when entirely under the control of police officers,

²⁰⁰ Information on injuries has been copied without any changes

any such injury originates gives the ground to presume that this person has been subject to inhuman treatment.²⁰¹ In such a case it is for the Government to provide a plausible explanation as to the causes of injuries.²⁰² Therefore, special attention must be paid to providing full written record of bodily injuries during detention in order to present plausible explanation in case a detainee files a claim.

The examination also revealed that in many detention protocols miss a section for reporting on bodily injuries and therefore, there is no written description of injuries in these protocols. Therefore, it is important that every protocol include a section about injuries to be filled out thoroughly with detailed information.

The scrutiny of 150 cases revealed three cases of missing information on bodily injuries in the protocols filed in the detention facility, while such information is found in the detention protocols. Also, there is inconsistency while describing injuries in external examination protocol and in that of detention which points out to discrepancies in documentations which needs to be addressed immediately.

Yet another problem related to the discrepancies found in documentations reporting bodily injuries is the absence of CCTV in a great majority of the police buildings. As a rule, a CCTV is installed only at the entrance thus covering only an outside perimeter. After a detainee is taken inside the police building, it is impossible to establish what conditions the detainee is kept in or whether or not s/he has been subject to physical or psychological abuse.²⁰³ Therefore, we find it critical that the police premises be equipped with CCTVs and video recording kept for a reasonable period of time.

When it comes to effective investigation European Committee for the Prevention of Torture states that even when there is no formal complaint filed it is for the prosecutorial authorities to open and proceed investigation upon the receipt of credible information from any sources on the ill-treatment towards a detainee. Therefore, it is critical that relevant state authorities be responsible to immediately provide information on the ill-treatment to prosecutorial authorities.²⁰⁴

It should also be mentioned that during a visit in a temporary detention facility of Khashuri the Group members found that the Prosecutor's Office had not been informed on bodily injuries identified on one of the detainees. It is important that the responsibility of staff at a temporary detention facility to inform a prosecutor's

201 Bursuc v. Romania, October 12, 2004

202 Selmouni v. France, Paragraph 87

203 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) highlights the importance of CCTV recordings in the police premises. See *Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf/E (2002) 1 – Rev. 2015), Paragraph 36*. Available at: <http://www.cpt.coe.int/en/docsstandards.htm> [Last accessed 27.03.2015]

204 14th General Report on the CPT's Activities, 2004, Paragraph 27

office in case of injuries sustained by a detainee, be clearly defined.²⁰⁵ At the same time, fulfilment of this responsibility must be strictly controlled and relevant measures taken against an individual who fails to comply.

During a visit to a temporary detention facility in Kutaisi, the group members learnt that A.D. and G.K. had injuries in the area of the face. More specifically, A.D. had an extravasation in the right eye, fractions on the right cheek, in the right corner of the lip and on the back of the head. G.K. had fractions on the right side of the nose and the right hand. According to the detainees police officers had beaten them up even though they never resisted the arrest. After that the detainees were transferred to Department 4 where they were coerced and threatened for about an hour to provide a written testimony declaring that they sustained injuries before the detention.

A series of conversations with the detainees in the temporary detention facilities revealed that in many cases detainees cannot manage to communicate their location to their families and therefore they have no opportunity to have a counselor of their choice or receive medical assistance which is a guarantee for the protection from inappropriate treatment of a detainee. The right must be exercised since the very moment of detention. It must be underlined that risks of intimidation, pressure, coercion, humiliation and other types of ill-treatment are particularly high on the first stage of the deprivation of liberty.

Police officers must use minimum force possible and take all measures to avoid physically injuring a detainee. According to the Police Law of Georgia the police must use proportionate coercive measures while performing their duties as the last resort and with the intensity that is necessary to achieve a legitimate goal.²⁰⁶ The type and intensity of coercive measures are defined by a specific situation, a nature of the crime and individual characteristics of an offender in question. At the same time, while using coercive measures the police officer must try to make the damage minimum and commensurable.²⁰⁷

It is worth noting that during monitoring missions carried out by the Special Preventive Group members throughout 2014 it was revealed that detainees had sustained a series of injuries as they were being detained by the police. The injuries were mostly sustained in the areas of the chest as well as lower limbs and the face. As shown in the table provided below the police staff tend to often omit detailed information in detention protocols that would describe the nature of resistance and types of coercive measures to stop the resistance. In addition, there are inconsistencies between the descriptions of bodily injuries sustained by detainees in detention and external

205 It is worth noting that according to Article 32, Clause 2 of the Georgian Police Law a police officer is legally bound to report to his/her supervisor and a prosecutor on any injury sustained as a result of his/him using physical force. At the same time, the Imprisonment Code also obliges that information on bodily injuries sustained by the convict be immediately provided to the prosecutor. More specifically, Article 75, Part V states that the prison administration must immediately notify the prosecutor if there are signs of injuries on the convict's body.

206 The Police Law of Georgia, Article 31, Part I

207 Georgian Police Law, Article 31, Part IV

examination protocols. The above said raises reasonable doubt that the police may have abused their authorities in the indicated cases.

N	Detention Protocol	Detention Circumstances	External Examination Protocol
1	An injury on the right side above the forehead which, as the detainee claims, was sustained before the detention	S/he was detained at 21:15. During the detention s/he resisted a lawful demand from the police	The detainees has an injury on the head. However, s/he claims the injury had been sustained few days before the detention during work
2	Redness above the right forearm, on the left flank, above the right eyebrow and a scratch above the left knee.	S/he was detained at 17:35 while resisting the police who had to use coercive measures against him/her	Redness on the upper side of the right forearm, on the left flank, above the right eyebrow and a scratch above the left knee
3	A scratch would on the left eyebrow, bruise of red and blue in the area of the left eyehole, scratches on the left side of the neck, scratches and redness on the left blade-bone and in the area of the back, redness in the area of the abdomen.	S/he was detained at 17:35 while resisting the police who had to use coercive measures against him/her	Excoriations, extravasations, swellings and contusions in the areas of chest, abdomen, back, lower and upper limbs.
4	An injury at the left ear, scratches in the areas of the neck, face, chest and left hand, extravasation of bluish color on the right shin	S/he was detained at 03:50 while resisting the police who had to use coercive measures against him/her	Extravasation, hyperemia and swelling/contusion in the areas of the face, neck, chest also on the upper and lower limbs.
5	Injuries in a form of extravasations on the left hand and in the upper right part of the back	S/he was arrested at 23:10 while resisting the police officers who were trying to perform their duties	Extravasation and hyperemia in the areas of the back and lower and upper limb
6	The detainee explained that s/he has a scar on the head from a wound several years ago. There are also scratches in the area of abdomen, in the back near the right blade-bone and on the lip. S/he claimed the injuries were sustained while s/he was repairing a car	S/he was detained at 18:20 while resisting the police's legitimate demand	Excoriation, extravasation and hyperemia in the areas of the neck, chest and the back.
7	Scars in the front and back of the body which s/he explained as marks from previous illness, also, injuries on the elbows and a bruise on the right eye.	S/he was detained at 03:15 while resisting the police's legitimate demand	A scar in the area of the face, extravasation
8	A scar from a wound on the lower and upper limbs and in the area of the abdomen which, as the detainee explained were sustained several years ago.	S/he was detained at 21:50 while resisting a patrol inspector. The detainee hit the latter in the face.	Extravasation on the upper limb

The data provided by the Ministry of Interior suggest that²⁰⁸ in 254 out of 6636 cases of detention, detainees sustained bodily injuries before they had been detained while 68 of them sustained injuries after the detention. In 28 cases the detainees inflicted self-injuries while the staff registered 9 cases of casual trauma.

3.3. CONDITIONS IN TEMPORARY DETENTION FACILITIES

The number of temporary detention facilities operating throughout Georgia in 2014 totaled 37²⁰⁹ two of which are located in Tbilisi. The rest includes facilities in the following locations: Mtskheta-Mtianeti, Dusheti, Telavi, Sagarejo, Sighnaghi, Kvareli, Gori, Khashuri, Borjomi, Akhaltsikhe, Akhalkalaki, Rustavi, Tetrtskaro, Tsalka, Gardabani, Marneuli, Kutaisi, Lentekhi, Zestaponi, Baghdati, Chiatura, Samtredia, Abmrolauri, Zugdidi (regional), Zugdidi, Senaki, Khobi, Poti, Chkhorotsku, Mestia, Batumi, Kobuleti, Ozurgeti, Lanchkhuti and Chokhatauri.

According to information provided by the Ministry 17087 individuals were placed in 37 facilities during the year. The table below shows the breakdown of the annual data per facilities.

N	Facility	Detainees	N	Facility	Detainees
1	Tbilisi 1 TDF	859	20	Lentekhi TDF	12
2	Tbilisi and Mtskheta TDF	5351	21	Zestaponi TDF	297
3	Mtskheta-Mtianeti TDF	390	22	Baghdati TDF	83
4	Dusheti TDF	45	23	Chiatura TDF	101
5	Telavi TDF	333	24	Samtredia TDF	302
6	Sagarejo TDF	211	25	Ambrolauri TDF	54
7	Sighnaghi TDF	198	26	Zugdidi regional TDF	338
8	Kvareli TDF	431	27	Zugdidi TDF	518
9	Gori TDF	535	28	Senaki TDF	311
10	Khashuri TDF	428	29	Khobi TDF	233
11	Borjomi TDF	136	30	Poti TDF	166

208 Correspondence 604485 of the Ministry of Interior of March 23, 2015 (registration N3290/15 by the Public Defender's Office)

209 Correspondence 604485 of the Ministry of Interior of March 23, 2015 (registration N3290/15 by the Public Defender's Office)

12	Akhaltshikhe TDF	277	31	Chkhorotsku TDF	183
13	Akhalkalaki TDF	52	32	Mestia TDF	20
14	Rustavi TDF	477	33	Batumi TDF	2039
15	Tetritskaro TDF	27	34	Kobuleti TDF	221
16	Tsalka TDF	46	35	Ozurgeti TDF	171
17	Gardabani TDF	78	36	Lanchkhuti TDF	65
18	Marneuli TDF	893	37	Chokhatauri TDF	28
19	Kutaisi TDF	1178	-	Total	17087

It should be noted that the number of detainees in 2013 totaled 16553 which indicates to an increase in the number as compared to the previous year.

Accommodation in temporary detention facilities must comply with relevant national and international standards. According to Rule 10 of the UN Standard Minimum Rules of the Treatment of Prisoners ‘all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.’

The Georgian legislation ²¹⁰ also regulates conditions of administrative custody. Sanitary and hygienic as well as general conditions should respect the right to respected existence, dignity and honour, inviolability and privacy. The administration is responsible to ensure the compliance of sleeping conditions of detainees in cells with health requirement, natural and artificial lighting, heating, ventilation, relevant sanitary conditions, protection of hygiene in cells. The administration shall also make sure that detainees, at their own expenses, are able to bring in food and clothes as well as receive parcels and that detainees have an access to medical service and are able to be alone in a cell as well as maintain contacts with the outside world and file complaints.

There are no functioning ventilation systems in most of temporary detention facilities in Georgia and small windows are far from being enough to provide natural ventilation and lighting. Nor are cells heated appropriately. To illustrate the findings of the monitoring the cases below delineates the situation in some of the temporary detention facilities.

Kutaisi Temporary Detention Facility has no space for out-walks. There are eight four-

210 Annex 1, Article 4 of Decree 108 of the Minister of the Interior dated February 1, 2010 on *Approving the Additional Instructions for the Regulation of Standard Statutes and Operations of Temporary Detention Facilities under the Ministry of Interior*.

bed, one six-bed and one ten-bed cells in the facility. Three cells²¹¹ are more or less in the need of rehabilitation (there is a moist because of leaking water from the floor above). Sanitary and hygienic conditions in other cells are satisfactory. The space of four-bed cells totals 9.48-9.78 m², ten-bed cells occupy 21.14 m² while six-bed cells are of 16.32 m².

The WCs in the cells are not isolated. Water pipe protruding from the wall at 60 cm height from the floor is used for washing face and hands as well as flushing toilets. Water is turned on from outside the cells. Artificial lighting is provided through a bulb installed in a small window above the cell door, which is always on.²¹²

Lentekhi Temporary Detention Facility is located on the premises of the police department and separated from the rest of the building by metal bars and a wooden door. There are just two two-person cells with the space 4.3 and 4.4 m² respectively. The height to the ceiling is 2.9 metres. There are no windows, ventilation, heating systems, water, tables and chairs in the cells. Detainees use WCs for the police staff. There is no out-walk space in the facility.

There is insufficient artificial lighting in all five cells of **Gori Temporary Detention Facility**. Nor is there any furniture in the cells. There is no closed WC and flushing tap is located in the corridor to be opened by an officer on duty.

There are only four cells in **Khashuri Temporary Detention Facility**. All cells are identical: there is no heating, ventilation and isolated WC.

Cells in **Dusheti Temporary Detention Facility** have concrete floors, walls and ceilings. There is one small window in each of the cells which provides neither natural lighting nor ventilation. The artificial lighting in the cells is insufficient while there is absolutely no ventilation system. Humidity and unpleasant odor are felt in all the cells. There is no space for out-walks.

In **Mtskheta Temporary Detention Facility** floors, walls and ceilings are of concrete. Unpleasant odor was felt inside the cells. Small windows are not enough to provide sufficient lighting and ventilation. WCs in the cells are not isolated. Flush button is outside the cells. One cell in the facility²¹³ is designated for female detainees. It should be noticed that there is no WC in this cell and detainees use shared WC in the facility. What is a positive feature of Mtskheta facility, is that it has the space for out-walks.

Tetrtskaro Temporary Detention Facility has no space for out-walks. Nor is there sufficient heating and adequate lighting and isolated WC. As reported by a director of the facility, detainees are accompanied by several staff members to an outer yard of the facility for out-walks.

There are four cells in **Rustavi Temporary Detention Facility**. Both artificial and natural

211 Cells 4, 7 and 8

212 Electric bulbs are turned on/off from outside the cell.

213 Cell 4

lighting and ventilation are not sufficient. There are no isolated WCs and sinks in the cells and therefore, detainees collect drinking water for a water pipe used for flushing toilets.

Gardabani Temporary Detention Facility was under rehabilitation works during the monitoring mission. It should be noted that the facility is located in the basement of Gardabani District Department of Ministry of Interior's Kvemo Kartli Regional Agency. A monitoring mission to this facility back in 2013 found that the cells did not have natural lighting and ventilation. The Public Defender of Georgia through his reports to the Parliament has repeatedly recommended the Minister of Interior to provide ventilation systems to cells of temporary detention facilities. As found out during the 2014 visit, the ongoing rehabilitation works served to improve accommodation of detainees in the cells as recommended by the Public Defender who welcomes the responsiveness demonstrated by the relevant authorities.

There are six cells in **Marneuli Temporary Detention Facility** to accommodate 6 detainees. Artificial and natural lighting are insufficient. Although there is a ventilation system, it still cannot provide adequate ventilation. WC is not isolated. The facility has the space for out-walks. It is worth noting that when it rains or snows it is not possible to take out detainees as the space is not fit for various climate conditions.

The monitoring group members found out that in one of the cells detainees did not have such hygienic items as soap and toilet tissue.

According to the European Prison Rules 'prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy'.²¹⁴ It should be noted that none of the temporary detention facilities mentioned above has isolated sanitary facility. In addition, the space of the cells fails to uphold standards. The Public Defender has repeatedly raised the issue in his reports to the Parliament. Namely, the Public Defender recommends that the space of 4m² be considered for a prisoner. The same recommendation has been developed by the European Committee for the Prevention of Torture stating that in cells for multiple prisoners the space must be minimum 7m².²¹⁵

Detainees in temporary detention facilities are provided standard food consisting of bread, tea, pate, canned beef and ready-to-eat soup. Considering the fact that some detainees who have to be kept in facilities for 15 days may not have families or friends to provide additional food, the above described package is insufficient as individuals serving administrative sentence must be provided with food which contains vital components for life and health.²¹⁶

214 European Prison Rules, Rule 19.3.

215 European Committee for the Prevention of Torture (CPT), 2010 Report to the Government of Georgia, Paragraph 117

216 Annex 4, Article 2, Part IV of Decree 108 of the Minister of the Interior dated February 1, 2010 on *Approving the Additional Instructions for the Regulation of Standard Statutes and Operations of Temporary Detention Facilities under the Ministry of Interior*.

Finally, it should be noted that there are CCTVs installed in temporary detention facilities, outside cells. However, recordings are not kept within reasonable period of time. We believe that such recordings must be kept within reasonable period of time to serve as evidence should claims be made for inappropriate treatment in temporary detention facilities.

3.4. MEDICAL CHECKUPS IN TEMPORARY DETENTION FACILITIES

According to Article 4, Part II, Paragraph G of Decree 108 of the Minister of the Interior dated February 1, 2010 on Approving the Additional Instructions for the Regulation of Standard Statutes and Operations of Temporary Detention Facilities under the Ministry of Interior, the prison administration shall be responsible to provide medical treatment, and 'if the detainee complains about his/her health condition or there are apparent signs of illness, the officer in charge shall immediately call the Ministry of Interior's medical staff or an ambulance or a physician from the nearest healthcare facility to obtain a credible report on the expediency of keeping the detainee in the facility.²¹⁷ 'if the health condition of the detainee deteriorates, the officer in charge shall be responsible for calling medical staff and make a record on rendered medical assistance in a log for emergency medical assistance to detainees. S/he shall also be responsible for transferring the detainee to the nearest in-patient facility accompanied by the guards.²¹⁸

It should also be noted that according to statistical data provided by the Ministry of Interior, 241 individuals were transferred to healthcare facilities because of deteriorated health condition in 2014. There were 3 registered attempts of suicide by the detainees.²¹⁹

The members of the Special Preventive Group at the Public Defender's Office of Georgia checked the documentation filed in temporary detention facilities in Gori serving Shida Kartli and Samtskhe-Javakheti regions revealing tens of cases occurring in January/February 2014 whereby detainees were not subject to checkups by medical staff upon the admission. The staff of the facilities explained that called medical brigades called to the facility refused to examine detainees in question. Therefore, the staff of the facility had to carry out only external examination of detainees.

It should also be noted that during a monitoring mission to Dusheti Regional Agency of the Ministry of Interior the members of the Special Preventive Group found that in four cases medical brigades had not indicated whether or not detainees had bodily injuries while such injuries had been recorded in an external examination protocol.

During a monitoring visit to Kutaisi Temporary Detention Facility, detainees Z.B. and R.C. informed the monitors that they had been living and working in Tbilisi. They were involved in Methadone Replacement Programme. They said it had been more than

217 Ibid, Annex 3, Article 3, Part II

218 Ibid, Annex 3, Article 5, Part IV

219 In Temporary Detention Facilities of Batumi, Khobi and Sighnaghi

24 hours since the last intake of their standard dosage prescribed by a physician as a result of which they suffered abstinence syndrome. In addition, R.C. said he had diabetes.

With regards to this situation, the members of the Special Preventive Group applied to a director of the facility who, in his own turn, submitted a referral to Kutaisi Regional Addiction Centre which runs the Methadone Replacement Programme. The director also requested guards from the Crime Police. Meanwhile, before a group of guards came to the destination, a counselor from Imereti-Kutaisi Legal Bureau of the Legal Assistance Service talked to R.C.

The same evening, the members of the Special Group met with detainees. As relayed by the director of the Facility, Kutaisi Addiction Centre turned down their request to render relevant medical assistance to the detainee as a result of which a health condition of the detainee considerably deteriorated and an ambulance was called. The physical rendered general medical support.

As the above described situation suggests management of abstinence in detainees who are drug abusers is problematic. To mitigate the situation the Ministry of Labour, Health and Social Affairs on the one hand and the Global Fund on the other must take steps reciprocal steps to ensure that beneficiaries of Methadone Replacement Programme are rendered emergency assistance if the need be. In addition, the Ministry of Interior should undertake measures to ensure the provision of medical assistance to detainees in temporary detention facilities.

RECOMMENDATION TO THE MINISTRY OF INTERIOR

- Undertake all relevant measures to ensure that documentation on detainees are fully filled out
- Ensure that each and every detainee is able to communication his/her whereabouts to family members or close relatives, notify on his/her conditions and also inform any creditor or other physical or legal body towards whom s/he is legally bound.
- Ensure that each and every detainee is able to communicate the fact of his/her detention as well the whereabouts to any person named by the latter, as well as the administration of his/her work and education institution
- Ensure that the responsibility of staff of temporary detention facilities to immediately notify a prosecutor on any bodily injuries sustained by detainees is embedded in a legal act. In addition, exercise strict control over the implementation of this responsibility and take relevant measures towards persons in charge.
- Install CCTVs in the premises of all police agencies and keep recordings for a reasonable period of time.

- Keep recordings from CCTVs in temporary detention facilities for a reasonable period of time.
- Install central heating in cells of temporary detention facilities and ensure the provision of adequate lighting and ventilation in cells.
- Completely isolate water closets in all temporary detention facilities
- Create conditions for personal hygiene for detainees in every temporary detention facilities including the installation of taps, sinks so that detainees can have an unrestricted access to water and sanitation.
- Provide individual beds instead of wooden planks for detainees
- Provide every detention facility with adequate food with necessary components
- Ensure the access to timely and adequate medical service to detainees in temporary detention facility

RECOMMENDATION TO THE CHIEF PROSECUTOR OF GEORGIA

- Ensure timely and effective investigation of all cases involving ill-treatment

4. PROTECTION OF MIGRANTS FROM ILL-TREATMENT

While international law permits states to establish immigration policies and deportation procedures, it does not grant them discretion to violate human rights in the process. The prevention of ill-treatment of migrants implies the compliance of migration policies with the international standards protecting human rights. More specifically, the prevention rests upon fair treatment of migrants, proportional sanctions, freedom from arbitrary detention, respectful deportation procedures and provision of migrants with adequate accommodation.²²⁰

4.1. ALIEN REMOVAL/DEPORTATION PROCEDURES

Procedures related to deportation and removal of aliens from Georgia are regulated by the Law of Georgia on Legal Status of Aliens and Stateless Persons as well as by Decree 525 of the government of Georgia on *Approving the Rule for the Removal of Aliens from Georgia*. Importantly, the removal of an alien from the country should take place in accordance with the Georgian legislation and in compliance with the principles of the international law.

Closer look at the migration regulations revealed that a series of flaws which were reflected in remarks of the Public Defender of Georgia on decrees and by-laws submitted to the government of Georgia on August 14, 2014.

According to Article 2, Clause 4 of Decree 525 of the government of Georgia on *Approving the Rule for the Removal of Aliens from Georgia*, in the process of removal, an alien must have an access to legal counseling. In spite of this regulation, legal counseling cannot be qualified as comprehensive legal assistance, as it is important that an alien be rendered exhaustive legal assistance while making a decision on the removal of an alien from the country. Comprehensive legal assistance implies filing legal documents, representation in the court of laws and an administrative agency.

It should be considered that the law of Georgia on Legal Assistance defines the circle of those individuals who are eligible for legal assistance. However, an alien to be removed does not fall under this category. Therefore, the mentioned law needs to be amended accordingly.

Article 14, Clause 1 of the decree lists those factors which should be considered by an authorized agency of the ministry while making decision to remove an individual from the country with escort. It would be expedient to upgrade the mentioned norm to consider such cases when, due to the personality of an alien, the authorized agency either has information or grounds to presume that the alien may be subject to violent act while leaving the country.

According to Clause 3 of the same article, an alien will be escorted in a specially

220 Human Rights Watch, „Unfair Immigration Policies“ Available at: <http://www.hrw.org/united-states/us-program/unfair-immigration-policies> [Last accessed 24.03.2015].

equipped vehicle to a place of departure as escorting a foreign citizen in inadequate conditions may cause inhuman or degrading treatment of the alien.²²¹ It is important that adequate equipment for a vehicle be defined by the normative act referred above. More specifically, vehicles should be equipped in such a way to ensure adequate lighting, ventilation, ample space, the access to food, water and medicaments. The escorted should also be given the possibility for taking a break in reasonable intervals.²²² Special needs of women, children, elderly and persons with disabilities must be considered while providing escort. It is also important that handcuffs and other means of restraint are used as the last resource and situations defined by the Georgian Police Law.²²³

According to Article 14, Clause 6, the results of medical examination must be handed in to a chief of escort which may lead to divulging confidential information pertaining to an individual to be deported. It is desirable, that a copy of a medical report be provided to an alien, while an original will remain within an authorized agency of the Ministry.

According to Article 14, Clause 14 of the same Decree, if persons in charge for taking relevant measures to assist escort staff in emergencies or hazardous situations are not available in a recipient country, escort staff are authorized to undertake all reasonable and relevant measures to prevent a subject of the removal from escaping, inflicting self-injuries or harming other individuals or damaging property owned by others. The above described norm allows unrestricted discretion for escort staff in regards to an individual subject to the removal. It is expedient to specify those measures or means that escort staff are eligible to use to avoid the implementation of incommensurable measures.

4.2. PLACEMENT OF AN ALIEN IN A CENTRE OF TEMPORARY ACCOMMODATION

According to Article 2, Clause 4 of the Decree 631 of the Minister of Interior on *Approving the Rule of the Detention and Placement of the Alien in Temporary Accommodation* a person authorized for the detention has the right to superficial checkup and external examination of items as per the rules determined by the legislation. It is important that the same article defines what superficial examination of items implies and enshrine the following legal guarantees for the protection of rights of a subject of examination/checkup which specifically implies: 1. Superficial examination of an individual means touching his/her clothes on the surface either by hands or with a special device or

221 With regards to prisoners, *Ananyev and Others v. Russia*, with regards to aliens *Georgia v. Russia (I)*, Para.196

222 A judgement on the case *Yakovenko v. Ukraine* the European Court of Human Rights, based on a report by the European Committee against Torture deliberated on conditions of the transportation and highlighted several important factors in their judgement.

223 For the use of handcuffs and other means of physical restrains by escort staff refer to the 13th General Report of the European Committee against Torture. Available in English: <http://www.cpt.coe.int/en/annual/rep-13.htm> [last accessed 25.03.2015].

an instrument; 2. Superficial examination is conducted a person of the same sex as a subject of the examination who is authorized to do so. In cases of emergency any authorized person regardless of sex may be allowed to examine but only with a special device or an instrument; 3. Superficial examination of an item implies visual examination in the presence of an owner 4. At the same time it is important that a relevant protocol be filed according to a rule determined by the legislation to convey the findings of the examination, or the information be indicated in a detention protocol.²²⁴ 5. It is imperative that an entry be made in a detention protocol on existing bodily injuries (if any) of the detainee.²²⁵

According to Article 14, Clause 6, the results of the examination must be handed in to a chief of escort which may lead to divulging personal data of a person to be removed and therefore, it is recommended that the latter is provided with a copy of the protocol while an authorized agency of the ministry keeps an original.

It is important to reword Clause 1 of Article 7 so that it reads as follows: 'before the placement of a detained alien in a centre, an authorized staff members shall make an inquiry about his/her health, conduct a thorough external examination in a separate room in the absence of others. The staff member shall then compile a protocol with exact date and time, and indicate his/her name, surname, position and rank of the examiner and personal information of the detained alien (name, surname, paternal name, date and place of birth), types of bodily injuries (if any) sustained by the detainee as well as explanation provided and claims voiced by the latter.'²²⁶

It is undoubtedly a positive fact that Article 7 of the Decree stipulates the provision of medical checkup and additional tests for detained aliens upon their admission to temporary accommodation centre. However, neither Article 7 nor Article 8 defining the rights of the detained aliens, says anything about the right of an alien placed in temporary accommodation to receive timely and adequate medical assistance at any time either at his/her own or at the state's expenses. Nor do mentioned articles indicate anything about regular medical checkups.

4.3. GUARANTEES FOR THE PROTECTION OF THE RIGHTS OF DETAINED ALIENS

The guarantees for the protection of detained aliens are enshrined in Article 66 of the Law of Georgia on Legal Status of the Alien and Stateless Persons. More specifically these guarantees include the protection of aliens placed in temporary accommodation centres from discrimination, degrading or humiliating treatment, the treatment of aliens with respect for their sex, age and cultural background, the protection of the principle of family unit if a family is placed in a temporary accommodation centre, the

224 It is important to harmonize a draft law with Article 22 of the Police Law of Georgia

225 As in an administrative detention protocol

226 As determined by Article 3 of *Additional Instructions for the Regulation of the Temporary Detention Facility* approved by Decree 108 of February 1, 2010 of the Minister of Interior

protection of the rights of minors and separation of men and women. In accordance with Article 30 of the same law, aliens have the right to healthcare as per the Georgian legislation. Article 12, Part I of the International Covenant on Social, Political and Cultural Rights the states parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners also highlights the right of prisoners to medical services.

Based on the above said, it is recommended that the normative act clearly define the right of an alien placed in a temporary accommodation centre to receive adequate medical service at his/her expenses as well as provided by the state.

It is important that the normative act clearly outlines the rights and guarantees of legal protection for detained aliens. Accordingly, the following issues need to be identified: 1. the right of the detained alien to be introduced to his/her rights and responsibilities in a language that s/he comprehends and to a service of an interpreter; 2. The right of a detained alien to seek and be granted with an asylum as per the Georgian Constitution, international covenants to which Georgia is a signatory country and other normative acts; 3. Status-appropriate treatment of a detained alien²²⁷ 4. Protection of the personal safety; 5. Contact to the outside world; 6. Sending and receiving parcels and remittance; 7. Access to information through printed and other media, as well as to fiction and non-fiction literature; 8. Right to making complaints, claims including confidential complaints 9. Adequate living conditions, nutrition, personal hygiene, clothing 10. The right to recreation, spend time on fresh air and rest; 11. Possibility for meeting special needs 12. Right to exercise religious practices; 13. Direction to rights and freedoms enshrined in the Constitution of Georgia, international covenants to which Georgia is a signatory country, other laws and by-laws. Ensuring access to information pertaining to these rights and freedoms is also very important for detained migrants.²²⁸

Article 9 of Decree 631 of the Minister of Interior on *Approving the Rule for the Detention and Placement of an Alien in a Temporary Accommodation Centre* is inconsistent with the Article 31 of the Police Law of Georgia (referring to the right to coercive measures). Article 30 of the law defines notion of coercive measures as the use of physical force, special means and firearms by the police for the implementation of their functions. According to Clause 1, Article 31 in order to fulfill their obligations the police officers are authorized to use coercive measures as a last resort and proportionally with the intensity which is necessary to achieving a lawful goal. Article 9 of the Decree does not refer to such important issues as the necessity to use force and proportion. Nor does it reflect on the warning before engaging physically as stipulated by Article 31 of

227 UN Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment (1989), Principle 8.

228 The list of issues has been compiled in accordance with Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention. Available at: <http://www.unhcr.org/505b10ee9.html> [last accessed 28.03.2015].

the Police Law.²²⁹ The same article also regulates issues related to medical assistance after using the force and notification of such occurrence to an immediate supervisor or a prosecutor. Therefore, it is important that Article 9 of the bill of decree reflect all important aspects which are covered by Article 31 of the Police Law.

Decree 631 of the Minister of Interior on *Approving the Rule for the Detention and Placement of Aliens in Temporary Accommodation Centre* should reflect the provision of Article 35 of the Police Law which bans using physical force, special means and firearms against the pregnant, minors, persons with disabilities or individuals with clear signs of old age except for the cases when such persons are armed and resist, or attack in a group endangering lives and health of the police and other persons, also if it is the last resort to deter such attack or resistance.²³⁰

Based on the above said, it is important to further improve by-laws and normative acts so that they are in full compliance with standards enshrined in international and national legislation.

4.4. MONITORING OF JOINT OPERATION FOR THE RETURN OF MIGRANTS

In 2014 the National Preventive Mechanism acquired a new function of monitoring a joint operation of the return of migrant. The monitoring was implemented within the frames of the Agreement on the Readmission of Persons Residing without Authorisation signed between Georgia and the EU.

On November 19, 2014 staff of Prevention and Monitoring Department at the Public Defender's Office implemented the monitoring of deportation of 18 citizens of Georgia from the EU countries. The citizens were deported from France, the Netherlands, Germany, Denmark, Poland and Lithuania. Border police of France and Poland handed in deportees to the Georgian side (escort staff assigned by the Ministry of Interior) on plane boards in Paris and Warsaw respectively.

European Union agency FRONTEX coordinated the process of deportation. Staff of Migration Department and patrol police of the Ministry of Interior of Georgia represented the Georgian side in the operation.

Staff members of Prevention and Monitoring Department at the Public Defender's Office travelled from Tbilisi to Paris and Warsaw for monitoring purposes.

Deportees were examined with a metal detector by the Ministry's staff after which they

229 Police officer shall give a prior warning to a person before restoring to physical force, special means or firearm and allow a reasonable period of time for following his/her lawful demand except for cases whereby delay may cause harm to health or life or cases whereby such warning is unjustifiable or impossible.

230 Use of force must be strictly regulated in relevant articles of the resolution of the government of Georgia on approving the rule for the removal of aliens in respect with provisions of the Police Law and international standards.

were allowed to take their respective passengers seats. One or two representatives of the Ministry sat next to each deportee. Handover, examination and journey involving the returnees were monitored continuously.

While on plane, the members of the National Preventive Mechanisms talked to the deportees who voiced no concerns or claims. Nor were there any kinds of incidents during the return. Escort members did not use force or any special means. No violation of the rights of the deportees had been observed.

RECOMMENDATION TO THE GOVERNMENT OF GEORGIA:

- With regards to Decree 525 of the Government of Georgia on *Approving the Rule of the Removal of Aliens from Georgia*,
- To replace a term *legal counseling* in Article 2, Clause 4 with *legal assistance*, which will enable an alien to be able to receive not only legal counseling, but also to be represented in the court of law and administrative agencies.
- To add a provision to Article 14, Clause 1, under which an authorized agency knows or has the ground to assume, that because of personal characteristics of a subject of the removal, s/he may be subject to abuse or violent act while leaving the country
- Article 14, Clause 3 to specify basic requirements for adequately equipped vehicle.
- Amend the Article 14, Clause 6 in such a manner to allow an alien receive a copy of his/her medical report rather than a chief of escort and an authorized agency of the Ministry have the original.
- Article 14, Clause 14 to specify what special means escort staff are allowed to use during emergencies

RECOMMENDATION TO THE MINISTER OF INTERIOR OF GEORGIA

- With regard to Decree 631 on *the Rule of the Detention and Placement of an Alien in a Temporary Accommodation Centre*,
- Article 2, Clause 4 must specify the meaning of superficial examination and superficial examination of items and identify in detail the guarantees for the protection of the rights of a subject of examination
- Add Article 7, Clause 1 a provision to reflect on the need of a detailed protocol on the external examination and observation of a detained alien.
- Add an entry on the right of a detainee on a temporary accommodation centre to timely and adequate medical service at any time at his/her own or the State's expenses to Articles 7 and 8.
- Harmonize Article 9 with the Police Law which describes procedures and

circumstances of using coercive measures.

- The Decree to clearly outline the rights of detained aliens and their legal guarantees.

5. PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES IN PENITENTIARY INSTITUTIONS, IN FACILITIES OF VOLUNTARY AND REQUIRED MENTAL HEALTH - ANALYSIS OF THE IMPLEMENTATION OF RECOMMENDATIONS

5.1. INTRODUCTION

The present report provides information on the implementation of recommendations in a special report of the Public Defender on the situation pertaining to persons with disabilities placed in penitentiary institutions, as well as in voluntary and required mental health facilities and temporary detention facilities.²³¹ For the purpose of assessing the process of the implementation of the recommendations and with a financial support of Open Society – Georgian Foundation, a control visit was paid to Penitentiary the Institutions N2 and N3, medical facility for the treatment of untried and convicted prisoners and Naneishvili National Centre for Mental health (hereinafter referred as National Centre for Mental Health) on December 4-12, 2014. The institutions were selected based on the following criteria:

1. During a visit to the Institution N2 in November 2013 the team found out that the institution had the highest number of persons with disabilities as compared to other institutions.
2. Penitentiary the Institution N3 is a new rehabilitated facility opened in May 2014 and therefore it was interesting to observe to what extent it met the needs of persons with disabilities.
3. There is a unit specialising in providing long term care and rehabilitation programme for persons with disabilities in the medical treatment facility for untried and convicted prisoners. In addition, there is a mental health unit in the facility. The ministry of Corrections considers the opening this facility as one of the key instruments for addressing problems that prisoners with disabilities faced.
4. The National Centre for Mental Health represents a voluntary and required treatment facility for convicts.

In order to check on the status of recommendation the Ministries of Corrections and Labour, Health and Social Affairs were requested to provided relevant information.

231 Situation pertaining to Persons with Disabilities in Penitentiary Institutions, Temporary Detention Facilities and Required Mental Health Institutions. Available at: <http://www.ombudsman.ge/ge/projects/angarishebi/ssnp-mdgomareoba-fsiqatriul-dacesebulebebshi.page>

5.2. THE STATUS OF THE IMPLEMENTATION OF THE RECOMMENDATIONS – PENITENTIARY INSTITUTIONS

5.2.1. PROCESSING STATISTICAL DATA FOR THE INMATES WITH DISABILITIES

An inspection revealed that social services at the penitentiary institutions file monthly reports and submit to the Penitentiary Department. Reports normally include information on inmates in the institution and indicate whether or not an inmate has any form of disability. It should be noted that processing data in this manner only produces information on the number of prisoners with disabilities in a particular institution.

It should also be noted that there are no criteria to determine a disability status of prisoners in penitentiary institutions which not only prevents local staff from running valid statistics, but also questions the accuracy of these statistical data.

Certain criteria for registering prisoners with disabilities were used only once in 2014 in the Institution N2. For this purpose the medical staff filled out a form provided by the Medical Department of the Ministry of Corrections designed to assess physical and mental health status of inmates in the institution.

It is said that the registration of prisoners with disabilities took place only once and that it is not regularly practiced. .

5.2.2. DEVELOPING A MECHANISM FOR THE IDENTIFICATION AND ASSESSMENT OF PRISONERS WITH DISABILITIES

There are no standards in place in the penitentiary system for the initial assessment of physical and mental health of prisoners. Nor is there a system of managing detected problems. A GP is responsible for the initial examination of prisoners upon their admission to penitentiary institutions.

Examination of prisoners' mental and physical health upon their admission to an institution is a formal procedure which does not involve a multidisciplinary assessment or any measures to identify somatic, psychological/psychiatric, social and legal needs of inmates. Therefore, there is no practice of planning and implementing interventions aiming to manage and address identified problems.

Mental problems induced by imprisonment and relatively light mental disorders usually go unnoticed.

Prisoners are not examined for their mental health upon admission to an institution. It is very rare that medical staff make an entry on mental health status which is far from being exhaustive and complete. Even when such entries are made in medical records, medical staff or a GP do not check a prisoner's mental condition because of lack of

relevant qualification. Psychiatrists are only consulted later on and mostly after acute psychotic symptoms start to show up or prisoners' behaviors are clearly inadequate.

According to a chief doctor of the Institution N2 of the Penitentiary Department general practitioners are the ones who carry out primary assessment of the disabilities in inmates upon their admission. A special form is filled out if an inmate shows any signs of indicating to disabilities. The form, which contains criteria to determine whether or not an inmate has disabilities, was provided by Medical Department of the Ministry of Corrections. It is worth noting that as relayed by the chief doctor, such forms were filled out just once. In 2014 up to the day of the monitoring the institution provided information only on 10 inmates. As for determining the status of inmates suffering mental health conditions, a decision is made in medical treatment facility for untried and convicted prisoners only after they have been transferred to this facility.

The facility for treating untried and convicted prisoners has not developed formalized criteria for the identification of persons with disabilities. According to the facility's administration consultations on developing criteria has been ongoing for the last six months within the Ministry of Corrections. The staff at the Institution N3 has yet to develop instruments for the identification of persons with disabilities and their specific needs.

Determining the status of disability for untried and convicted prisoners in the penitentiary system still remains a problem, which in its turn makes it impossible to meet the needs of prisoners with disabilities and provide them with adequate services while they are serving their sentences in penitentiary institutions.

There is no structured information available to staff of penitentiary institutions on those inmates who have their disability status determined before their imprisonment.

5.2.3. DEVELOPING STANDARDS FOR THE CARE OF PRISONERS WITH DISABILITIES ADAPTED TO PRISON CONDITIONS

In light of problems related to statistics and the identification of the needs of prisoners with disabilities, as well as of the scarcity of specialized services, penitentiary institutions including newly opened ones, have no standards for the care of inmates with disabilities adapted to prison conditions. Therefore, it can be assumed that the recommendation has not been implemented.

5.2.4. INTRODUCING SPECIALIZED SERVICES FOR PRISONERS WITH DISABILITIES (LONG-TERM CARE, REHABILITATION, PERSONAL AIDE)

Prisoners with disabilities may suffer from health conditions which are specific to their status. Failure to meet the special needs may result in drastic decline of their functional status and even more restricted abilities to take care of themselves, dislocate in the

space and perform other basic activities. Prisoners under this category require regular physical and occupational therapy, auditory and eyesight checkups etc in order to meet their special needs. Access to those auxiliary instruments without which they cannot exercise their rights is equally important. These auxiliary instruments include but are not limited to wheelchairs, hearing aids, walking sticks, prosthetic and orthotic devices.

Persons with disabilities may be in dire need for psychiatric services in penitentiary institutions. Inmates with sensorial restrictions (the blind, the deaf, those with hearing impairment etc) or those having poorly developed communication abilities are frequently exposed to such needs especially when they are isolated or subject to abuse and bullying. The need for medical services becomes acute in the absence of psychological counseling. The importance of an easy access to healthcare services for inmates with disabilities is highlighted in UN's Handbook on Prisoners with Special Needs.²³²

None of the facilities which were re-monitored had specialized services for inmates with disabilities. *Long-term care service* was introduced in the Institution N18 for the treatment of untried and convicted prisoners in July 2014 which also offers the service of personal aides provided by health-nurses. The service has the capacity to support 52 beneficiaries and provide both social and medical rehabilitation. However, a rehabilitation room is still closed and inaccessible to prisoners with disabilities. It is worth noting that none of the rehabilitation programmes functioning in penitentiary institutions had a beneficiary with disabilities.

Sport and recreational activities aimed to maintain and restore physical and psychosocial functions are highly recommended for the prevention of the deterioration of physical and functional status of prisoners with disabilities.

Occupational therapy to help prisoners acquire skills for maintaining/improving personal care is also highly recommended. There were no such rehabilitation programmes developed in any of the monitored penitentiary institutions. There were only singular cases of psycho-social rehabilitation measures undertaken in relation to inmates in the treatment facility for untried and convicted prisoners.

Although there is one aide in the treatment facility for untried and convicted prisoners, but one person is hardly enough to assist all patients with mobility problems. This is the reason why the functions are also performed by officers on duty. A patient G.M. has difficulty in dislocation due to the damage to central nervous system sustained in the penitentiary system. In addition, s/he also suffers from chronic dysfunction of small pelvis cavity organs. The patient often finds it difficult to go to toilet on time and therefore has to call officers on duty for help rather than the personal aide. S/he often needs wet tissue papers to maintain personal hygiene which is not available to him/her.

232 United Nations Office of Drugs and Crime (2009). Criminal Justice Handbook Series, Handbook on Prisoners with disabilities. ISBN 978-92-1-130272-1

There is no staff assigned to aid prisoners with disabilities in penitentiary the Institution N3. A chief doctor of the Institution N2 explained to the team that there is only one wheelchair in the facility currently used by one of the inmates. If there is a need for a wheelchair upon the admission of an inmate with disabilities they have to request additional wheelchair from the Medical Department which is a time consuming procedure.

5.2.5. ENSURING PHYSICAL ACCESS AND ACCESS TO SERVICES AND INFORMATION

According to the Convention on the Rights of Persons with Disabilities, access refers to not only physical environment, but also to accessibility of information, social programmes etc. Ensuring access with a broad meaning of the word for prisoners with disabilities is critical so that the latter can enjoy their rights and freedoms on an equal basis for others. A principle of reasonable accommodation must be employed in order to ensure accessibility for prisoners with disabilities. Reasonable accommodation means the adaptation of environment, programmes and specific activities to special needs of such prisoners.

The monitoring mission also aimed to assess the progress of the implementation of those recommendations which had been developed to address the issues related to access for prisoners with disabilities in penitentiary institutions. The monitoring team closely examined the status of the implementation of the recommendations during the renovation of infrastructure in the penitentiary the institution N3 as well as in the facility for medical treatment of untried and convicted prisoners.

5.2.5.1. PHYSICAL ACCESS

A unit for the special care of prisoners with disabilities was opened on the third floor of the medical treatment facility for untried and convicted prisoners. However, the monitoring mission found that prisoners with disabilities in this facility face serious problems in terms of exercising their rights and accessing physical environment.

There is a ramp on the entrance stairs to the facility with the decline of 26.4 per cent (versus standard 6 per cent, ≤ 6 per cent)²³³. The stairs to the corridor leading to out-walk space are equipped with a ramp with the decline of 15 per cent. Prisoners with disability can use a shared bathroom located on the third floor. The bathroom consists of four semi-isolated shower cabins. There is a chair equipped with a removable tap in one of the shower cabins. The height of the step to the door of the cabin is 30 cm while the width of the door is 66 cm. There is a ramp with without a handrail with the width of 66 cm (versus standard 120 cm) and the height of 30 cm at the entrance. The decline of the ramp is 44 per cent.

233 Decree 41 of the government of Georgia dated January 6, 2014 on *Approving Technical Statute for the Spatial Arrangement, Architectural and Planning Elements for Persons with Disabilities*

There are three hospital wards in the long-term care unit which are equipped with adapted WCs for prisoners with disabilities. There are no thresholds at the entrance doors of the wards and handrails installed at the toilet pans. There is sufficient space in WCs.

The monitoring visit found that there are several prisoners in wheelchairs who are accommodated in the wards which are not adapted to their special needs. There are no handrails at a toilet pan and a sink in one of the wards which also homes a prisoner in a wheelchair. The width of the WC door is 66 cm, an ascend - 11 cm without a ramp. The width of the space to the right of the toilet pan is 42 cm (versus standard 90 cm). The width of the corridor at the entrance to the ward is 88 cm, to the WC 66 cm (standard – 120 cm), a pathway along the bed is 112 cm (standard – 150 cm). The prisoner living in the ward explained that it was impossible for him/her to enter the WC in a wheelchair and therefore, s/he had to lean on various objects on the way to the toilet which caused unbearable pain. The patient was not able to turn on and off light independently and s/he had to call one of the staff members. S/he also found it difficult to reach for a handle to open a window.

A blind prisoner lived in a ward which was not adapted for special needs. As the prisoner explained he tried to survive independently and would request assistance only as the last resort. He needed to shave and the administration had told him that they would call a barber from the Institution N8. He had his nails cut three days after he had made a request. The patient reported that the administrative staff regularly helped him reach the bathroom, open a tap, dial numbers on the phone even though they were not officially tasked to do so.

The monitoring mission also revealed that prisoners with disabilities in the Institution N3 experience serious problems in exercising their rights. The monitoring team talked to a prisoner in a wheelchair who lived in a ward which was not adapted to his special needs. The height of the entrance to the WC was 25 cm and had no ramp. The prisoner explained that as he was unable to independently use the toilet he had to be assisted by a prisoner who performed housekeeping duties.

The situation in terms of ensuring access for the prisoners with disabilities in the Institution N2 had not much changed. The monitoring team talked to prisoners with disabilities currently in the medical unit. Only one of them used wheelchairs, while the other one did not have one in spite of his diagnosis (polyneuropathy) and disability to walk independently. The latter explained that he never asked for a wheelchair as there was not enough space in the cell for a wheelchair. Measuring the cell corroborated that the space was hardly enough to allow the prisoner dislocate in a wheelchair. The width of the space between beds in the cell did not exceed 45 cm (versus standard 150 cm), while a step to a WC was 37 cm and had no ramp. The prisoner had reportedly asked the administration to install steps to the WC but to no avail. Nor was the ward of another prisoner in wheelchair adapted to special needs. The space in the ward allowed movement of a wheelchair, but similar to the previous case, a 36 cm step to

a WC had no ramp. The prisoner had difficulties using a sink as its height (86 cm from the floor) did not allow him to remain seated in a wheelchair. Instead he had to stand up, lean on one leg and reach for the sink which caused him severe pain.

None of the cells in Penitentiary the Institution N2 is adapted to special needs of prisoners with disabilities (the similar situation as found in the Institution N3). The monitoring group identified three prisoners with apparent signs of disability. A prisoner using a wheelchair had been placed in a cell which had no adapted infrastructure to accommodate to special needs of the prisoner with disabilities.

There is no call button to be used by individuals with disability to call for medical staff or prison staff in the long-term care unit of the treatment facility for untried and convicted prisoners.

In spite of the fact that the Institution N3 is newly rehabilitated, it is far from being adapted to meet the basic needs of prisoners with disabilities.

5.2.5.2. ACCESS TO SERVICES AND INFRASTRUCTURE

Out-walk spaces in the treatment facility for untried and convicted prisoners were located mostly outside the main building. The spaces were covered with just metal nets. All interviewed prisoners with disabilities stated that they were reluctant to go out for a walk in the winter because of cold. However, they can access phones only by going out to those places as phones are installed on the outside walls. It is worth noting that phones were fixed on the walls at 150 cm height which made it impossible for prisoners with disabilities to independently use phones. Therefore they would ask prison staff to help them dial numbers.

There is a complaints box attached to the wall of a corridor leading to a bathroom on the third floor. The box is fixed at 170 cm from the floor which means that prisoners in wheelchairs cannot drop complaints independently which in its turn compromises the confidentiality of complaints. On the other hand, decline of a ramp at the entrance of the bathroom (44.8 per cent) prevents prisoners with disabilities to enter the bathroom without help.

Access to a local shop is a serious problem for prisoners placed in the treatment institution for untried and convicted prisoners. To be exact, the shop does not work and patients are only allowed to purchase tobacco, safety match, single-use razors and phone cards from the shop at the Institution N8 while other products and goods are unavailable to the patients. It is worth noting that the inaccessibility to the shop severely affects patients under a long-term care as they are the ones who spend the longest period of time in the facility.

There is a library in the same facility with quite outdated books. There is no catalogue to help prisoners choose books they prefer. Interviewed prisoners stated that they

are not taken to the library to personally select books and they only choose books according to favourite genres. Likewise, the Institution N2 has no book catalogue either.

A phone in the Institution N3 of the Penitentiary Department is fixed on a wall at 150 cm which makes it difficult for a prisoner in a wheelchair to dial a number while a complaints box is installed at the entrance of the out-walk space at 155 cm. A corridor leading to the out-walk areas is not adapted for persons in wheelchairs as it has three thresholds of 4 cm each and three stair cases.

Out-walk areas in the Institution N2 of the Penitentiary Department are located on the fifth floor, while a medical unit occupies the third floor. However the stairs are not adapted as a result of which prisoners with disabilities report that they often refrain from going out for a walk. A prisoner with polyneuropathy stated that he had been out only three times for 1 year and 7 months he had spent in the institution.

There are no information boards in the treatment facility for untried and convicted prisoners while such boards in the Institutions N2 and N3 are fixed in such a manner that makes it difficult for prisoners in wheelchairs to read information placed on the boards. None of the institutions listed above has a sign language translator or a list of responsibilities and obligations available Braille which poses serious problems for prisoners with auditory and vision impairments.

5.2.6. ACCESS TO QUALITY AND TIMELY PSYCHIATRIC ASSISTANCE, PROVISION OF ADEQUATE PSYCHIATRIC ASSISTANCE AND PSYCHO-SOCIAL REHABILITATION FOR PRISONERS IN DIFFERENTIATED REGIMES

Comparatively high quality psychiatric service is available in the treatment facility for untried and convicted prisoners where a team of specialists (psychiatrist, psychologist, psychotherapist) provide the service. However, they do not liaise much and a psychologist's service is not included in a psychiatric service provision. The administration of the treatment facility for untried and convicted prisoners lack knowledge of types of specific trainings to be provided for their staff. A rehabilitation specialist has already been appointed in the facility and it is believed that s/he is responsible for developing a strategy for the provision of special services. Staff at the Institutions N2 and N3, including medical staff lack awareness on the special needs of persons with disabilities.

There is no effective system in place in the Institution N3 for the adequate psychological and psychiatric management of prisoners with auto-aggressive behavior. Nor is a suicide prevention programme implemented in the facility.

Psycho-social rehabilitation is considered one of the special needs of persons suffering from mental disorders. However, this type of a service is provided to few patients in the psychiatric care unit of the treatment facility for untried and convicted prisoners. Sadly,

the staff's confidence in and expectations towards positive behavioural management and personal development strategies are quite low.

According to the General Comment 20 of UN's Human Rights Committee²³⁴ solitary confinement of the detained or imprisoned person may amount to such acts as torture or inhuman or degrading treatment. As stated in a conclusion prepared by the UN Subcommittee on the Prevention of Torture, prolonged solitary confinement may equal to torture and it shall not be used against juveniles and persons suffering from mental disorders²³⁵. According to the 2007 Istanbul Statement on the Use of Solitary Confinement²³⁶ this practice must be absolutely prohibited with regard to prisoners with mental disorder.

Sadly, the monitoring mission revealed that placing prisoners with mental disorders in a solitary confinement has been practiced in the Institution N3. While reviewing personal files of a prisoner who had been placed in solitary confinement, the team found out that the inmate was placed in the Institution N3 of the Penitentiary Department on September 17, 2014. Since the day of the placement, he had been placed in solitary confinement three times (once for four days, then for 15 days and the third time for ten days as indicated in an order). Examination of the prisoner's medical record yielded that the prisoner did not have access to a psychiatric counseling since he was placed in the institution even though his medical history clearly indicated to such need. It is worth noting that the prisoner inflicted self-injuries four times since his placement in the institution.

All measures must be taken to prevent the placement of prisoners with mental problems under solitary confinement. The measures to be undertaken must ensure that such inmates receive timely and adequate psychiatric assistance.

It is undoubtedly positive development that the government of Georgia with Decree 762 of December 31, 2014 approved of *Strategy and 2015-2020 Action Plan for the Development of Psychiatric Health*. The document alongside the development of psychiatric health services in Georgia also covers issues related to psychiatric health in penitentiary institutions and seeks to ensure equal access to standards of psychiatric services in penitentiary facilities.

Based on the above said, it can be assumed that the recommendation has been partially implemented. While the Georgian government made a significant step ahead towards the implementation of the recommendation by approving the action plan, more needs to be done in order to ensure the provision of adequate and timely psychiatric assistance for prisoners with mental health problems.

234 CCPR, General Comment 20/44, April 3, 1992

235 UN Subcommittee on Prevention of Torture (2010), report on the visit of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment to the republic of Paraguay (par 184).

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

5.2.7. ADDITIONAL TRAININGS FOR STAFF OF PENITENTIARY INSTITUTIONS FOR THE IDENTIFICATION OF PRISONERS WITH DISABILITIES, ASSESSMENT THEIR PSYCHOLOGICAL/SOMATIC/SOCIAL NEEDS AND THE PROVISION OF ADEQUATE SERVICES ON EVERY STAGE OF IMPRISONMENT

The above recommendation has only partially been implemented. Some of medical personnel at the psychiatric unit of the treatment facility for untried and convicted prisoners have undergone a series of trainings on stress response management, adaptation disorders, depression, prevention of auto and hetero-aggressive behavior, detection of signs and symptoms, risk assessment and management, identification of acute outcomes of psychotropic substance abuse and its management. A psychiatrist of Facility 2 of the Penitentiary Department has also undergone a series of trainings.

5.2.8. PREVENTION OF PSYCHOTROPIC SUBSTANCE ABUSE FOR NON-MEDICAL PURPOSES

Some measures have already been undertaken in this regard in the treatment facility for untried and convicted prisoners, Institution 2 of the Penitentiary Department and partially in the Institution 3. In the Institutions N2 and N3 of the Penitentiary Department inmates have to take psychotropic medication in the presence of a nurse which is an attempt to control over psychotropic drugs. In addition, a psychiatrist of the Institution N2 often counsels inmates on risks and complications associated with the abuse of psychotropic substances. Sadly, the doctor of the Institution N3 is still under pressure for excessive demand for psychotropic medicaments.

5.2.9. RETRAINING DENTISTS ON THE BASICS OF DENTAL CARE FOR SPECIAL NEEDS PATIENTS

It is important that every prisoner have an access to the services of qualified dental officer (Standard Minimum Rules for the Treatment of Prisoners, Rule 22).

A dental officer at the treatment facility for untried and convicted prisoners has not been trained on the basics of specialized dental care. A service of an orthodontist is not available in the Institution N3 while a dental officer, how has not given any training on treating patients with special dental care needs, performs his/her without a nurse. Based on the above said, it can be assumed that this recommendation has not been implemented.

5.3. A STATUS OF THE IMPLEMENTATION OF RECOMMENDATIONS IN THE NATIONAL CENTRE FOR MENTAL HEALTH

The National Centre for Mental Health provides non-voluntary in-patient care within a state programme for mental health, according to which targets not only Georgian citizens but also other persons placed in the penitentiary system.

During a visit to the National Centre, the monitoring team members visited wards in IX, X, XI and XII units. It is worth noting that cells in IX, XI and XII units need to be rehabilitated. At the same time, sanitary situation in units IX, XI and XII is alarming. There is no ventilation system in any of the wards, flushing system is dysfunctional in WCs and some of taps are out of order. Out-walk spaces are not adequately equipped and covered for rainy weather. It is worth noting that the situation has not changed since the last monitoring visit in November 2013 and still remains a problem.

5.3.1. PROVISION OF ADEQUATE PSYCHIATRIC ASSISTANCE TO UNTRIED/ CONVICTED PRISONERS WITH DISABILITIES

The National Centre for Mental Health is understaffed. Most of the patients are not involved in therapy and lack awareness on illness, treatment and side effects of medicaments they take.

No standards for mental health have been developed by the National Centre for Mental health. There is a lack of rehabilitation programmes tailored to individual needs of prisoners. The director of the centre explained the reason behind the absence of such programmes is the lack of staff with adequate qualification and expertise while available resources only make it possible to provide rehabilitation activities for few patients. Art therapy, ergo therapy, cinema therapy, psychotherapy are provided as a part of psycho-social rehabilitation activities. However, only few of the patients, mainly women, participate in rehabilitation activities. Psych-social rehabilitation activities are not structured and systemic. The facility is understaffed in regard to psychologists. There is no occupational therapists who would work on habilitation/rehabilitation programmes.

Standard Minimum Rules for the Treatment of Prisoners states, which deals with the key issues related to health services at great length, states that the relevant institutions need not provide the same degree of security for every group. Moreover, it is desirable that severity of security measures vary across groups (Rule 63).

The regimen of prisoners transferred from the penitentiary system and that of patients in non-voluntary care are identical. However, it is different from the regimen applied to other non-voluntary patients. There are no standards for the provision of psychiatric assistance under the conditions of differentiated regimen.

Based on the above said, we believe that currently untried/convicted prisoners placed at the National Centre for Mental Health under non-voluntary in-patient care are not provided with adequate psychiatric assistance. While having underlining this flaw, it should also be noted that the Georgian government has made a significant step forward towards the implementation of the recommendation in question.

5.3.2. REVISING THE ROLE AND FUNCTION OF THE SECURITY SERVICE AT THE NATIONAL CENTRE FOR MENTAL HEALTH

Under Order 12 of a director general of the National Centre for Mental Health dated February 28, 2013 and according to a renewed manning table, the security service was renamed and since March 1, 2013 it is officially called Supervision Service. A new statute of Supervision Service of the National Centre for Mental Health was approved on the same day. However, the service changed only the title while a scope of main activities has remained the same.

Patients interviewed during the monitoring visit still reported measures of physical restraint were undertaken by the staff of the Supervision Service. Moreover, the latter often threaten patients to ‘chain them up’.

According to Rule 8 of Decree 92/2 dated March 20, 2007 of the Minister of Labour, Health and Social Affairs on *Approving the Rules and Procedures for the Use of Physical Restrain Methods against Patients with Mental Disorder* ‘physical restraint measures shall be applied by authorized staff with adequate qualification and experience in applying physical constraint measures.’

According to Article 3.8 of the Statute of the Supervision Service at the National Centre for Mental Health ‘the scope of the activities of the Service includes undertaking every measure defined by the law together with medical staff against violators of public order if a condition of a patient deteriorates [...]’

The analysis of the norms mentioned above shows that the staff of the Supervision Service are allowed to physically restrain patients but only if they have relevant qualification and experience in applying the methods of physical constraints. The monitoring revealed that the staff members of the Supervision Service have not been given any training on applying procedures aiming to physically restrain patients. However, they still undertake measures to restrain patients which is unacceptable.

According to information provided by the Ministry of Labour, Health and Social Affairs²³⁷ a module of training of trainers is being developed to provide cascade trainings for staff of mental health staff including the personnel of the National Centre for Mental Health.

Based on the above said, it can be assumed that practical implementation of roles and functions assigned to the Supervision Service of the National Centre for Mental Health still remains a problem.

5.3.3. DEVELOPING A NORMATIVE FRAMEWORK FOR A MECHANISM OF APPEALS

A commission to review complaints and proposals filed by the patients was set up further to Order 34 of the Director General of the National Centre for Mental Health

²³⁷ Letter N01/99693 of December 12, 2014.

on December 23, 2008. The commission which consists of various staff members of the Centre is responsible for opening complaints boxes and reviewing complaints and proposals during sessions. It is worth noting that there is pre-determined interval for opening the boxes. As clarified by a deputy director of the Centre and a member of the commission, they have never reviewed any complaints or proposal as they never find complaints in the boxes.

Complaints boxes are attached to the walls of the corridors in units IX, X, XI and XII close to resting rooms for medical personnel and security staff which means that no patient can go unnoticed if s/he wants to drop a complaint in either of the boxes.

A staff member of the unit XI explained that complaints boxes are opened at least once a week, however, no protocols are filed upon the opening. Interviews with the patients revealed that social workers are actively engaged in writing letters on patients' behalf. This statement was corroborated by one of the social service staff (XI unit). The monitoring team found out that none of the patients had a paper and a pen in his/her wards.

No complaints had been found in the complaints boxes throughout 2014 which clearly indicates to the fact that the mechanism for appeals is not effective in the National Centre for Mental Health.

According to information provided by the Ministry of Labour, Health and Social Affairs²³⁸ an assessment of a mechanism of appeals, a full revision of legal/normative framework related to psychiatric assistance and development of recommendations based on international standards is planned to take place within the frame of a joint project *Human Rights Protection in Prisons and other Closed Institutions* commissioned by the Council Europe and the European Union.

5.3.4. DEVELOPING STANDARDS FOR THE RELEASE OF PATIENTS FROM IN-PATIENT FACILITIES AND RETURN OF LONG-TERM PATIENTS TO THEIR COMMUNITIES AND FOR THE PROVISION OF BENEFITS RELEVANT TO THEIR PSYCHO-SOCIAL STATUS

Keeping patients in institutions over a lengthy period of time in isolation from society tends to result in disappearing life skills and a complicated process of resocialisation. Long-term patients lose social benefits relevant to their illness or old-age and have no family support.

With regard to the terms of non-voluntary and coercive treatment and further to an amendment of July 26, 2014 to the law of Georgia on Psychiatric Care and the Criminal Proceedings Code, criminal court is authorized to apply non-voluntary psychiatric treatment in the events stipulated by Article 191, Part II of the Criminal Proceedings Code. Based on Article 191, Part II of the Criminal Proceedings Code, provided that

²³⁸ The letter 01/99693 dated December 12, 2014

there is evidence corroborating insanity of the accused at the moment of committing a crime, the court shall terminate criminal prosecution and a judge in charge shall apply non-voluntary psychiatric care for the accused in the same judgement. Non-voluntary psychiatric care shall be applied based on a report submitted by psychiatric experts confirming the presence of circumstances stipulated by Article 22¹, Clause 1 of the Law on Psychiatric Care while the duration of care shall not exceed 4 years as stipulated by Article 191, Part II¹ of the Criminal Proceedings Code.

In addition, also further to aforementioned amendments, the Minister of Labour, Health and Social Affairs with Order 70/2 of October 1, 2014 approved the list of those activities which aim to develop the standards for the risk assessment and reduction, improve resocialisation and mental health. Also, the order approved the constitution and rules of operation of the special commission in a mental health facility for assessing the mental health condition of patients subject to non-voluntary psychiatric care.

In addition, based on the information provided by the Ministry of Labour, Health and Social Affairs²³⁹ within the frame of the Mental Health Strategic Paper and the Action Plan for 2015-2020 approved by Decree 762 of the government of Georgia on December 31, 2014 also considering existing context and situation assessment (including financial resources, the quality of training provided to staff) progressive process of implementation of community based services will soon take a start to serve as a finishing unit in a chain of mental health services.

It should be noted that in spite of above mentioned improvements, there are tens of patients in the National Centre for Mental health who have been staying in the facility for more than 15 and even 20 years. This fact corroborates the need for community based services and the implementation of the law.

5.3.5. THE USE OF PHYSICAL RESTRAINT MEASURES AGAINST PATIENTS WITH MENTAL DISORDER IN ACCORDANCE WITH THE NATIONAL LEGISLATION AND INTERNATIONAL STANDARDS

There are two accepted ways of restricting patients with mental disorder: isolation in a specialized ward and physical restrain. At the same time, in the period of fixation, the patient must be under continuous medical supervision. Every occurrence of fixation must be entered in a special log. Immediately after the expiry of the need for restraining the patient, the psychiatrist makes a decision to terminate or continue the application of the measure and makes relevant entry on a type of intervention and its timeframe.

No internal standards for physical restrain of patients have been developed in the National Centre for Mental Health. The staff of the Centre run a log where they make entries on restraining patients. There is a specialized room in the Centre where

239 The letter 01/99693 of December 12, 2014

patients are restrained. There are sheets and restraining jackets however, the latter are not much used because local staff do not find them practical for use.

There were 13 cases of applying physical restraint measure against patients in all four units during 2014. Interviews with the patients revealed that medical staff assisted by the Supervision Service of the National Centre for Mental Care periodically apply the methods of physical restraints against patients with acute mental conditions. Restraining measures are applied in the presence of other patients in the corridors of the facility which is against the national legislation and international standards. Based on the above said, using restraining measures against patients still remains a problem.

5.3.6. DEVELOPING A SYSTEM OF SPECIAL SUPERVISION OVER THE OPERATION OF PSYCHIATRIC SERVICES AND THE PROVISION OF PSYCHIATRIC CARE

Quality Control Service for the National Centre for Mental Care was set up on February 1, 2013. Order 15 signed off by the Director General of the Centre on April 1, 2013 approved the rule of the operation of internal assessment system for quality assurance of medical services and security provision for patients.

According to aforementioned rule quality management system ensures that relevant measures are developed for monitoring, control, outcome assessment and quality improvement. Quality Management System for medical staff registers and examines cases with lethal outcomes, situation involving deterioration of health conditions, both mental and somatic of patients, medical errors; complaints filed by patients/ their representatives, statistically frequent complications, detection and management of statistically frequent side effects.

The rule also refers to internal retraining system which includes the implementation of periodic measures with the staff. Ongoing activities of the quality management system implies regular supervision of medical practices and revision of patients' conditions through panel discussions. In addition, ongoing activities also includes in-depth panel inspections of those medical cases which involve drastic deterioration of patients' health and lethal outcomes.

One of the important directions within the activities of quality management service at the National Centre for Mental Health is the provision of trainings to medical staff of the Centre to improve their skills and enhance qualification.

Based on the above said, it can be assumed that quality management service does function as internal supervision system within the National Centre. However, we also find it expedient that the Ministry of Labour, Health and Social Affairs strengthen a special supervision system for psychiatric services and care to evaluate the efficiency of the internal control service together with the quality of psychiatric services. It is important that system be based on partnership and cooperation rather than repression and punishment.

5.4. CONCLUSION

Repeated monitoring visits to the treatment facility for untried and convicted prisoners, the Institutions N2 and N3 of the Penitentiary Department and to the National Centre for Mental Health revealed that in spite of some positive development there has been little progress in terms of the implementation of the recommendation. Alarming, some recommendations have been ignored completely and there has not been any measure implemented to at least partially address the issues highlighted in these recommendations.

Opening the treatment facility for untried and convicted prisoners was considered by the Ministry of Corrections as one of the important measures to respond to the challenges faced by prisoners with disabilities. It is true that a long-term care unit within the facility has positively contributed to improving conditions of prisoners with disabilities, however, there are still prisoners with physical disabilities and mental disorders in penitentiary institutions. On the other hand, a whole range of problems including inadequate psychical infrastructure, is still to be solved in the long-term care unit of the treatment facility for untried and convicted prisoners.

Approval of the Strategic Document for Mental Health Development and the Action Plan for 2015-2020 by the government of Georgia on December 31, 2014 is undoubtedly a positive development, which clearly indicates to the political will to provide psychiatric services to patients in penitentiary system and other closed institutions in accordance with the national legislation and international standards. Therefore, it is of utmost importance to consistently implement activities and measures outlined in the Action Plan.

Therefore, we call on the government of Georgia and the Ministry of Corrections as well as the Ministry of Labour, Health and Social Affairs to undertake all necessary measures for the implementation of recommendations provided below.

RECOMMENDATIONS TO THE MINISTRY OF CORRECTIONS

- Develop a mechanism for the identification of prisoners with disabilities and their needs to be implemented in all penitentiary institutions for continuous statistical data processing
- Develop standards for care of prisoners with disabilities tailored to prison conditions
- Ensure personal aides for prisoners with disabilities in all penitentiary institutions and take measures to ensure social and medical rehabilitation for prisoners with disabilities
- Ensure full physical access and complete adaptation of physical environment as well as access to services and information in all penitentiary institutions
- Ensure quality and timely psychiatric care in all penitentiary institutions

- Ensure adequate psychiatric care and psycho-social rehabilitation for prisoners in differentiated regimes
- Ensure continuous trainings for staff in all penitentiary institutions
- Ensure stronger protection of medical staff for the prevention of pressure on the latter and implement measures for a stricter control on the distribution of psychotropic medicaments
- Ensure retraining of dental officers in the basics of dental care for special needs patients

RECOMMENDATION TO THE MINISTER OF LABOUR, HEALTH AND SOCIAL AFFAIRS:

- Ensure that untried/convicted prisoners are provided with adequate psychiatric assistance in the National Centre for Mental Health
- Revise the role and functions of the supervisory service at the National Centre for Mental health so that staff of the supervisory service are banned from participating in undertaking measures for physically restraining patients or are trained in applying such restraining measures and procedures
- Set up a normative framework for the regulation of the appeal mechanism in the National Centre for Mental Health
- Develop standards for discharging patients from in-patient facilities and ensure that patients released from a long-term care are back to their communities and receive all benefits relevant to their psycho-social status
- Ensure that restrain methods against patients with mental disorder are applied in accordance with the national legislation and international standards
- Develop an external system for overseeing the operation of psychiatric services and the provision of psychiatric care, carry out an efficiency assessment of the quality control service of the National Centre for Mental Health

6. RIGHTS OF THE CHILD IN SMALL GROUP HOMES

6.1. INTRODUCTION

In 2014 the Special Preventive Group members together with Child's Rights Centre of the Public Defender under the scope of National Preventive Mechanism carried out the monitoring of following 14 Small Group Homes (hereinafter referred as SGH) located in the village of Bajiti, Sachkhere municipality (1), Ambrolauri (1), Kutaisi (3), Khoni (1), Chkhorotsku (1), Tsalenjikha (2), Batumi (1), Ozurgeti (2), Lanchkhuti (1) and Zestaponi (1) The monitoring aimed to assess the situation in regard to the protection of the rights of the child and consistency of services provided to the beneficiaries with the requirements enshrined in the national legislation and international standards.

On a preparation stage the monitoring teams planned the activities, identified the number of SGHs and their beneficiaries to be visited during the monitoring, developed thematic questionnaires tailored to each target group. After the completion of the actual monitoring visits, the team members summarized the findings, developed technical reports which served as a basis for the present report and recommendations.

In November 2014 two monitoring teams consisted off the staff members of Department of Prevention and Monitoring and the Child's Rights Centre (Nikoloz Khvaratskhelia, Daniel Mgeliashvili, Tamta Babunashvili, Tamar Chkolaria) and five guest experts from the National Preventive Mechanism (Ketevan Pilauri, Maia Tsiramua, Ketevan Gelashvili, Lali Tsuleiskiri and Nana Koridze).

The present report is based on technical reports prepared by the monitoring teams. The monitoring of child care institutions was carried out in accordance with the Child Care Standards.²⁴⁰

The members of the teams closely examined the consistency of the situation in SGH with requirements under each of the standards. The report has been designed in such a manner which does not allow for identification of beneficiaries interviewed during the monitoring missions.

While implementing activities within competences defined by the organic law on Public Defender of Georgia the monitoring teams adhered to the Georgian Constitution, the UN Convention on the Rights of the Child, the Child Care Standards and other relevant normative acts²⁴¹.

The findings of the monitoring have demonstrated that qualification of personnel at

240 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

241 Law of Georgia on Social Assistance, Law of Georgia on the Adoption and Foster Care, the joint decree N152/N-N496-N45/N of the Minister of Labour, Health and Social Affairs, the Minister of Internal Affairs and the Minister of Education and Science of May 31, 2010 on approving the procedures for referral; the decree N52/N on Approving Rules and Terms of the Placement and Discharge of Persons in and from Specialized Institution.

SGH, violence against children, protection of their right to healthcare, psycho-social rehabilitation, the right to education and the preparation for independent life still remain a problem in SMGs.

Pursuant to Article 20 of the UN Convention on the Rights of the Child ‘a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State’. Article 27 of the Convention protects the right of the child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development while Clause 3 of the same article states that ‘States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing’.

Sustainable and strong families are the foundation of child’s welfare. Nowadays, not every family in Georgia can afford to meet all needs children may have. In this case the State has to step in and take over the responsibilities for creating adequate environment for care and development of children.

Placing a child in a small group home and creating an environment which is close to family situation in the child’s best interest is one of the forms of care the state can provide for a child deprived of his/her own family. Beneficiaries of such care should receive services that are tailored to their individual needs. Individually tailored services are important for the child’s development and increases chances that juveniles can fully develop their capacities and skills.

6.2. STANDARD 1 – INFORMATION ON SERVICES²⁴²

According to Article 3, Clause 3 of the UN Convention on the Rights of the Child institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities. Article 1 of the Child Care Standards provides a list of those documents that service providers must file and make accessible to stakeholders.²⁴³

All SGHs kept an information page and a license granting them the right to provide care together with child care curriculum containing methodology and order of daily activities. Statutes in most cases cover all matters stipulated by the Child Care Standards. SGHs had all contracts with caretakers and filed in accordance with the Georgian legislation.

242 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Standard 1

243 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

Batumi small group home²⁴⁴ has developed child care curriculum, however, a schedule of daily activities is not complete. More specifically, standard activities for week-ends are missing from the schedule. SGH failed to introduce a license for child care which, according to the staff was kept in the office of provider organization. As for the statute, it does not include rules and methods for the management of socially unacceptable behavior of beneficiaries, privacy and confidentiality issues, code of conduct for the staff, volunteers or interns, or rules for the prevention of infectious diseases.

Schedule of activities are available in almost all SGH, however, some of them the schedules were incomplete.²⁴⁵

The SGHs keep the following documents: a log for registering accidents, a log for registering cases of abuse, registry of the opening of a trust box, a log for recreational and cultural activities attended by children and youth, a registry for infectious disease occurrences.

The monitoring found that there are inconsistencies observed in the logs. Opinion journals are accessible at only few SGHs and are mostly empty, which means that they are kept because of formal requirements. Accidents registry are mostly empty which indicates that facts are not properly documented. The monitors also learnt that in most cases caretakers do not fully understand the meaning of an accident as logs often have entries on cases when beneficiaries escape from homes.²⁴⁶

It should be noted that in Ozurgeti SGH²⁴⁷ measures undertaken further to anonymous complaint letters retrieved from a special box conform to the rules defined by the legislation. Documentation on these measures also include explanatory notes, which is undoubtedly a positive practice. Conferences following up on such cases and attended by a manager of the home, caretakers, beneficiaries and a social work is also an example of a good practice. The participants of the conference discuss issues, needs and objectives of the operation of the SGH.

Zestaponin SGH²⁴⁸ keeps a registry of meetings which is undoubtedly a positive fact. The registry contains information on needs of children and notes from meetings with school principal. In addition, there is a parents' council at the small group home which regularly discuss children's needs together with a psychologist.

244 Batumi Centre for Education, Development and Employment, 26 Maisi street №106, Batumi

245 The Charity Humanitarian Centre *Apkhazeti*, Lagodekhi, the village of Baisubani

246 Association "SOS Children's Villages Georgia, Sachkhere, the village of Bajiti

247 Non-profit legal entity Association *Imedis Skhivi*, D. Aghmashenebeli Street 148, Ozurgeti

248 Association "SOS Children's Villages Georgia, Zestaponi, the village of Kvaliti

6.3. STANDARD 2 – INCLUSIVENESS OF SERVICES²⁴⁹

Article 2 of the Child Care Standards²⁵⁰ outlines the responsibility of a service provider to provide a beneficiary with a service which meets his or her needs and is consistent with his or her abilities. Beneficiaries should also have an access to other community based services.

Beneficiaries, to the extent that is allowed by the capacity of the organisations, have an access to community based services. Children attend school, vocational training facilities, collage and participate in various classes. However, a level of their engagement in activities varies across age-groups and interests and depends on the capacity of an organization. In this respect choices²⁵¹ are particularly limited in the regions. Seniors have to commute to the administrative centre to access available resources while juniors cannot commute independently. Because of limited resources, caretakers cannot always afford taking junior children to the centre.

In certain cases caretakers are not able to identify a child's individual needs and an individual service plans do not always reflect needs of beneficiaries and the importance of the provision of services.²⁵² There was a case when beneficiaries were not able to access various services available in town (sports, music, dancing). It should also be noted that several activities or engagement in various classes often are not practically implemented.²⁵³

The monitoring revealed that sometimes communities attach stigma to beneficiaries of small group homes and children residing in such homes are often negatively perceived by their classmates and teachers.²⁵⁴

6.4. STANDARD 3 – PROTECTION OF CONFIDENTIALITY²⁵⁵

Article 3 of the Child Care Standards²⁵⁶ protects the confidentiality of personal information of beneficiaries.

249 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards. Standard 2

250 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

251 Association “SOS Children’s Villages Georgia, Sachkhere, the village of Bajieti, non-profit legal entity Association *Momavlis Skhivi*, Lanchkhuti, the village of Lessa; Association “SOS Children’s Villages Georgia, Shengelia Street 24, Borough of Chkhorotsku.

252 Association “SOS Children’s Villages Georgia. Tsereteli Street 8, Ambrolauri, Association “SOS Children’s Villages Georgia, Ip. Khvichia Street 28, Khoni, Association “SOS Children’s Villages Georgia. Tsalenjikha, the village of Kvemo Mazandara; the Batumi Centre for Education, Development and Employment, 26 Maisi Street 106, Batumi

253 Association “SOS Children’s Villages Georgia, Shalva Dadiani Street 17, Kutaisi.

254 Association “SOS Children’s Villages Georgia, Ip. Khvichia Street 28, Khoni, non-profit legal entity Association ‘*Momavlis Skhivi*’, Lanchkhuti, the village of Lessa, Association “SOS Children’s Villages Georgia, Sachkhere, the village of Bajiti

255 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Standard 3

256 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

Confidentiality of beneficiaries' correspondence, conversations and meetings are protected to a certain extent. However, it should be noted that individual meetings mostly take place in a beneficiary's room. In order to ensure a better protection of confidentiality of a conversation, it is advised that a room is designated in every SGH so that conversations, consultations and individual activities take place in a confidential environment.

Documents and personal records of beneficiaries are kept in caretakers' offices and are inaccessible for strangers. Information pertaining to children are confidential and are not subject to open discussions. However, it should be noted that caretakers are not fully aware of Paragraph H of Standard 3.²⁵⁷

6.5. STANDARD 4 - INDIVIDUAL APPROACH TO SERVICE PROVISION²⁵⁸

Article 4 of the Child Care Standards²⁵⁹ highlights the importance of individual approaches while providing child care services which should be tailored to a child's individual skills and requirements.

Pursuant to Article 25 of the UN Convention on the Rights of the Child state parties recognize the right of a child who has been placed for the purposes of care to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

All SGHs keep personal records on each of beneficiaries. However, individual development and service plans are kept only for formal purposes as they fail to provide information on objectives, planned activities, expected outcomes, individual needs of beneficiaries. Beneficiaries do not participate in developing their own plans and there are cases when health problems of beneficiaries are not reflected in individual development plans.²⁶⁰

A social worker is responsible for guiding a provider through a personal file of a child to be placed in a small group home. However, this is not always the case. For instance, several children had no required health certificate NIV-100/a upon their admission.²⁶¹

257 If services are no longer provided for a child, information related to the child shall be kept at the service provider for three years. In cases when an organization terminates its activities and beneficiaries are transferred to the care of other organization, all documentation pertaining to the child shall be handed over upon the agreement with foster or care agency. However, if the child reunites with his or her biological family the documentation will be handed over/destroyed upon the primary agreement with a legal representative of the child.

258 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Standard 4

259 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

260 Non-profit legal entity *Momavlis Skhivi*, Ozurgeti, Association “SOS Children’s Villages Georgia, Zestaponi, the village of Kvaliti, Association “SOS Children’s Villages Georgia, Shalva Dadiani Street 17, Kutaisi

261 Association “SOS Children’s Villages Georgia, Sachkhere, the village of Bajiti; Shengelia Street 24, the borough of Chkhorotsku. Non-profit legal entity *the Union of Young Teachers*, Aghmashenebli Street 53, Ozurgeti, Charity and Humanitarian Foundation “Breath Georgia”, 26 Kekelidze St. Kutaisi,

Also, caretakers stated that there were cases when they did not have full information on beneficiaries when they were admitted to SGHs.²⁶² The monitoring revealed that one of the beneficiaries had been placed under care for two months in a manner which violated the rule for placing a person in a specialized institution.²⁶³

In some of the SGHs individual development plans were developed by social workers in January 2014, and activities which were scheduled for six months were subject to revision. There are no updated individual development plans in personal files of beneficiaries.²⁶⁴

There are no evidence that a multidisciplinary approach has been used with regard to difficult to manage cases which means that there is no practice of planning joint measures to address problems.²⁶⁵

6.6. STANDARD 5 – EMOTIONAL AND SOCIAL DEVELOPMENT²⁶⁶

According to Article 27 of the UN Convention on the Right of the Child every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. Article 5 of the Child Care Standards²⁶⁷ states that an environment created by a service should accommodate to emotional and social development of beneficiaries, prepare them for independent life, support their social integration and contribute to maintaining contacts between beneficiaries and their families.

Emotional and social circumstances in small group homes and forms of care are different and depend on financial capacities of an organisations as well as on administration and management models. (a British model²⁶⁸, a Polish model). In a Polish model five caretakers, including a lead one, work in one small group home. Each of beneficiaries is under patronage of different caretakers, which in monitoring team's opinion creates a series of problems in the provision of care. One caretaker is not aware of the needs, problems, vulnerabilities and mental and physical health of a child being under the care of a fellow caretaker which in its turn prevents a holistic care strategy to be developed. Creating an enabling emotional and social environment for the development of beneficiaries in small group homes is also largely determined by caretakers' skills.

Engagement of both caretakers and social services in measures aimed to seek and

262 Association "SOS Children's Villages Georgia, Zestaponi, the village of Kvaliti

263 Non-profit legal entity Association 'Momavlis Skhivi', Lanchkhuti, the village of Lessa

264 Charity and Humanitarian Foundation "Breath Georgia", 26 Kekelidze St. Kutaisi,

265 Charity and Humanitarian Foundation "Breath Georgia", 26 Kekelidze St. Kutaisi,

266 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Standard 5

267 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

268 A British model stands closest to a family environment. A number of children placed in small group homes do not exceed 8. Foster parents are around during weekdays and are replaced by caretakers (an aunt and an uncle). They have meals together. Foster parents have their own room

rebuild contacts with biological families of beneficiaries is undoubtedly a positive trend. Communication with families are mostly maintained through mobile telephones. Biological families rarely visit beneficiaries most of whom cannot remember the last time they met their family members.²⁶⁹

Most of beneficiaries living in small group homes are well integrated in host communities and school environment. They often visit families of their friends and also receive guests. Children have friends.²⁷⁰ In order to encourage children to develop their life skills, they are often invited to participate in household errands. They prepare meals and do housework together. On the other hand, there are cases when children experience negative treatment from school teachers and fellow students.²⁷¹

Environment in some of small group homes lacks coziness and creativity and therefore does not contribute to children's emotional and intellectual development.²⁷² For instance, Batumi small group home is in need of rehabilitation, furniture is old and damaged. Entertainment means for junior beneficiaries is limited by few dolls and books. There is no computer or internet but a TV set.

Some of SGHs only meets basic needs of children as there are not enough books and toys as well as other means for children's cognitive, emotional and social development.²⁷³

In spite of requirements under statutes to keep records on daily activities and progress of beneficiaries caretakers often fail to do so. They explain that they have little time keep daily records. Records lack information on how problems related to children are resolved, or what incentives are used to encourage good behavior among beneficiaries as well as details of activities undertaken to encourage beneficiaries' positive learning experience.

6.7. STANDARD 6 - NUTRITION²⁷⁴

Article 6 of Child Care Standards²⁷⁵ determines the responsibilities of service providers for nutritional matters.²⁷⁶ Children under the state's care must be provided with

269 Association "SOS Children's Villages Georgia, Shengelia Street 24, the borough of Chkhorotsku

270 Association "SOS Children's Villages Georgia, Tsalenjikha, the village of Kvemo Mizandara, Association "SOS Children's Villages Georgia, Tsereteli Street 8, Ambrolauri, non-profit legal entity *Momavlis Skhivi*, Ozurgeti, D. Aghmashenebeli Street 148

271 Association "SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni; non-profit legal entity *Association Imedis Skhivi*, Lanchkhuti, the village of Lessa; Association "SOS Children's Villages Georgia, Sachkhere, the village of Bajiti.

272 The Batumi Centre for Education, Development and Employment, 26 Maisi Street 106, Batumi; Association "SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni

273 Association "SOS Children's Villages Georgia, Shengelia Street 24, the borough of Chkhorotsku; Association "SOS Children's Villages Georgia, Tsalenjikha, the village of Kvemo Mazandara

274 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards. Standard 6.

275 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

276 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Article 6.

sufficient amount of food adequate for their age.

The monitoring has revealed that caregivers do not calculate calories and conform to principles of balanced diet. Portions are often determined based on caretakers' personal experience

Children's' desire to take processed meat (sausages), frozen meat dumplings (khinkali), and excessive amount of sweets is often satisfied. Occurrences like this do not meet children's best interest and requirements necessary for healthy growths and development. A menu at one of the SGHs contained particularly excessive amount of gassed drinks,²⁷⁷ while a closet of one of the SGHs²⁷⁸ contained a large amount of ready-to-eat soup *Anakom*. As foster parents explained soups were purchased at the request of the children.

No cases of food restrictions have been revealed during the monitoring visits to west Georgia's SGMs.

The monitoring team learnt that drinking water is a problem in most of small group homes as organisations failed to introduce a certificate for safe potable water. Most of the leaders are not aware on the level of safety of water consumed at SGHs. In one of the SGHs where there is a well, it turned out that the well dries out for 8 months a year and therefore they have to fetch water from a village spring.²⁷⁹

SGHs can only purchase food through an electronic waybill, a practice that is not common in the regions. There may just one shop which provide service in such a manner. Therefore it is necessary to adjust menus to options available in such shops which affects the availability of food as well as its diversity.²⁸⁰

6.8. STANDARD 7 – REST, LEISURE AND RECREATION²⁸¹

Article 31 of the UN Convention on the Rights of the Child recognizes the right of children to rest and leisure. Article 7 of the Child Care Standards²⁸² delineates the responsibilities of services providers with regard to rest, leisure and recreation.

Opportunities for rest and recreation in SGHs vary according to resources of a provider as well as to a level of caretakers' engagement in leisure and recreational activities.

Beneficiaries are engaged in informal activities in most of SGHs. There are several problems in this regard. More specifically, caretakers report that children often get

277 non-profit legal entity *Association Imedis Skhivi*, Lanchkhuti, the village of Lessa

278 Association "SOS Children's Villages Georgia", 24 Shengelia St, Chkhorotsku.

279 Association 'SOS Children's Villages Georgia', Sachkhere, the village of Bajiti

280 Non-profit legal entity *Association Imedis Skhivi*, Lanchkhuti, the village of Lessa; Association 'SOS Children's Villages Georgia'. Shengelia Street 24, the borough of Chkhorotskhu; Association 'SOS Children's Villages Georgia', Sachkhere, the village of Bajiti

281 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards. Standard 7

282 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

bored with classes and regularly change them. There are cases when desired classes are not available in a community and therefore children cannot engage in informal activities.²⁸³

There are TV sets and computers in most of the SGHs. Each beneficiary spends an hour on a computer on average. Beneficiaries spend most of their leisure time in front of TV which is often the only means of entertainment.

The monitoring mission also revealed that not every SGH has the Internet²⁸⁴ which is directly linked with children's educational needs.

Staff at SGHs keep a log for children's leisure and cultural activities that take place outdoors. Beneficiaries are eligible to exercise their right to a seasonal holiday defined by the Child Care Standards. However, children living in SGHs are rarely taken out for excursions and cultural activities.

6.9. STANDARD 8 - EDUCATION²⁸⁵

The right to education is enshrined in national legislation and international law. Pursuant to Article 28 of the UN Convention on the Rights of the Child, children have the right to education and with a view to achieving the right progressively and on the basis of equal opportunity, the state must support children to exercise this right. Article 3 of the Law of Georgia on General Education determines the major directions and objectives of the national education policy including the principles of openness and equal access, inclusive education etc. Above mentioned commitments gain particular importance when it comes to children under the state care. Article 8 of the Child Care Standards²⁸⁶ outlines the responsibilities of services provider with regard to the realisation of the right of children to education.

In most SGHs children do their homework without help. They require private tutors in some of school subjects, in particular, math and foreign languages, which is not always available. Beneficiaries talk about abusive behaviors of teachers and bullying. Some of them expressed their hatred towards schools.

Juveniles do not tend to be willing to continue with education and are mostly focused on vocational education. Caretakers think that laziness accounts for unwillingness to further pursue education. Only two out of six beneficiaries in Chkhorotsku²⁸⁷ SGH attend public schools. The rest of the beneficiaries stated that they have completed

283 Bajeti Small Group Home - Association 'SOS Children's Villages Georgia', Chkhorotsku Small Group Home - Association 'SOS Children's Villages Georgia', non-profit legal entity *Association Imedis Skhivi*, Lanchkhuti, the village of Lessa

284 Bajeti Small Group Home - Association 'SOS Children's Villages Georgia'. The Union of Young Teachers, Ozurgeti, Ozurgeti Small Group Home

285 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards. Standard 8.

286 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

287 Association "SOS Children's Villages Georgia". Shengelia Street 24, Borough of Chkhorotsku

nine grades and do not want to continue to upper grades. At this moment some of the beneficiaries are not included in either of formal or informal education activities. Four beneficiaries of Chkhorotsku SGH spend most of their time at home in front of a computer. They do not receive any kind of education including vocational trainings.

It is worth noting that SGHs are assisted by various organisations in providing for education needs of beneficiaries. However, many of beneficiaries' education needs are to be met. The resolution of this problem cannot be solely dependent on goodwill and charity of organisations and it is critical that the state develop a systemic approach to issues related to children's education in SGHs.

In Khoni SGH²⁸⁸ the monitoring team identified cases involving pedagogical negligence, lack of learning skills of beneficiaries, a low level of cognitive development and poor communication and social skills. In spite of this situation there is only one child engaged in an inclusive education programme upon his/her written refusal to continue education.

The monitoring to Batumi Small Group Home²⁸⁹ revealed that most of the beneficiaries residing in the SGH require additional classes and need to be engaged in an inclusive education programme.

The children of Batumi SGH demonstrated academic underperformance as they fail to handle school's curriculum and therefore require intensified measures. It is undoubtedly a positive practice that a development teacher has been working with three beneficiaries of the SGH, however, this is far from being sufficient to meet the needs of all beneficiaries of Batumi SGH.

Libraries in SGHs are limited and lack in choice of fictions. Books are old and undiversified and irrelevant to age and interest of beneficiaries. In most cases libraries in SGHs are formalities and not of much use.

Situation with regard to children with special learning needs is particularly difficult. They do not always have teachers with special qualifications and they have to study independently. Activities that are designed for them do not meet their special education needs.

The monitoring of SGH demonstrated that some of staff members lack understanding of inclusive education. Nor are they aware of types of activities and measures they need to undertake in order to protect the right to education of children with special education needs.

Often providers fail to prepare beneficiaries for higher education institutions. In such cases they occasionally apply to free of charge preparation classes and volunteer students.²⁹⁰

288 Association "SOS Children's Villages Georgia". Ip Khvichia Street 28, Khoni

289 Batumi Centre for Education, Development and Employment. 26 Maisi Street 106, Batumi

290 Charity and Humanitarian Foundation "Breath Georgia", Kekelidze Street 26, Kutaisi.

Together with the identification of beneficiaries who require individual curriculum, the implementation of such curricula is also of utmost importance. In order to achieve this goal, staff at a SGH are responsible for building working relations with an education institution and take a lead in controlling this process. On the other hand, schools also have important roles to cooperate with SGH and beneficiaries. However, the monitoring team revealed that school staff demonstrated negligent attitudes towards fulfilling their obligations on various occasions.

Either one or both foster parents are responsible to oversee school attendance by beneficiaries of small group homes. However, in most of the SGHs foster parents are not fully aware of children's education needs and problems they encounter in schools.

The monitoring revealed that a majority of beneficiaries have never heard about the UN Convention on the Rights of the Child. Therefore, it is critical that adequate measures be taken in order to raise awareness of beneficiaries and caretakers on the rights of the child.

6.10. STANDARD 9 - HEALTHCARE²⁹¹

Pursuant to the Article 9, Clause 1 of the Child Care Standards²⁹², the beneficiaries should be raised in an environment promoting healthy lifestyle, where proper attention is paid to the state of their health.

According to the Child Care Standards²⁹³ service provider shall provide the availability of the immunization and preventive medical examination of the beneficiaries²⁹⁴.

In terms of immunization, all beneficiaries of the small group homes have received the age appropriate vaccinations. Children are also regularly vaccinated against seasonal influenza. During the monitoring visits only several beneficiaries revealed the signs of post vaccination complications. The children were hospitalized, where their health status was assessed and necessary treatment was prescribed²⁹⁵.

The foster parents are informed about the necessary measures for preventing the transmission of viral infections. In general, small group homes do not have the means to isolate the infected children.

Beneficiaries undergo preventive medical examination, as evidenced by the provided form #IV-100/a. Medication is purchased with the doctor's prescription. Generally, small group homes have a small supply of medicines available. One particular small

291 Technical Regulation about "Child Care Standards" adopted by the Resolution #66 issued by the Government of Georgia on January 15, 2014

292 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

293 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

294 Article 9, Clause A, Paragraph 2

295 Association "SOS Children's Villages Georgia". Akhlagzardoba Ave. turn 3, south west, House #1, Kutaisi.

group home did not have any emergency medical supplies²⁹⁶. According to the internal regulations, the medical supplies have to be stored in a specifically designated area, however in some small group homes the medicines are kept within the reach of children²⁹⁷.

Several problems were identified in terms of availability of medical services, including the issue of territorial accessibility. In several cases the polyclinic, where the small group home beneficiaries are registered, is located too far away, which makes the monitoring of children's health status and proper healthcare provision more difficult²⁹⁸. Problems linked with the availability of medications at the local pharmacies were identified in the small group homes located in remote villages.

There is an apparent need to conduct more educational activities promoting healthy lifestyle. The beneficiaries of the majority of small group homes consume tobacco and children are less involved in sports and fitness activities.

During the placement of beneficiaries in the small group homes, along with other necessary documents, it is essential to provide medical certificate (medical documentation form #IV-100/a)²⁹⁹.

The role of social worker in terms of administrating the child's healthcare remains a problem. In most cases, in the individual development plans prepared by the social worker the section about "healthcare" is filled only formally. During the review of individual plans the assessments stay the same, failing to reflect the actual health status and needs of a child. This particular circumstance emphasizes the lack of cooperation between social workers and foster parents.

In the small group home of "Breath Georgia" all medical documentation was stored by the physicians and social workers; the given fact prevents the dynamic supervision of beneficiaries' health status³⁰⁰.

Cost of healthcare services for the beneficiaries of small group homes are covered by the state insurance vouchers, however in the reports of previous years the Public Defender noted that the funding within the frameworks of the voucher does not envisage the age related specifics of children and youth, which affects the effectiveness of availability of medical services.

Endocrine disorders and issues linked with puberty are common in adolescents, vision correction is also frequently required and the glasses need to be purchased. Monitoring revealed that dental services are still problematic in the majority of small

296 Association "SOS Children's Villages Georgia". Levan II Dadiani St. Tsalenjikhva

297 Association "SOS Children's Villages Georgia. Shalva Dadiani Street 17. Kutaisi

298 "Caritas Georgia", 8 Bezhanishvili St. Small Group Home "Satnoeba"

299 Article 6 of the Decree #52/n "about adopting the rules and conditions of placement and withdrawal of a beneficiary in and out of the specialized institution" issued by the Ministry of Labor, Health and Social Affairs of Georgia on February 26, 2010

300 Charity and Humanitarian Foundation "Breath Georgia", Kekelidze Street 26. Kutaisi

group homes, since the medical insurance package does not cover them. The service providers of small group homes bear the responsibility of providing the dental care to the beneficiaries.

6.11. STANDARD 10 – PROCEDURES FOR FEEDBACK AND COMPLAINTS³⁰¹

Pursuant to the article (10) of the Child Care Standards³⁰² the service provider shall develop clear and simple procedures for providing feedback and expressing complaints regarding the quality and type of services by the child and his/her legal representative.

As a result of monitoring it was revealed, that in most cases, the small group homes maintain the records of the activities implemented to respond to the expressed opinions. Mostly the records are being kept, although the timeframe for providing a response and the respective outcomes are unclear or the document is not filled at all. Therefore, it is often of formal nature.

In order to ensure the feedback provision, the small group homes have complaint boxes, which, in most cases, are empty. The procedures for providing feedback and complaints are not promoted by the service providers, therefore the service beneficiaries, due to the lack of information, do not exercise this right.

The complaint boxes are installed in the visible places of the small group homes. Several beneficiaries interviewed by the monitoring experts claim that they do not use the boxes frequently. During the monitoring feedback or complaint logs in the majority of homes were either blank or not filled completely. This issue was especially evident in Batumi small group home³⁰³. The box was placed out of the reach of children. It did not have a label. It was quite apparent that in this particular home the box did not serve its purpose. The monitors found the feedback logs empty.

In Chkhorotsku small group home³⁰⁴ the beneficiaries are not informed about their right to express their opinion or protest against the quality of services. There is no agreed procedure enabling the beneficiary or his/her legal representative to express his/her opinion anonymously.

6.12. STANDARD 11 – PROTECTION FROM VIOLENCE³⁰⁵

The article (11) of the Child Care Standards³⁰⁶ defines a right of a child to be protected from violence. Article (19) of the Convention on the Rights of a Child obliges the

301 Technical Regulation about “Child Care Standards” adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 10

302 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

303 Education, Development and Employment Center of Batumi, 26 Maisi Street 106. Batumi

304 Association “SOS Children’s Villages Georgia”, Shengelia Street 24, Chkhorotsku

305 Technical Regulation about “Child Care Standards” adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 11

306 Technical Regulation about “Child Care Standards” adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 11

participating states to protect children from all types of violence, and the UN Committee on the Rights of the Child, in its general comment #8, urges member states to provide a rapid response to all types of physical violence against minors³⁰⁷. In the given comment the committee specifies, that the disciplinary actions must be clearly separated from violence. The latter, unlike the first, causes a certain intensity of pain, discomfort and humiliation.

Majority of the beneficiaries of small group homes have a history of psychological and physical violence (abandonment, neglect, death of a mother, physical and psychological violence from a parent, lack of food, experience of institutional care, frequent changes in the types of care, etc.)

All small group homes maintain the violence registration journal or a special notebook, but the records do not correspond to the existing reality of small group homes and do not properly reflect all incidents of abuse.

The violence registration journal of a particular small group home³⁰⁸ reveals an entry recorded in 2013 regarding the statement of a child about being abused by the foster father. The individuals responsible for child care did not carry out any procedures for further investigation of the given issue; no actions were taken to prevent the violence and provide the psycho-social rehabilitation services to the child with a traumatic experience. Public Defender's report of 2012 provides the facts linked with the given case, although during the current monitoring mission, the above mentioned foster father was still employed at the small group home.

The majority of beneficiaries of a particular small group home³⁰⁹ have problems at school. They have emotional and behavioural disorders and require professional help, individual programs tailored to their educational or mental needs. The given procedure was not implemented. For several months already they have been under care of a foster parent, who has not been properly trained; foster mother hardly interacts with children and the majority of information regarding the beneficiaries is kept by foster father. A newly appointed representative of the provider organization is motivated to assist the beneficiaries. He (She) is actively involved in the everyday life of a small group home, takes children to school, organizes various events for them and frequently addresses the family physician. Although, he (she) has not taken appropriate training and his (her) efforts are not adjusted to the specific needs of the beneficiaries.

The individuals involved in child care, in most cases, cannot independently, without the help of a specialist, identify the psychological/psychiatric problems of the beneficiaries and are unable to determine their needs before the crisis. Respectively, they do not take preventive actions or try to overcome the crisis by ignoring and concealing the problem or through general discussions, which, in most cases, are ineffective. During

307 General Comment №8, the Right of the Child to Protection from Corporal Punishment and other Cruel or Degrading Forms of Punishment, Committee on the Rights of the Child, 2006, Para. 2.

308 Education, Development and Employment Center of Batumi, 26 Maisi Street 106, Batumi

309 LEPL Association "Momavlis Skhivi" (Beam of Future), Village Lesa, Lanchkhuti

the conversation with monitors, a foster mother of a particular small group home³¹⁰ stated that she does not “enjoy” taking a child to the psychiatrist. So she arbitrarily stopped giving the beneficiary the medicines prescribed by the psychiatrist, as she considered that the medications had negatively affected the child. According to the observations of the monitoring group, several children under care of the given foster parent demonstrated signs and symptoms of behavioural and emotional disorders. The foster parent was definitely unable to independently manage the behaviour of these beneficiaries.

It is noteworthy, that the presence of beneficiaries with complex and expressed behavioural disorders negatively affects other beneficiaries of the particular small group home³¹¹, given that the service provider is unable to regulate his/her behaviour. Majority of foster parents do not possess any knowledge about the influence of a traumatic experience on the development and behaviour of a child. In many cases, unwanted behaviour of children with such complicated pasts is interpreted as “stubbornness”, “ungratefulness”, “genetics”, etc.

In the majority of small group homes the violence among children has a systematic nature, which creates unsound situation in the homes. The incidents of bullying were reported at several small group homes³¹².

The beneficiaries of a particular small group home³¹³ had various physical injuries sustained during fights and as a result physical violence against each other. According to the foster parents’ notes, the children frequently demonstrate physical and verbal aggression towards each other. The situation is similar in Batumi small group home³¹⁴.

Foster parents usually do not trust children’s reports about violence without objective data and frequently refer to the violence among the children as “small quarrels”.

The situation in the biological families of the beneficiaries is especially noteworthy. The information provided by the beneficiaries and their foster parents points out different types and cases of violence in the biological families, which, in most cases, are not fully investigated. The situation within the biological family of the beneficiary is not taken into account during his/her temporary withdrawal. In this regard, it is important to involve a social worker in the processes of identification and addressing of a child’s problem.

310 Association SOS Children’s Villages Georgia, Village Kvaliti, Zestaponi

311 Charity and Humanitarian Foundation “Breath Georgia”, Kekelidze Street 26, Kutaisi.

312 Education, Development and Employment Centre of Batumi, 26 Maisi Street 106, Batumi; Association SOS Children’s Villages Georgia, 28 Ip. Khvichia St, Khoni; Association SOS Children’s Villages Georgia, Levan II Dadiani St, Tsalenjikha, LEPL “Momavlis Skhivi”, Village Lesa, Lanchkhuti; Association SOS Children’s Villages Georgia, Village Bajiti, Sachkhere.

313 Association SOS Children’s Villages Georgia, Ip. Khvichia Street 28, Khoni.

314 Education, Development and Employment Centre of Batumi, 26 Maisi Street 106, Batumi.

6.13. STANDARD 12 – CARE AND SUPERVISION³¹⁵

Article (12) of the Child Care Standards defines the obligations of a service provider and protects the right of a child to live under proper care and supervision.

The small group homes maintain a journal for “registration of child disappearance”, but the monitoring revealed that usually it is filled only formally and some cases have not been recorded at all.

In most cases the procedures for assessment and management of a complex behaviour of a child are included in the individual development plan; however they lack the multidisciplinary nature and usually burden the foster parents.

Monitoring revealed several cases of children secretly leaving the small group homes to return to the biological families, when foster parents had to locate and return them independently or with the help of social services and police.

The named reason for secretly leaving the facility is usually a desire to see parents and siblings – due to the financial problems the family members do not visit the beneficiaries of small group homes frequently.

The monitoring group paid special attention to the problems with child care identified in the small group homes of Kutaisi³¹⁶ and Khoni³¹⁷. After several years of unaddressed and neglected behaviour, children demonstrated violent and in some cases asocial conduct. In the small group home of Khoni³¹⁸ children often leave the house without permission and return late. The foster parents’ notes do not show whether they were notified about the reasons of child’s absence and also reveal that they are not informed about children’s problems, interests and the time spent outside the house. It is also unclear what kind of correctional actions were taken by the foster parent in each individual case.

The atmosphere in one of the small group homes³¹⁹ indicates that only the basic needs of the beneficiaries are being met. During the discussions with the foster parents it was apparent that the foster mother is less involved in rearing of the beneficiaries. Most likely, she is only involved in performing the household chores and is hardly acquainted with the children’s problems. She claimed that the adolescents do not have any difficulties aside of the fact that they sometimes stay out until late. She is less familiar with the individual needs of the beneficiaries.

315 Technical Regulation about “Child Care Standards” adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 12

316 Association SOS Children’s Villages Georgia, Shalva Dadiani Street 17, Kutaisi

317 Association SOS Children’s Villages Georgia, Ip. Khvichia Street 28, Khoni

318 Association SOS Children’s Villages Georgia, Ip. Khvichia Street 28, Khoni

319 Association SOS Children’s Villages Georgia, Shengelia Street 24, Chkhorotsku

6.14. STANDARD 13 – PREPARATION FOR LIVING INDEPENDENTLY AND LEAVING THE FACILITY³²⁰

According to the recommendation of the Committee of Ministers of the Council of Europe, after leaving the facility the adolescent needs state support and adequate assistance³²¹ in order to ensure his/her integration within the family and the society. In its 2008 conclusion, the UN Committee on the Rights of the Child urges Georgia to introduce measures for providing assistance and care to the adolescents who leave the care centres³²².

In its parliamentary report of 2012, the Public Defender addressed the Ministry of Labour, Health and Social Affairs of Georgia to develop an effective program to respond to the specific needs of the beneficiaries leaving the small group homes upon reaching the age of majority to live independently. It includes the provision of a living space and employment opportunities.

Child Care Standards oblige the service provider to prepare a child for independent life and support him/her during the process of leaving the facility.

Monitoring clarifies that the state has not implemented appropriate activities in this direction. As for the service providers, unlike the previous years, they are actively involved in planning of the beneficiary's future. The government essentially needs to take effective steps.

Provider organizations try to use their own or charitable organizations' resources to provide professional education to the beneficiaries. It is also noteworthy, that the Foundation "Natakhtari" helps the children lacking parental care lead independent lives. The representative of the foundation works with the small group homes, assesses the needs of the beneficiaries and develops their future plans. Usually social workers are also involved in this process. In spite of this, the whole burden falls on the provider organizations and funding acquired from various sources. In most cases the biological families of the beneficiaries of small group homes are not involved in the process of preparation for living independently.

During the monitoring process the small group homes did not possess clearly defined development plans for preparing an adolescent for living independently. Consistent work with the beneficiaries in this direction and assessment of their interests and needs is an urgent priority.

Majority of beneficiaries express their desire to receive professional education. They have no interest in learning, as they want to have their own income as soon as possible in order to be prepared for leading independent lives.

320 Technical Regulation about "Child Care Standards" adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 13

321 Recommendation of the Committee of Ministers of the Council of Europe Rec(2005)5, *Regarding the rights of children living in closed institutions in the member states of the Council of Europe, General principles.*

322 48th Session of the UN Committee on the Rights of the Child, CRC/C/GEO/CO/3, Recommendation 37.

Several beneficiaries of the Chkhorotsku small group home attended respective professional courses. After reaching the age of majority they returned to their biological families, where the living conditions were quite poor. It is notable that these adolescents were never employed. Several cases of early marriage were reported, which were probably caused by the unpreparedness for leading independent lives and the reluctance to return to the biological families³²³.

It is remarkable that the majority of beneficiaries possess self-care skills. They help their foster parents in daily chores and assist in cooking and cleaning.

6.15. STANDARD 14 – BENEFICIARY ORIENTED ENVIRONMENT³²⁴

According to the UN Convention on the Rights of a Child³²⁵ “every child has the right to a standard of living adequate for the child’s physical, mental, spiritual, moral or social development.” State, in its turn, shall provide appropriate conditions for the implementation of this responsibility. Full development of a child requires a normal environment similar to the one in a family.

According to the Child Care Standard 14, the service shall be provided in an environment, which corresponds to the goal of the service and meets the needs of a beneficiary. The service shall be provided in clean and comfortable environment. The physical environment of the service should be similar to the one in a family.

Tsalenjikha small group home³²⁶ has a damaged roof, where the rain water leaks in the living room. During the rain the kitchen wall also leaks. The railings of the second floor stairs are amortized. Small group homes of Lanchkhuti³²⁷ and Village Bajiti³²⁸ do not have electricity and the children have to study by candlelight.

In Batumi small group home³²⁹ humidity causes specific unpleasant odour. Paint on the walls is crumbling and needs to be repaired.

The water taps of the bathrooms of small group homes of Ambrolauri³³⁰, Khoni³³¹, Zestaponi³³² and Kutaisi need to be changed, water supply and sewage systems need to be repaired, artificial ventilation needs to be installed. In the kitchens of small group homes of Kutaisi³³³, Village Bajiti³³⁴ and Khoni³³⁵ the exhaust systems are out of order.

323 Association SOS Children’s Villages Georgia, Shengelia Street 24, Chkhorotsku

324 Technical Regulation about “Child Care Standards” adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 14

325 UN Convention on the Rights of a Child, Article 27, Part I.

326 Association SOS Children’s Villages Georgia, Levan II Dadiani St, Tsalenjikha

327 LEPL “Momavlis Skhivi”, Village Lesa, Lanchkhuti

328 Association SOS Children’s Villages Georgia, Village Bajiti, Sachkhere

329 Education, Development and Employment Centre of Batumi, 26 Maisi Steet 106, Batumi

330 Association SOS Children’s Villages Georgia, Tsereteli Street 8, Ambrolauri

331 Association SOS Children’s Villages Georgia, Ip. Khvichia Street 28, Khoni

332 Association SOS Children’s Villages Georgia, Village Kvaliti, Zestaponi

333 Charity and Humanitarian Foundation “Breath Georgia”, Kekelidze Street 26, Kutaisi

334 Association SOS Children’s Villages Georgia, Village Bajiti, Sachkhere

335 Association SOS Children’s Villages Georgia, Ip. Khvichia Street 28, Khoni

6.16. STANDARD 15 – SAFETY AND SANITARY CONDITIONS³³⁶

According to the Standard 15³³⁷ the beneficiaries shall receive the services in a safe environment, where the sanitary measures are being met; service provider shall keep the service area clean and dispose litter in a closed container placed in a specifically designated area.

In the bathrooms of small group homes the children’s toothbrushes are stored in open vessels without any hygienic protection and distinguishing labels. Therefore, it is quite possible that the toothbrushes get mixed, fall on the floor or get contaminated in any other way, which certainly contains health hazards.

It is also noteworthy that most of the garbage bins in the small group homes do not have covers. This refers to the bins both inside and outside of the house. During the monitoring mission, there were several partially filled garbage bins without covers installed at the entrance of Kutaisi small group home³³⁸. Part of the garbage had been placed by the side of the bins, which is a violation of sanitary rules.

RECOMMENDATIONS TO THE MINISTRY OF LABOUR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Prior to their employment, the service providers should provide the basic training to the individuals working at small group homes according to the training course agreed with the Ministry of Labour, Health and Social Affairs;
- As per the article (1) of the Child Care Standards (Standard #1 – Information about the services) and Annex #3 of the decree #52/n “about adopting the rules and conditions of placement and withdrawal of a beneficiary in and out of the specialized institution” issued by the Ministry of Labour, Health and Social Affairs of Georgia on 26 February 2010, the proper processing of the documentation should be supervised;
- Ensure the availability of necessary services for small group homes functioning in the regions; the beneficiaries need to be supported with additional resources;
- Social services need to work more actively in terms of improving the economic and social conditions of biological families, in order to improve the quality of contact between the child and his/her biological family and ensure future reintegration;
- Ensure multidisciplinary assessment of child’s individual needs, reflecting them in the individual development plan and developing of the indicators of

336 Technical Regulation about “Child Care Standards” adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 15

337 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

338 Charity and Humanitarian Foundation “Breath Georgia”; Kekelidze Street 26, Kutaisi

achievement of set targets;

- Introduce the planning of short-term individual activities, based on the urgency of the problem. Develop indicators for measuring the achieved progress;
- Strictly monitor the small group homes in terms of creating and maintaining a reliable environment necessary for the emotional and social development of a child defined by the “Child Care Standards”;
- Provide trainings to the employees on the procedures of developing the individual learning plans for the beneficiaries with special educational needs and controlling their achievement;
- Ensure the cooperation between the service providers and educational institutions in order to identify the educational needs of the beneficiaries;
- Provide an additional systematic and qualified tutoring in the necessary disciplines to the beneficiaries and increase their motivation;
- Ensure that the beneficiaries and their foster parents are informed about the rights of a child and the mechanisms of their protection;
- Ensure the timely provision of adequate healthcare to the beneficiary;
- In case of urgent placement in a small group home, the health status of the beneficiary should be assessed immediately in order to eliminate the health risks of other beneficiaries;
- Promote a healthy lifestyle. Increase the role of physical activities and different sports in the daily lives of the beneficiaries of small group homes;
- Fully meet the requirements of disease control. Provide information about contagious diseases to the foster parents and beneficiaries;
- Ensure a safe storage of medical supplies and documentation of handing over the medicines to the small group homes;
- Ensure the development of Psychological and Psychiatric Assistance Standards for the Children under State Care, implement the psychological assistance based on the beneficiaries’ needs by training relevant staff, introducing supervisory mechanisms, providing adequate psychiatric assistance and timely development and initiation of psycho-social rehabilitation programmes;
- Provide regular training to the service providers and beneficiaries on the issues of child’s rights and prevention of violence. Develop special programs of psycho-social rehabilitation for the foster parents;
- Pay special attention to the social conditions and prevention of violence towards children during the temporary withdrawal of the beneficiaries to the biological families.

RECOMMENDATIONS TO THE SOCIAL SERVICE AGENCY OF THE MINISTRY OF LABOUR,
HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- In order to protect confidentiality of conversations, assign a special room for this purpose in every small group home;
- In order to protect confidentiality, develop a consent form for the authorized individuals, which will be signed upon the release of personal information of the beneficiary of a small group home;
- Provide trainings to the employees of small group homes in order to ensure the proper development of individual plans of beneficiary service provision. During the process of designing the mentioned plans the opinions of the beneficiaries and foster parents need to be considered;
- Supervise the elaboration of individual development plans;
- Ensure timely provision of a child's documentation upon the placement of the beneficiary in a small group home, adequate risk assessment and defining of the alternate forms of care considering the true interests of a child;
- Develop specific nutrition standards for small group homes;
- Provide regular trainings to the foster parents on the topics of child's development, food storage, quality control and healthy and balanced diet of a child;
- Introduce appropriate measures for uninterrupted purchase of food products;
- Regularly test the water quality;
- Implement the multidisciplinary management of a complex behaviour of a child and actively involve a psychotherapist or if necessary a psychiatrist in the process;
- Ensure the active and effective involvement of the social workers from the regional centres in the process of providing necessary care to the beneficiaries of small group homes;
- In order to avoid undermining of child care processes and prevent the abuse of child's rights in the case of ineffectiveness of psychological/psychiatric/pedagogic/social activities, initiate timely discussions about selecting the alternate form of care for the beneficiary and implementation of adequate measures;
- Repair and furnish those small group homes, which do not provide proper living conditions for the children;
- Provide the trainings to the foster parents on disaster risk response;
- Develop the evacuation plan for each small group home, which will be shared

with both the foster parents and the beneficiaries;

- Provide small group homes with fire extinguishers; assign a specific area for storing the fire extinguishing supplies;
- Regularly monitor whether the hygienic norms are being followed.

RECOMMENDATIONS TO THE EDUCATION, DEVELOPMENT AND EMPLOYMENT CENTRE OF BATUMI **ENSURE:**

- The improvement of psycho-social environment in the Batumi small group home by actively involving a psychologist and foster parents in the process;
- Training of the foster parents on the issues of child care;
- Active involvement of social services in the processes of child care;

RECOMMENDATIONS TO THE SOCIAL SERVICE AGENCY OF THE MINISTRY OF LABOUR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA AND THE PROVIDER ORGANIZATIONS:

- Systematically involve the beneficiaries in different activities based on their needs, work on improvement of their motivation, aim to acquire funding and transportation;
- While defining the locations of the small group homes consider the needs of the beneficiaries and the existing resources within the local community;
- Clearly define complete procedures for providing feedback and complaints in the documentation of small group homes; inform the beneficiaries about the rules of providing feedback and expressing complaints and record each feedback and complaint according to specific rules;
- Make sure that the beneficiaries of small group homes can exercise their right to provide feedback and complaints by informing them on a regular basis, simplifying the rules, using the anonymous feedback surveys and addressing the emerging problems through interactive discussions.

RECOMMENDATION TO THE GOVERNMENT OF GEORGIA

- Develop a state system, which will ensure the employment and financial assistance of a minor upon his/her withdrawal from the state care until his/her complete independence; provide qualified information to the beneficiaries about the issues of planning the future and prof-orientation.