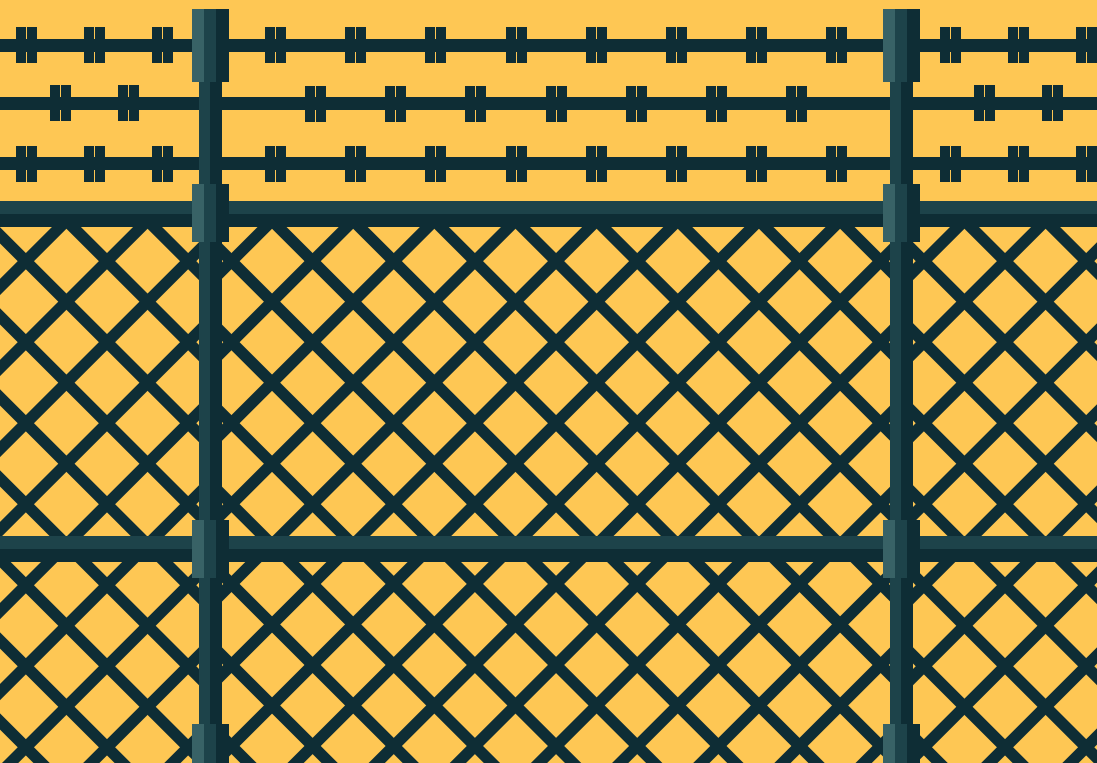




**National  
Preventive  
Mechanism**  
for the Prevention of Torture

# Consolidated Report

of the National Preventive Mechanism members  
on the preventive visits made in 2018





# Consolidated Report

Prepared by the National Preventive  
Mechanism members on the preventive visits made in 2018



**National  
Preventive  
Mechanism**  
for the Prevention of Torture

Nur-Sultan 2019

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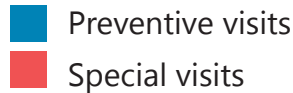
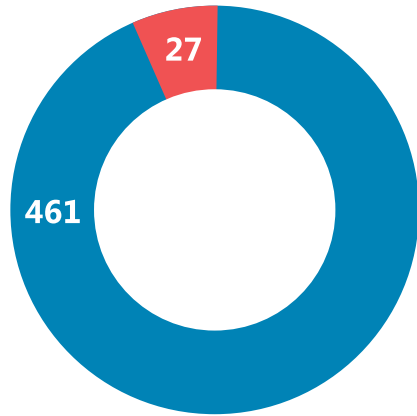
1

On some organizational  
issues of the National  
Preventive Mechanism  
in 2018

According to the current legislation of the Republic of Kazakhstan, the Coordination Council prepares an annual consolidated report of the national preventive mechanism members, considering their reports on the results of preventive visits. The 2018 report is the fifth consolidated report of the NPM members.

In 2018, the NPM members carried out 461 preventive visits, which of 27 were special. As the statistics show, number of preventive visits decreased by 121 in comparison with 2017 and by 219 in comparison with 2016. The decrease in the number of preventive visits is associated with a reduction in allocated budget. In this regard, in 2018, additional amounts were requested under sub-program 106 "Implementation of measures to enforce the national preventive mechanism", however, the relevant budget request was not supported by the Ministry of Finance.

During the reporting year, the visits were paid to a total of 118 temporary



detention centers, 33 pre-trial detention centers, 90 correctional institutions, 26 remand houses, 24 special reception centers, 15 centers for adaptation of minors, 8 special educational institutions, 37 psychiatric, 20 narcological, 22 anti-tuberculosis organizations, 3 detention centers under the National Security Committee, 3 military detention facilities, 31 police stations (including the premises of departments of internal affairs).

Out of these 27 special visits were paid to 17 correctional institutions, 7



pre-trial detention centers, 1 psychiatric hospital, 1 narcological hospital and 1 special reception center under the Shymkent Police Department.

Based on the results of the special visits, the materials on the revealed violations contributing to the creation of factors of cruel and degrading treatment were sent to the General Prosecutor's Office and to the authorized state bodies depending on the content.

One of the indicators showing the effectiveness of the NPM is the implementation of the recommendations on elimination of revealed violations mandated by the institutions.

The recommendations of the NPM members outlined in the previous consolidated report were implemented by the National Security Committee, the Ministry of Internal Affairs, the Ministry of Defense, the Ministry of Education and Science and the Ministry of Health to the extent that their direct capabilities, including financial ones, allowed.

Medical supplies were improved in the correctional institutions of East Kazakhstan, Kostanay, North Kazakhstan, Kyzylorda oblasts where the stock of medicines was updated, the ventilation system of the premises was renovated, the library database was updated, and the regime and foodstuffs of prisoners were monitored. In many mandated institutions major repairs were carried out in the living quarters, where windows and a sewer system were replaced, and the yards were equipped with shelters from rainfall.

The conditions were improved in temporary detention facilities, special reception centers and remand houses in Shymkent, East Kazakhstan and Kyzylorda oblasts. NPM members also carried out methodological work on familiarizing employees in correctional institutions of the East Kazakhstan, Kostanay, North Kazakhstan oblasts with the procedure for observing the rights and freedoms of convicts, as well as on the prevention of torture. These

examples prove the feasibility of ongoing preventive visits.

The leadership of the National Security Committee of the Republic of Kazakhstan, together with the administration of the pre-trial detention centers, implemented measures to create conditions that meet the minimum standard rules for the treatment of prisoners, as well as to prevent torture and other cruel, inhuman or degrading treatment or punishment. In pursuance of measures to create appropriate conditions in detention centers, the leadership of the Committee continues to implement projects for the construction of pre-trial detention centers in the Astana and Almaty.

The recommendations of the NPM members on the outcome of visits to the military detention centers were accepted for implementation. According to the information received from the General Staff of the Armed Forces of the Ministry of Defense of the Republic of Kazakhstan, it follows that such work as equipping

medical cabinets, placing sports equipment in exercise yards, and increasing artificial lighting was carried out in the military detention facilities including Akmola, Almaty, Aktyubinsk, Taldykorgan, Shymkent and Karaganda military posts according to the recommendations of the members of the NPM.

The Ministry of Education and Science of the Republic of Kazakhstan provided detailed information on the implementation of the recommendations of NPM members regarding specific institutions. Moreover, the authorized body provided information to oblast reporting institutions and organizations on the implementation of recommendations to improve the conditions of treating children and the order of their presence in educational organizations. The Ministry stresses that most of the violations identified by the NPM members during preventive visits to the activities of the centers for adaptation of minors and specialized

organizations have been eliminated. According to the recommendations of the NPM members, in order to prevent torture and mistreatment of minors by employees, work was carried out to design information and legal stands in two languages about NPM, children's rights, the procedure for filing complaints and appeals provided sample petitions, telephone lines, prosecutors, Commissioner for Human Rights in the Republic of Kazakhstan and public organizations.

On the implementation of the recommendations made by the NPM members in the institutions reporting to the Ministry of Health of the Republic of Kazakhstan, the authorized body notes that in the planning period for 2018-2020, the budget program provides for the construction and reconstruction of 11 health facilities and the seismic retrofit of 1 health facility from 2017 to 2021. In terms of insufficient staffing per specialized medical staff, the Ministry is working to integrate such the

specialties as "psychiatrist" and "narcologist" into a single specialty psychiatrist (narcologist). Corresponding changes and additions are made to the model staff establishment and staff standards of health organizations, these actions will allow to reduce the shortage of medical staff in oblast health institutions.

As a result of the analysis of the information provided on the implementation of the recommendations of the NPM members for 2017, reflected in the consolidated report, the positive dynamics can be recognized in the implementation of public comments and recommendations based on the results of preventive visits.

Within his competence, the Commissioner for Human Rights has sent requests to the authorized state bodies on the facts stated in the appeals of citizens. Received complaints were not always confirmed, but in some cases pretrial investigations were conducted, a number of

examinations and checks was appointed.

During the reporting year, following the results of special visits, the materials were transferred to the authorized bodies for inspection. In some cases, the results of special visits have led to the disciplinary liability of employees of closed institutions. Thus, according to the results of the special visit, a number of employees of the UIS Department of Almaty oblast were brought to strict disciplinary responsibility.

According to the current legislation, interference with the activities of NPM members is prohibited. Despite the implementation of the activities of the NPM since 2014, the facts of impeding NPM activities continue to be. Thus, in 2018, the NPM members in the in Astana, Kostanay and North Kazakhstan oblasts faced attempts to prevent them from the work from the law enforcement agencies due to their lack of knowledge about the norms of the national legislation of the

Republic of Kazakhstan in the field of prevention of torture. It should be noted that the obstruction of the activities of the NPM members by law enforcement officers entails liability for violating the Code of administrative offences of the Republic of Kazakhstan.

The Commissioner for human rights and his/her institution are implementing training projects aimed at enhancing the professional skills and knowledge of NPM members as a human rights mechanism.

During 2018, with the involvement of such international organizations as OSCE, OHCHR, Council of Europe, PRI, a training on practical issues of the functioning of the NPM was conducted for its new members with the participation of international experts. The training was an introductory course on the functioning of the NPM, where special attention was paid to the preparation for preventive visits, the conduct of the visit itself, the preparation of reports on the results of visits as well as

the importance of sharing responsibilities among group members.

Also, in July 2018, a three-day prison monitoring training was conducted with the participation of an international expert, M. Gnatovskyi, the President of the European Committee for the Prevention of Torture.

In September 2018, in Geneva, within the framework of UN sessions, with the support of the Commissioner for Human Rights together with the NPM Coordination Council, with the support of the Permanent Mission of Kazakhstan to the UN office and other international organizations, a side event was conducted to present the activities of the National Preventive Mechanism of Kazakhstan to the international public.

In 2018, the second Forum of the national preventive mechanism "Prevention of torture by joint efforts of national human rights institutions and the NPM" was conducted during which the annual consolidated report of NPM members on

the results of preventive visits made in 2017 was presented. The event was attended by government officials and all members of the NPM of Kazakhstan. Also a member of the UN Subcommittee on Prevention of Torture, representatives of the Asia-Pacific Forum of National Human Rights Institutions, employees of the office of the Commissioner of Slovenia, the NHRI of Central Asian countries and the Russian Federation were invited. The key point of the Forum was the opportunity of meeting and conducting an open dialogue at a single table of representatives of the non-governmental and civil sector with representatives of state bodies to discuss issues on the prevention of torture in the closed institutions of the country. Within the framework of the forum, master classes for members on topical issues of the NPM activities were conducted by members of the Coordination Council and international experts. The event was organized by the Office of the Commissioner

in the Republic of Kazakhstan with the support of the European Union, the Council of Europe, the Office of the High Commissioner for Human Rights' (OHCHR), the United Nations Development Program, the OSCE Program Office in Astana, the UNICEF Representative Office in Kazakhstan and the Penal Reform International (PRI) in Central Asia.

In addition, during 2018, the work on confirming the draft law of RoK "On amendments and additions to some legislative acts of the Republic of Kazakhstan on the activities of organizations engaged in the protection of the rights of the child" continued and it is currently being considered by the Senate of the Parliament of RoK. It is known that this bill will expand the list of subjects allowing members of the national preventive mechanism to attend educational organizations for orphans and children left without parental care, special educational organizations, educational organizations for children with deviant behavior

and special treatment, social centers and services for family and children support.

On December 25 2018, 109 NPM members (*out of 179 candidates who participated in the election*) were elected for 2019-2020 by the decision of the members of the Coordination Council. For West Kazakhstan oblast, an additional selection of the NPM members was conducted, as a result, the total number of members in the NPM was 116, among them 56% women and 44% men. The overall membership in the NPM for 2019-2020 was updated by 31% compared with the previous year.

The activity of the national preventive mechanism is funded by the republican budget. The budget funds are used only to reimburse the costs incurred by NPM members for preventive visits and cannot be used for other purposes.

For 2018, 55.2 million tenge was allocated, 99.9% of which was disbursed.

# 2

## Rights of convicts in correctional institutions of the Committee of the Penitentiary System of the MIA RoK

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Tumenova Bakhyt Niyazbekovna  
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Since 2014, NPM has been operating in Kazakhstan to prevent torture and other cruel, inhuman or degrading treatment or punishment. According to the plan approved by the Commissioner for Human Rights in the Republic of Kazakhstan, preventive visits are conducted and the NPM members have drawn up a report on institutions with conclusions and recommendations to various state authorities on their competences. There can be an impression that there is a difference in the understanding of what torture is and, accordingly, the expectations of the NPM members, significantly differ from the measures taken by state bodies on recommendations or even their inaction on one or another petition of torture. We believe that, to begin with, we need an equal understanding of what torture is.

According to Article 1 of the Constitution of the Republic of Kazakhstan "The Republic of Kazakhstan claims

itself to be a democratic, secular, legal and social state, the highest values of which are people, their rights and freedoms", which also implies freedom from torture, which is further reflected in Part 2 of Article 17 of the Constitution of the Republic of Kazakhstan "No one should be subjected to torture, violence, other cruel or degrading treatment or punishment". The UN Convention against Torture, ratified by the Republic of Kazakhstan, in Part 2 of Article 2, claims: "No exceptional circumstances, whatever they may be, whether it is a state of war or a threat of war, internal political instability or any other state of emergency, can serve as an excuse for torture". According to the Constitution of the Republic of Kazakhstan (Article 4, Part 3), international treaty ratified by the Republic of Kazakhstan takes precedence over its laws. Thus, freedom from torture is an absolute right and applies to freedom and there is no such situation and there cannot be such a situation that would justify the use of torture.



According to Article 12 of the UN Convention against Torture, "Each State Party shall ensure that its competent authorities conduct a prompt and impartial investigation when there are reasonable grounds to believe that torture has been applied on any territory under its jurisdiction".

According to Article 13 of the UN Convention against Torture, "Each State Party shall ensure to any person who claims to have been tortured on any territory under the jurisdiction of that State the right to complain to the competent authorities of that State and for prompt and impartial consideration of such a complaint. Measures are being taken to ensure the protection of the plaintiff and witnesses from any form of ill-treatment or intimidation in connection with his or her complaint or any witness testimony".

According to Part 1 of Article 21 of the Optional Protocol to the UN Convention against Torture, "No state body or official can appoint, apply, authorize or

allow any sanction against any person or organization for reporting any information to the national preventive mechanism, whether true or false and no such person or organization can in any way be infringed upon".

The reports of the NPM members on institutions of the penitentiary system considered by us show that Article 12 and 13 of the United Nations Convention against Torture are not observed by the Republic of Kazakhstan, and Part 1 of Article 21 of the Optional Protocol to the United Nations Convention against Torture, which is described in more detail in this report.

### **Situation of convicts in correctional institutions of the Committee of the Penitentiary System under MIA RoK.**

During the period from January to December 2018, 21 special visits were made to the following correctional institutions:

1. *"Establishment ZK-169/5" of the Department of the penitentiary system*

- in Kyzylorda oblast – 23.01.2018, 25.01.2018;*
2. *RSE “UK-161/11” of the Department of the penitentiary system in Kostanay oblast – 01.25.2018;*
3. *“Establishment AP-162/2” of the Department of the penitentiary system in Pavlodar oblast – 01.25.2018;*
4. *“Establishment ES-164/3” of the Department of the penitentiary system in North-Kazakhstan oblast – 30.01.2017;*
5. *RSE AK-159/11 of the Department of the penitentiary system in Karaganda oblast – 07.02.2018;*
6. *RSE AK-159/17 of the Department of the penitentiary system in Karaganda oblast – 07.02.2018;*
7. *“Establishment ES-164/9” of the Department of the penitentiary system in North-Kazakhstan oblast – 10.02.2017;*
8. *RSE “Establishment EC 166/24” of the Department of the penitentiary system in Akmola oblast – 13.02.2018;*
9. *RSE “Establishment AP-162/3” of the Department of the penitentiary system in Pavlodar oblast – 14.02.2018;*
10. *RSE “UK 161/2” of the Department of the penitentiary system in Kostanay oblast – 20.02.2018;*
11. *RSE “Establishment LA-155/14” of the Department of the penitentiary system in Almaty oblast – 02.21.2018;*
12. *RSE “Establishment ZK-169/4” of the Department of the penitentiary system in Kyzylorda oblast – 02.26.2018;*
13. *RSE “Establishment AP-162/4” Committee of the penitentiary system (CCES) in Pavlodar oblast – 02.03.2018;*

14. *“Establishment ICH-167/10” of the Department of the penitentiary system in South Kazakhstan oblast - 02.03.2018;*
15. *RSE “Establishment EC-166/5 f” in Astana - 17.03.2018;*
16. *RSE “UK 161/4” of the Department of the penitentiary system in Kostanay oblast – 27.03.2018;*
17. *State Establishment LA -155/6 in Almaty – 28.03.2018;*
18. *RSE “Establishment AK-159/7” of the Department of the penitentiary system in Karaganda oblast – 29.03.2018;*
19. *RSE AK-159/20 of the Department of the penitentiary system in Karaganda oblast – 29.03.2018;*
20. *“Establishment GM-172/8” of the Department of the penitentiary system in Mangystau oblast - 03.30.2018.*

Reports of visits to the above-mentioned correctional institutions allow to compare the situation with previous years, where minor changes have occurred in the penitentiary system. Monitoring of visits has shown that in many correctional institutions there is still an outdated material base and incomplete staff in the units. For example, in the establishment EC-166/5, at the time of the visit, there were 13 open vacancies, in GM 172/8 in Mangistau oblast - 8 open vacancies, in RSE AK-159/20 in Karaganda oblast - 7 open vacancies.

During the preventive visit, the sanitary and hygienic conditions in correctional institutions were also examined, which showed that in almost all institutions as a whole, the conditions are satisfactory.

*According to Part 2 of the European Penitentiary Rules:*

*- Paragraph 19.3. Prisoners should have unhindered access to sanitary facilities that meet hygiene requirements and allow privacy.*

- *Paragraph 19.4 Bathrooms and showers should be sufficient so that each prisoner can use them at a temperature appropriate to the climate whenever possible daily, but not less than 2 times a week.*

In the establishment LA - 155/14 in Almaty oblast, toilets are located next to all the barracks. Their condition cannot be described by words. An unbearable fetid odor can be felt in a distance of a few meters, and it is generally impossible to be present in the toilet without experiencing a vomiting reflex. Convicts are forced to relieve natural functions in such conditions. And this, at least, speaks of ill-treatment of them, and such a toilet conditions can lead to massive infectious diseases. Isolating a person from society on the basis of the decision of the authorized body, the state undertakes the responsibility to preserve his or her health. The state is obliged to create minimum proper conditions for the living of persons who are in places of detention. All holes

are filled with feces, there is no place to go to relieve natural functions. Flushing occurs by pouring water into a Genoa bowl from bottles (plastic containers), and in some units with holding a hose. There is no money for the installation of new bowls and the procurement of components, according to the chief. There is no money and gasoline, which is necessary for septic pumper trucks. It turns out to be a dead end. The situation is that there is no money, the question arises about the rational use of funds allocated from the state budget. According to the prisoners, they are offered to "relieve natural functions" in plastic bags, if the convict tries to go to the toilet of the neighboring detachment, the guards threaten him with weapons. Toilets in this facility are the source of the spread of infectious diseases. In this regard, there is a need to create a separate independent commission that will be authorized to conduct a thorough inspection.

In the Establishment JD 158/4 in the local area for

about 150-160 convicts there are 6 toilets, 9 taps with tap water, the sink is lined with granite with an incline towards the room where the toilets are installed. This design of the sinks is inconvenient for washing: from the upper part, everything flows in the direction of washing over below. It is necessary to install a separate sink on each water tap to flush out dirty water. The situation is similar to the toilets in the premises of JD 158/2, the number of toilets located on the neglected of local areas is not enough, and those that are available need to be better and cleaner, all the equipment and flooring are old and shabby.

In the Establishment EC-166/5 in sleeping rooms in which a large number of convicts are placed, there is an insufficient number of washstands and sanitary facilities, as a result of which convicts in the morning do not have time to carry out hygienic procedures. According to the Regularity No. 15 for the allocation of furniture, inventory and equipment for premises of

the penitentiary system, there is 1 tap for 10 people. For example, detachment #5 consists of 57 people and has 1 toilet in its layout, with 3 toilet bowls and 2 washbasins. Cleaning in the premises is carried out by convicts. Control over cleanliness, ventilation of the premises, air temperature is entrusted to the duty officer of the detachment. In this case, according to Article 47 of the Order of the Ministry of Internal Affairs of the Republic of Kazakhstan dated November 2, 2017 No.728 "On amendments to the Order of the Ministry of Internal Affairs of the Republic of Kazakhstan dated April 7, 2015 No.314 "On the approval of the regulations for the provision of medical care to citizens whose freedom is restricted, as well as to persons serving a sentence by court sentence imprisonment, placed in special institutions": *in emergency and full security institutions, the paramedic, together with the senior corps, checks the sanitary condition of the cells daily, by going around them after*

*the withdrawal of persons held in the institution for a walk or sanitary treatment weave.* According to the convicts, this provision is not considered - there is no daily detour, control over cleanliness and ventilation of the premises is assigned to the convicts themselves. It also violates Nelson Mandela Rules (No.35) as of 2015: *"The physician or the competent public health authority is obliged to conduct inspection and report to the director of the prison regularly"*. In addition, the NPM members noticed that the washed things were hung in the detachment cells for drying. According to the convicts, there are no places for drying things and they are forced to dry them in the cells, which entails excessive moisture. In addition, convicts in some correctional institutions voiced the fact that the means of individual use (toothbrush, toothpaste, soap, toilet paper) are not provided, hot water is needed for everyday washing during the winter heating season.

Failure to comply with the nutritional conditions

in the Establishment ZK-169/5 of the Department of the penitentiary system in the Kyzylorda oblast creates undoubted risks to the deterioration of the health condition of convicts. Out of those signed up for the personal check 53 convicts for non-compliance with the nutritional conditions, 19 convicts presented their complaints. Namely: the lack of hot boiled water for drinking in the cells, sugar is not given at the prescribed rate, compote and milk are rarely given, the range of goods in the store is scarce, and it works only 3 days a week, there is no possibility to purchase sauce, mayonnaise, honey, canned cereal, meat and plant (vegetable, fruit) canned goods, sausages, lard, cheese, fruits, vegetables, oils of animal and vegetable origin, which is a violation of *the Annex 8 to the Internal Regulations of the Institutions of the Penal System, the List of things and items that convicts are allowed to carry with them, receive in parcels, deliveries, wrappers and to purchase in shops of institutions under*

*the Order No.819 of the Minister of Internal Affairs of the Republic of Kazakhstan dated November 17, 2014 On approval of the Internal Regulations of the institutions of the penal system" (as amended on August 31, 2016), as well as Paragraph 1, Item 44 "For the sale of food and essential items to convicts, shops run daily in institutions, with the exception of weekends and holidays".* In addition, in the same institution there were complaints from 25 convicts for non-compliance with the standards of medical care. Among them: lack of timeliness of medical services by medical officers, staffing of medical officers, the provision of additional medical services, the provision of medical preparations, not included in the register of the provision of guaranteed free medical care.

In the Establishment JD 158/7, convicts complained about the absence of fruits, fish, butter, kefir in the menu, and they also complained about the poor quality of bread. They reported that the table to the prisoners is

not fully filled with meat and bread. On the first day of the visit, the NPM members found out that they did fresh cucumber and tomato salad was not served for lunch, which was supposed to be delivered according to the approved menu. The head of the establishment said that the prisoners asked to serve the salad for dinner, since at this time of day only one main course is provided. He also claimed that the salad would be served to the convicts in the evening. However, during the visit by the NPM members on the second day, it turned out that the convicts never received a salad. The NPM members were tried to be convinced that the vegetables had arrived at the institution. An invoice was presented as evidence, however, employees of state institutions could not find the transfer and acceptance certificate for 20 kg of vegetables. After that, they were forced to admit that the vegetables were not really served to the table of the convicts and were not delivered at all.

It should also be noted that the convicts should have been given rice porridge as per the approved menu for lunch, and it was replaced with pearl barley, because there was no rice.

Each convict is entitled to 650 grams of bread for one day. One bread roll made of dark flour should weigh 700 grams. The NPM members weighed a loaf of bread and found out that it actually weighs 520 grams. This roll is divided into 4 parts, three of them are given to one convicted person per day - one portion for one meal - for breakfast, lunch, dinner. In fact, it turns out to be 390 grams instead of the prescribed 650. 260 convicts receive less of 260 grams of bread every day. As explained, the bread is baked in the UJD 158/2 of the RSE "Enbek" and is delivered to the UJD 158/7. According to the head of the UJD 158/7, the convicts do not even eat what they get, so he made an order that bread leftovers should be dried for breadcrumbs and are to be distributed to the convicts so that they could drink tea with

it in the evening. However, convicts say that there is no bread left. The NPM members checked buckets of waste and noted that there was no bread in them. Thus, the NPM members face the signs of corruption. In addition, the quality of bread leaves much to be desired and, most likely, it does not meet the standards of baking. Several years ago, there were already big complaints about the quality of the bread, then the issue was solved after the intervention of the prosecutor - the bread started to be baked again in quality. At the moment the situation is the same again. The committee of the Penal System under the Ministry of Internal Affairs of the Republic of Kazakhstan should take special control over the quality of the products supplied, produced for convicts of the RSE "Enbek" by oblasts, since pasta and other types of products (not for the better) are different from products supplied by private firms for tenders.

Convicted with a diseased liver and various diseases



of the gastrointestinal tract complained about the lack of diet, exacerbation of pain when consuming common foods, sometimes very fat or very salty. In institutions of the Penal System, dietary food for sick convicts is not provided, additional food is provided, which is not a diet food.

It is necessary to pay special attention to medical services in the Establishment LA-155/14 of the Department of the penitentiary system in the Almaty oblast, in which, at the time of the monitoring visit, staff at the medical ward under any pretext tried to hide the facts of injuries and beatings. The complaints from convicts about the medical ward described their refusal to register the facts of injuries and beatings. On the behalf of medical workers, insulting remarks are made to convicts who needed medical care, and the principles of medical ethics and deontology are not observed. It is necessary to strengthen the control over the situation with provision of medical preparations to the convicts

with HIV status, people with disabilities, people with epileptic and convulsive syndromes, chronic diseases to make them able to receive continuous treatment, and to provide the above-mentioned persons with examination and consultation from narrow specialists (neurosurgeon, endocrinologist, cardiologist, etc.) and to implement their recommendations. It is also necessary to register such situations when convicts get injured by other persons in the log of injuries in the medical ward in a timely manner and to carry out a forensic examination prior to healing of injuries (within a week). It is important to note special bureaucratic delays when convicts apply for medical assistance: it is necessary to write a petition addressed to the head of the detachment, then to the deputy head of the institution, who should put his visa on the petition, only after that the convict can go to the doctor for check, as a result of which valuable time for providing medical assistance is lost.

At RSE "Establishment EC-166/5" there were numerous complaints about the lack of timely treatment and the poor quality of medical services. Complaints about the provision of medical care were almost at all units of the establishment. 22 convicts filed verbal and written complaints about the medical staff on the fact that their requests were ignored, and medical preparations were not prescribed at the proper level.

At the time of visiting RSE "UK 161/4" of the Department of the penitentiary system in the Kostanay oblast, there were two convicts in the medical unit who had previously been in intensive care of the rayon hospital. There was a confidential conversation with them, which resulted in conclusions on the fact convicts being poisoned and the following death of four. This time again there were many appeals from convicts precisely on the failure to provide qualified medical care. It should be noted that in their previous recommendations the NPM

group constantly wrote about staffing the medical ward with qualified doctors.

The medical units of the institution are limited in their powers by the administration, the medical service does not take measures to release convicts from work and classes beyond their strength without the consent of the administration of the institution. The issue is not being resolved on prosthetics and timely travel for treatment to specialized institutions, certification from medical consultative board and disability registration without coordination with the administration.

Conditions of serving punishment for persons with disabilities in institutions are not respected, it is not uncommon for wheelchair users with a prosthesis with restricted mobility to be placed on the second floor where there are no conditions for movement. In the medical ward of the Establishment JD 158/4, the wards for sick convicts are located on the second floor. In such conditions, persons

with disabilities are restricted to walk in the fresh air.

According to Part 5 of Article 151 of the Correctional Code of the RoK, "pregnant women, nursing mothers, minors, as well as sick and disabled people are provided with improved living conditions and increased nutritional standards", and this part is not observed in institutions. With the transfer of the establishment of the penitentiary system under the Ministry of Internal Affairs of the Republic of Kazakhstan from the Ministry of Justice of the Republic of Kazakhstan, in institutions, individual barracks for the persons with disabilities to live are gradually annulled and they are held together with other convicts, which, in our opinion, is a violation of the rights of persons with disabilities. According to the legislation of the Republic of Kazakhstan it is necessary to restore their lost rights. There are no adequate conditions for convicted persons with disabilities in the bathrooms, washing rooms, toilets, etc., which are not equipped with

special handrails for them, and they can get injured. It is necessary to return or equip the barracks, where convicted persons with disabilities are kept, with all the necessary conditions for their safe living.

Often convicts from another state, in particular citizens of the Kyrgyz Republic, are not accepted for further serving the sentence. A special preventive visit to UJD 158/4 showed that 35 convicted citizens of the Kyrgyz Republic are kept there, of which 32 convicts petitioned through the General Prosecutor's Office of the Republic of Kazakhstan to continue serving the sentence in the Kyrgyz Republic at the place of residence, 29 convicts got a refusal from the Prosecutor General of the Kyrgyz Republic with such explanation that they can harm the interests of the Kyrgyz Republic.

Based on the recommendations of the NPM members, this issue was resolved through the offices of the Commissioner in the Republic of Kazakhstan and

the Kyrgyz Republic. At the end of the year, more than half of the convicted citizens of the Kyrgyz Republic from this establishment were transferred to their homeland or there was a positive decision in their respect and they are waiting for prison transfer. During the visit, it was revealed that convicted citizens of a foreign state, due to the prevailing circumstances, cannot be given paid work, cannot open a current account, thus, they cannot shop in a special store for convicts, cannot receive specialized medical treatment, cannot independently purchase payphone cards (KazakTelecom) to talk to their relatives. These difficulties and issues are associated with the lack of an IIN (Individual Identification Number), which is issued to citizens of the Republic of Kazakhstan and foreigners with a residence permit in the Republic of Kazakhstan. In addition, the relatives of convicts are not able to send money from another state to the operating account of the establishment, sick persons

with specific diseases also do not have the opportunity to receive appropriate treatment. One of the convicts Zh.U. lives with a pacemaker that has expired more than one year ago. He needs an urgent replacement of the apparatus, otherwise he can die. Two convicts E.A. and R.B. suffer from diabetes and need insulin. In our opinion, such issues are largely due to gaps in the national legislation in the provision of medical services, due to the departmental subordination of the medical part of the institution of the administration of the institution of the Committee of the penitentiary system of MIA RoK. According to the NPM, there is an urgent need to transfer the liability of the medical department of the establishment under the responsibility of the Ministry of Health of the Republic of Kazakhstan. Indicative is the case of convicted B., who suffered for 6 months until his relatives collected money in the amount of 83,000 and he had an operation in the city hospital of Taraz. Particularly

acute is the issue of obtaining early release on parole for convicted foreigners who receive refusals. Literally all convicted foreigners indicated that telephone cards worth 2000, 3000 tenge were purchased through the establishment if there were money in the accounts which convicted foreigners did not have. The only way to get a phone card (KazakTelecom) was from relatives during a visit.

Special means are applied to convicts during the search very often, and this fact is not reflected in the log of injuries of convicts. So during such a search event on April 21 2018 in the Establishment JD 158/4 there was a special means (baton) used against 12 convicts, and this fact was not reflected in the outpatient card or in the log of injuries, also no medical assistance was provided to these persons. According to Clause 4 of Article 62 of the Law on Law Enforcement Service dated January 6, 2011 for 380-IV, "when using firearms and other weapons, special means, physical strength,

employees are obliged to ... take the necessary measures to provide ... medical assistance to the injured".

Entries in the log of injuries and outpatient cards of convicts subjected to the use of special means were not conducted, there was no compilation of certificates proving the presence of bodily injuries, prosecutors and internal affairs agencies did not issue a decision on conducting a forensic medical examination, that is, the existing "Rules for providing medical care to citizens whose freedom is restricted, as well as to persons serving a court sentence in custody placed in special institutions" (see Order No. 314 of the Minister of Internal Affairs RoK dated April 7, 2015) were seriously violated. According to paragraph 154 "Upon detection of bodily injuries, the administration of the correctional institution ... immediately notifies the prosecution authorities of the facts of infliction of bodily injuries to persons detained in the institution..., as well as those who have complained

about the infliction of bodily injuries. All the facts are entered in the log of injuries in accordance with the form present in Appendix 18 to this Regulation". In addition, "in the case of appealing for infliction of bodily injuries or detecting bodily injuries on the body of the person complaining, a duty shift in the person of the duty assistant chief of the institution, an employee of the operational service and a medical worker shall draw up a report on the presence of bodily injuries (examination) ... And with this "In all cases of treatment or detection of bodily injuries by the prosecutor's office or office of internal affairs a decree issued on the appointment of a forensic medical examination".

The illegal actions of employees, as well as the inaction of the medical staff of the institution, in particular during the search of April 21 2018, entail the risk of infection of not only convicts, but also the employees themselves. Such conditions were created during the beating of one of the HIV-

infected convicts, who had his head smashed. His blood was all over the floor, on the walls of the premises of the disciplinary cell, which other convicts could touch with their wounds or mouth. Considering that the process of getting the HIV virus can occur through the blood and injured mucous membranes of the human body, during the torture that took place in the disciplinary cell there was a risk of getting such infection. This danger also exists due to violation of the rules for the storage and issuance of toothpaste and toothbrushes in the disciplinary cell, as well as a result of the collection of razor accessories from convicts and their storage in one general package with subsequent distribution. In accordance with the Decree No. 2018 of the Government of the Republic of Kazakhstan dated December 4 2009, the disease caused by the human immunodeficiency virus and carriers of the human immunodeficiency virus are included in the list of diseases that cause danger to others. The danger of acquiring HIV

infection also arises when medical staff or employees of organizations do not perform their professional duties properly. According to Paragraph 5 of Article 317 of the Criminal Code of the Republic of Kazakhstan "Inadequate performance of professional duties by a medical worker, as well as an employee of an organization ... due to careless or unfair treatment of them, if this act resulted in another person getting infected with HIV/AIDS, is subject to up to five-year imprisonment sentence and to the revocation of the right to occupy certain positions or to be engaged in certain activities for a period of up to three years".

The conclusions that all convicted persons subjected to the use of special means and placed in the ward-type room do not have chronic diseases do not meet the reality, and the conclusions that these persons may be placed in the establishment are not legitimate, because all of these persons have been suffering from chronic diseases for a long time

according to medical documents.

Medical records are formally led by doctors; the procedure for medical checks of convicts and registration of complaints is violated. In particular, there are no complaints from convicts regarding their health status, no description of the form, nature, extent of injuries is present, there is no number, location of injuries on the body, by which it is possible to evaluate them. As a rule, common terms are used in the plot of the case: "he fell from the stairs", "he did harm to himself", "he had a fight" etc., thereby turning the scale of the case against the convicts. Law enforcement agencies, having received this kind of information, do not investigate to find out the true circumstances of the case.

The Rules for registration and storage of medical records in the medical ward of the institution are seriously violated. In particular, the outpatient cards of convicts are stored in publicly accessible place, there is no

strict accounting, the rules of storage and distribution are violated.

Neither the doctors nor the employees, due to their official duties, provided adequate medical assistance to convicted persons who were injured during torture, and neither to the convicted B.A who went on hunger strike.

Complaints of convicts on the failure to provide timely medical assistance, on the non-distribution of necessary medical preparations, on the confidentiality of information about the state of health have been confirmed, that is, there are violations of Article 117 Correctional Code of the Republic of Kazakhstan "On the Health of the Nation".

There are serious reasons along with a serious violation of employees' duties, the low professionalism of the head and staff of the medical sanitary ward of the institution, and collusion with the administration of the institution to conceal the consequences of torture.

In total, according to the NPM members, in the

course of a general search in the establishment UJD 158/4, a significant number of convicts were subjected to degrading treatment, and at least 12 of those were additionally subjected to ill-treatment and torture.

The degrading treatment resulted in:

- obscene language used when addressing the convicts, both to the general mass and to individuals,

- coercion of repeating the same meaningless actions (commands "Run!", "Back to square one!"),

- coercion of prolonged sitting in an uncomfortable squatting pose with hands on the back of the head and head down, which in essence should be described as torture,

- being forced to strip naked and do squats in the presence of many people,

- an offensive attitude towards the property of convicts, which was scattered on the floor of the premises, was trodden by the feet of the employees in the shoes;

- repeated, that is, several convicts, washing the



same toilet with bare hands with a rag soaked in urine and water, a mixture of water and urine,

- being forced shouting abusive insults to themselves,

- coercion to beg the administration of the institution for forgiveness and the staff shouting repeatedly at the top of their voices.

At the same time, paragraph 85 of the "Rules for the organization of activities to monitor and supervise the behavior of persons held in institutions of the penitentiary system and the order of conducting searches", approved by the Order No. 536 of the Minister of Internal Affairs of the Republic of Kazakhstan of August 20, 2014, was seriously violated.

According to this standard, a full search is carried out in the following order:

- 1) the convicted person is offered to hand over money, securities, as well as other items, documents, things, products, substances that are not allowed for storage and use by the convicted person,

and then takes off his or her headwear, shoes and clothes, up to the underwear;

- 2) web spaces of arms, legs, auricles and oral cavity, as well as medical bandages and limb prostheses are examined. Examination of prostheses and bandages is carried out with the participation of a medical worker;

- 3) clothes, headwear, shoes and belongings of the convict are examined. Patches, seams, collar and lining of clothes are examined by touching. If necessary, certain places of clothing are pierced with an awl or are ripped off. Shoes are examined from the outside and the inside to be checked for bending;

- 4) patches, heels, soles and other places of possible shelter of money, narcotic substances and other items, products and substances not authorized for storage and use by convicts are also checked.

At the same time, according to the same paragraph 85 of the same Rules, in any case, "full search .... when conducting

general searches of convicts at temperatures above +10 C, they are conducted at the inspection sites, in their absence – **in local areas in special dismantable booths...**. That is, there was a serious violation of the legislation of the Republic of Kazakhstan, which could not but cause outrage from convicts.

Ill-treatment and torture happened as follows:

- failure to provide medical care after the use of special means;

- unjustified beating of convicts with rubber batons, significantly exceeding of the permissible number of beatings (20 or more beatings) and striking blows to the same part of the body, previously forcibly bared to deliberately increase the pain, while begging the administration for the forgiveness and shouting insults to themselves;

- repeated dipping the heads of the convicts in the water, up to loss of their consciousness;

- long squatting with hands on the back of the head and head down;

- twisting the arms behind the back in the "swallow" position, bending down the head and running in such a state for a distance of more than 100 meters, accompanied by kicks, beatings with a baton and hands;

The texts on the acts on the use of special means and on the violation of the regime of serving the sentence in the files of the cases of convicted tortured, allow to suggest that the actions of convicted persons and officers are falsified. Proof of this is absolutely identical, as if copied, description of the behavior of convicts, who (see Acts No. 34-37, No. 50, No. 52), "were passing through the corridor of cell rooms, using obscene words addressed to the administration of the institution, showing resistance, namely they broke out from under the escort and started to beat their **heads** against the wall". Against each of them, "physical

force was used, the combat technique "twist of the arms". At the same time, none of them "stopped their illegal actions, began to run amok, with attempts to put BRS handcuffs on to calm them down, did not allow to put them on, tried to beat their head against the wall and the floor". Moreover, the staff of the establishment "loudly and distinctly several times orally asked each of them to stop their illegal actions" and explained that otherwise "special means will be used". None of them "reacted to the warnings and continued to run rampant". And at the same time, each of them needed to apply "7-8 beatings", and to "completely calm them down" they also had to put "BRS" handcuffs on them. At the same time, the number of beatings, according to the inspection and the attached photographs, ranged from 20 to 40-50 beatings, while they were applied to previously forcibly bared body parts (buttocks and upper thighs) in a position where the victims were pressed to the floor, including their heads

facing the floor. These actions were not aimed at overcoming the resistance of convicts, as indicated in the acts, or for pacification, but it was done with the purpose of punishment.

There is no explanation for the fact that the convicts, who walked more than 100 meters in the "swallow" position, were suddenly able to break out in the disciplinary cell corridor, although there were a lot of employees in the disciplinary cell corridor and start "beating their heads against the wall". There is also no explanation why it was necessary to lead the convicts for 100 meters and more to prevent resistance, which, if it took place:

- a) saw all the convicts who were there,
- b) should have been terminated on the spot.

According to Article 60 of the Law No. 380-IV of the Republic of Kazakhstan dated January 6, 2011 "On Law Enforcement Services", "... employees have the right to use physical force, including combat fighting techniques, as well as special means,

including handcuffs, rubber batons, ... for:... suppressing riots and group violations of public order (group violations of the established regime of detention in the penitentiary system) ... as well as against persons who intentionally prevent employees from carrying out their legal obligations". Since the convicted prisoners were in the corridor of the disciplinary cell and in the quarantine room the convicts were present one by one, and there was nothing to "deliberately impede" there, except for the **unlawful requirements** of the staff: to wash the floor with their bare hands in the toilet or to shout obscenities, there were no grounds to use special means in relation of the convicts.

According to Paragraph 3 of Article 104 of the Correctional Code of the RoK "Convicted ... has no right: ... to resist the lawful actions of the staff of the institutions", this means that if the actions of the employees are illegal, then the convicts have the right to resist these actions. And such resistance,

especially with all kinds of humiliation of human dignity, should be recognized as legitimate. Of course, this is quite a fine line of relations between employees and convicts, which can be determined only by those who know the legislation well, constantly improve their knowledge, correctly imagine the goals and objectives of the penitentiary system.

According to the testimony of other convicted respondents, those convicted who were subjected to torture did not take any actions that threaten the life or health of employees. These convicts are not leaders of the organized criminal group. Some of them suffer from serious illnesses, in particular, one of them has the 3rd stage of AIDS, one of them has hemorrhoids, one of them suffered a hypertensive crisis, and one has a ruptured eardrum. The victims were escorted to a place hidden from the eyes of the other convicts precisely for physical violence and intimidation, which resulted in torture.

The fact that this was a torture is indicated by numerous beatings of the convicts with rubber batons in the same place - buttocks, previously bared, in order to increase pain, as well as the attempts of the administration, first, to hide the consequences, in particular, by not reflecting the injuries of convicts in the log, not drawing up acts on the presence of beatings and injuries, by exerting moral pressure on convicts, threatening them that they would be sent to other colonies, secondly, by distorting the reality in the case files of convicts, thirdly, by separating injured convicts from the other convicts and unjustly placing them in ward-type room of the disciplinary cell. Thus, Articles 130 and 131 of the Correctional Code which do not correspond to actual offenses, were used as the basis for such punishment. In the acts, the actions of the convicts are described incorrectly and illegally, since the phone was actually stored and used by only one

convict. The rest did not even hold it their hands. There are no protocols on violations in case files.

From conversations with convicts subjected to the use of special equipment, the investigation team of the Taraz police department tried to settle disputes out of court, although the cases where there are signs of torture and ill-treatment are not subject to such settlement if officials and law enforcement officers are involved in them. As the convicts testified, the investigators used pressure to convince the them, in particular, they were made to rewrite the finished text of the petition, or were forced to sign the written text of the petition in advance with the refusal of any claims against the employees.

The responses received from the prosecutor's office on this incident show that the pre-trial investigation authorities and prosecutors ignored giving a legal assessment to the materials collected by us as the NPM and they are not attached to the materials of the pre-

investigation examination on the facts of torture and ill-treatment.

10 out of the 12 convicts subjected to torture and ill-treatment were subsequently transferred to Arkalyk in an institution with a stricter regime of serving the sentence. According to the convicts, the correctional institution for convicts in Arkalyk and Atbasar is the cruelest in relation to the violation of the rights of convicts.

Recommendation: strict compliance with the requirement of the Joint Order "On the interaction of law enforcement agencies and civil society individuals when examining complaints on torture and other unlawful inquest and investigation methods", as well as criminal prosecution of these facts.

The Joint Order of the Minister of Health of the Republic of Kazakhstan dated January 29, 2010 No.56, the Minister of Justice of the Republic of Kazakhstan dated February 1, 2010 No.30, the Minister of Internal Affairs of the Republic of Kazakhstan

dated February 1, 2010 No.41 and the Chairman of the National Security Committee of the Republic of Kazakhstan dated January 30, 2010 No.15 "On ensuring compulsory participation of the specialists in the field of forensic medicine in conducting medical examinations for the presence of bodily injuries for persons in temporary detention facilities, pre-trial detention centers and institutions of the penitentiary system". This order provides in the compulsory order for conducting a forensic medical examination on the facts of causing bodily harm to persons who are in temporary detention centers, pre-trial detention centers and correctional institutions of the penitentiary system. This order is not executed by local police officers, in particular, no forensic examinations or formal medical examinations are carried out by emergency doctors, in polyclinic institutions, by doctors of the medical ward of the institution. The injuries that are on the body of the traumatic patient are not

only not described in detail, but are not always reflected in medical records. At the same time, diagnoses of an unidentified sample such as "injury, abrasion, strain, bruises, scar" are used, and later on after the time of the forensic medical examination these diagnoses are erased, since they make it difficult to answer questions about the mechanism of trauma, the duration of the cause, and the individual properties of the traumatic item. A forensic expert in giving an expert assessment takes into account the shape, nature, size and changes in bodily injuries. The absence of these descriptions deprive the patient to provide evidence of the presence of a traumatic effect on his or her body.

Recommendation: strict compliance with the requirements of this order to ensure timely medical examination by forensic experts.

The case of convicted S.S.I. raises serious concern because during the visit to the establishment JD 158/7, he complained verbally that

after being beaten by an employee of the institution, he was persecuted by the administration of the institution and other convicts helping the administration. He was subjected to moral, psychological, administrative pressure from the administration of the institution with the aim to make him refuse his petition submitted to the prosecutor's office. He was threatened with transfer to an institution with a stricter regime for serving a sentence, and this threat was finally fulfilled by the administration of the institution. Until June 19, 2018 (beaten by an employee of the institution), for 8 years of serving the sentence there was not a single violation on the behalf of this convict, he had 3rd degree of positive behavior, was kept in relaxed security, worked wherever told, he finished education over there in college on the specialty of a crane operator.

There is an extract from the protocol No. 18 dated June 27 2018 in the personal file (page 110 of the personal file), where he is recognized

as a malicious violator of the regime. On June 27 2018, in the resolution (p. 111) he has 3rd degree of negative behavior indicated. According to the Protocol No.18 of the Disciplinary Council of the detachment No.6 dated 06.26.2018. (p. 113), they decided to give the convicted S.S.I. 3rd degree of negative behavior and transfer him from the prison with relaxed security to the prison with strict regime of serving the sentence. Thus, until June 27 2018, the convicted S.S.I. was listed in detachment No.6 of the institution. The entry in the log of injuries of convicts in the medical ward of the institution as of June 20 and 23 2018 about the maintenance of S.S.I. in detachment No.1 does not meet the reality, which once again may indicate the prosecution of the convicted person and the advance planning of his transfer to an institution with strict regime of serving the sentence (detachment No.1). There is a record as of June 20, 2018 in the log of injuries on convict S.S.I., detachment No.1.

The scene of the accident is disciplinary cell. Hematoma of the left eye, bruises on the left shoulder. Measures taken: treatment of wounds. Circumstances are not indicated. At the same time, in the "description of injuries" column, the initial entry is erased with a white marker, another entry is made on top of it, which confirms the convict's words that the staff of the institution are trying to hide the true state of affairs. Convicted S.S.I. claims that on that day when the convicted got the hematoma on his right eye, the log also did not indicate the circumstances of the injury. The second entry on convict S.S.I., born in 1980, detachment No.1. Complaint received on June 23, 2018. Diagnosis: incised wound of the anterior abdominal wall. Measures taken: sent to the emergency hospital. Circumstances are not indicated.

Thus, the medical staff of the institution, in view of the direct subordination of the administration of this institution, voluntarily or unwittingly takes part in



the prosecution of convicts who objected to the administration, and injuring themselves is only way for the convicts to make the prosecutor's office or other authorities recognize their desperate situation.

Such cases once again prove the need to transfer the medical part of the institution from the direct subordination of the administration of the institution to the Committee of the penitentiary system of MIA RoK under the Ministry of Health of RoK. All talks about the difficulties, the absence of the practice of such work is untenable. For more than 10 years, in institutions of the Committee of the penitentiary system, the Ministry of Internal Affairs of the Republic of Kazakhstan provides training in secondary vocational education colleges, which are reporting to the Ministry of Education and Science of the Republic of Kazakhstan.

In the case of the convict S.S.I. a forensic examination by the investigator was appointed almost a month after the injury.

As for the establishment ICH 167/10 of the penitentiary system in the South Kazakhstan oblast, at the time of the visit the medical assistant's station did not comply with the sanitary rules and standards. There was no sink in first aid room for washing hands, there was no table for medical manipulations. There is no emergency care algorithm for anaphylactic shock. Quartz lamp is not used at all, as evidenced by the lack of a log of quartz procedures. Filtering chamber is missing.

There is still a shortage of medical staff in the RSE "Establishment AK-159/7" of the Department of the penitentiary system in the Karaganda oblast. Medical staff of the medical ward is not complete. Part-timers took the following positions: a psychiatrist, a dentist, a dermatologist, a radiologist. All part-timers work at half rates and accept sick persons once a week on Saturdays and Sundays.

All the above facts indicate violations of the law, namely *the Order No. 728 of the*

*Minister of Internal Affairs of the Republic of Kazakhstan dated November 2, 2017 "On Amendment to the Order of the Ministry of Internal Affairs of the Republic of Kazakhstan dated April 7, 2015 No. 314 "On approval of the Rules for the provision of medical care to citizens whose freedom is detained, as well as to persons serving by a court sentence in custody placed in special institutions, as well as violations of the principle of medical ethics, which reads: "Health care workers, especially doctors, providing the medical care of prisoners and detainees have a duty to protect their physical and mental health and treatment of disease of the same quality and standard as is provided to those who are not imprisoned or detained".*

*According to the UN International Standard Rules for the Treatment of Prisoners (Mandela Rules) Rule 24 pp.1-2 "Providing health care to prisoners is the responsibility of the state. Prisoners should be provided with the same standards of health care that exist in the community, and*

*they should be provided with free access to the necessary health care services without any discrimination on the basis of their legal status".*

The location of the establishments of the penitentiary system far from the regional center contributes to the emergence of a number of issues, including: lack of medical and general staff, communications with relatives and human rights defenders.

I would like to pay special attention to non-observance of the rights and legitimate interests of convicts. The NPM team of the region interviewed convicts detained in "Establishment ZK-169/5" of the Department of the penitentiary system in the Kyzylorda region, who complained about non-compliance with exercising the rights provided for by law. In particular, 56 complaints were filed, namely on the lack of clothing to be distributed (cotton suit, cotton t-shirt, warmed turtleneck, sports tights, vest, pants, shirt and warm pants, sports shoes), which is a violation of the

*Decision of the Government of the Republic of Kazakhstan dated November 28, 2014 No.1255 "On Approval of Nutritional Requirements and Living Conditions for Convicted Persons, Suspects and Accused Persons and Children in Institutions of the Penal Correction System, and Samples of Uniforms for Suspects and Accused Persons, and the Rules on Provision of Free Travel, Food or Money to their Place of Residence or Work for Persons Discharged from Serving their Sentence of Short-term Rigorous Imprisonment or Deprivation of Liberty make a provision for the national nutritional norms (as amended on November 10, 2016).*

At the time of visiting the RSE "UK-161/11" of the Department of the penitentiary system in Kostanay oblast there were 4 undocumented prisoners whose citizenship was not identified. Accordingly, these persons are seriously limited in their rights.

In addition, in the RSE "AK-159/11" of the Department of the penitentiary system

in Karaganda oblast during a confidential conversation with convicted S., the fact of human rights violations was revealed. For a long time, S. tried to re-issue identification documents. According to S., he is a citizen of the country G., but for unknown to the NPM team reasons, he was recognized as a citizen of Kazakhstan and sentenced to 3 years by the court decision. Moreover, during the conversation, S. indicated that there were no identity documents in his personal file and he did not know how he could be convicted without documents. In connection to this fact, the NPM team sent a request to the prosecutor's office of Karaganda oblast to clarify and give a legal assessment on this fact.

In the SE "Establishment of AP-162/2" of the Department of the penitentiary system in Pavlodar oblast, the NPM team held a confidential conversation with M. (convicted under Article on Extremism), during which there were complaints that he did not receive a positive characteristic, allowing to

apply for release on parole. It does not violate the internal rules, but the characteristic is still negative. Also, the convict noted that a year ago he was in a penitentiary institution in the territory of East Kazakhstan oblast and there he was tortured with a stun gun and a wet "submarine". The administration wanted him to wear a VAA (a volunteer administration assistant) mark.

According to the Order No. 819 of the Minister of Internal Affairs of the Republic of Kazakhstan dated November 17, 2014: in the event of a threat of a criminal offense against a person convicted by convicted persons and other persons, the convicted person has the right to make a written or verbal petition to the administration of the institution to transfer to the place where there is no such threat.

Members of the NPM team at RSE "UK 161/4" of the Department of the penitentiary system in the Kostanay region, during a conversation with convicted V., revealed facts of ill-

treatment. According to V., they used special means - handcuffs, beat him with baton on soft spots. A petition was made for the Commissioner for Human Rights. With his consent, photographs of the traces of handcuffs and beatings were made. Also, despite the fact that almost 15 days have already passed, there are still traces.

When visiting the "Establishment of the LA - 155/14" of the Department of the penitentiary system in the Almaty region, the NPM members received a complaint from convicted B. on the violation of personal safety. According to the convict, the Activists rule in the camp, they freely move around the local territories at night, assign convicts to watch on the nightstand, in case of refusal, they punish the convicts. It was at night that activists freely approached convicted B. with threats that later they will use sexual and psychological violence. A complaint was written on that fact, but at the time of the visit, the NPM members

revealed that no action had been taken. Members of the NPM team drew a special message to the prosecutor's office of Almaty oblast.

In addition, in the report of the monitoring visit of "Establishment EC-166/5" there were complaints from 5 convicts who voiced that they were repeatedly subjected to torture, psychological violence and pressure, threats to personal security from the administration of the institution and wrongful acts by the voluntary administration assistant.

In "Establishment ZK-169/5" of the Department of the penitentiary system in Kyzylorda oblast, the NPM team received complaints on personal safety, namely, assault, threats, and humiliation of human dignity from 18 convicted with regard to the "voluntarily convict organization", who also commit unlawful acts in relation to the conditions of detention provided for and take advantage of the privileges granted to them.

According to Part 2 of Article 126 of Correctional

Code RoK the main tasks of the voluntary convict organizations are: 1) to create a positive moral and psychological climate in the institution; 2) to develop positive social relations among convicts; 3) to maintain socially useful initiative of convicts; 4) to assist convicts in spiritual, professional and physical development; 5) to assist in the organization of work, life and leisure of convicts.

A large number of complaints from convicts concerned the actions of the convicts from Voluntary Administration Assistants, Service of Leisure and Self-education of the Colony, Hygiene and Sanitation Service on the fact that they use their privileged position for personal purposes. After some convicts go shopping in the store or receive the parcels, food, cigarettes and other things, these items are extorted. The convicts who are dissatisfied with such actions face the risk of receiving a notification or violation. As they themselves admit, they have the right to

move around the institution unaccompanied, they can accompany other convicts on the premises of the institution, that their task is to detect violations among the convicts and report them to the administration, and that their immediate supervisor is deputy head of the institution. Thus, the voluntary convict organization does not correspond to the main tasks of any of the 5 points of Part 2 of Article 126 of Correctional Code RoK. In addition, DPA, SDISK, GHS convicts violate Part 4 of Article 126 of Correctional Code RoK "Members of voluntary organizations of convicts do not take advantage of liberties, privileges and cannot exercise the powers of the administration of the institution".

All correspondence, letters, complaints pass through the strictest censorship, according to the convicted such letters, which contain information about illegal actions of employees, do not leave the institution, and the sender undergoes preventive work.

Attention should be paid to the above violations of the rights of convicted persons, since this does not comply with the Nelson Mandela Rule 2, which says: *"All prisoners should receive a respectful attitude with respect to human dignity. It is necessary to protect prisoners from torture and other forms of ill-treatment. It is necessary to ensure the permanent security and safety of prisoners, staff, visitors and individuals"*.

It leaves much to be desired to comply with the temperature regime in winter and the quality of drinking water, which creates undoubted health risks for inmates in institutions.

It is necessary to talk separately about the stores inside the institutions. Unfortunately, during NPM monitoring visits, stores are most often closed. But when interviewing convicts, the NPM group regularly receives complaints about high prices and poor assortment. Stores, despite being owned privately, serve as an additional corruption tool.

In connection with the above violations, which were noted in the NPM team reports, we give the following **recommendations**:

1) *It is necessary to ensure the implementation of the provisions of the standard minimum rules for the treatment of prisoners ("Nelson Mandela Rules"), adopted on May 21, 2015, by harmonizing this provision with the departmental subordinate acts of the Committee of the penitentiary system of the MIA of the RoK;*

2) *It is necessary to introduce into the educational process the preparation and professional retraining of the staff of the penitentiary system, of national guard servicemen and to introduce special courses to study the recommendations of the "Nelson Mandela Rules"*

3) *It is necessary to form the practice of conducting training seminars in a training format for the effective interaction of correctional institutions employees and members of the PMC in the process of public control;*

4) *It is necessary to confirm the existence of a issue with living quarters for convicts and their sanitary and hygienic provision, and take into account the decision of the Security Council of the Republic of Kazakhstan dated May 25, 2011, to find resources for repairing the premises of correctional institutions under the Department of the penitentiary system and creating proper sanitary conditions, providing in reality the necessary living conditions for the convicts with disabilities;*

5) *In view of the unresolved issues of ensuring the right of convicts for health protection and obtaining qualified medical assistance, it is necessary to intensify the procedure of transferring the sector of medicine in prisons to civilian health care sector.*

6) *In order to increase the transparency of penitentiary institutions, it is necessary to provide convicted persons with legal access to the internet, as well as the possibility of using video-conferencing, skype-technologies, which contribute to greater transparency of*



the conditions of convicted persons;

7) In connection with corruption risks associated with obtaining a degree of behavior, transfers from one institution to another and other types of punishments and incentives, it is recommended that the administration should gather commissions consisting of human rights defenders, prosecutors, representatives of religious denominations, deputies.

8) In order to exclude the possibility of the administration of correctional institutions distributing disciplinary and other responsibilities to some convicted in relation to other convicted persons it is necessary to provide in the criminal executive legislation of the Republic of Kazakhstan a ban on distribution of powers of controlling other convicts to some convicted persons and assisting the administration of correctional institutions in exercising such control;

9) Taking into account the issue of criminal segregation and stratification of convicts in prisons which is in fact

ignored by the correctional institutions administration, it is necessary to develop and implement guidelines for the re-socialization of convicts from the groups that are rejected by other convicts. It is important to envisage social technologies to provide these persons with rehabilitation assistance and to prohibit the administration and staff of state bodies and institutions executing punishment in the form of imprisonment, to adopt the rules of separation of convicts from rejected "small groups" established in the criminal subculture of convicts and to develop a system of measures for the protection of convicts from sexual assault;

10) It is necessary to create a system of countering criminal behavior of convicts based on the use of modern engineering and technical means of protection and supervision, new technologies and approaches to the organization of security of facilities of the penitentiary system, as well as to form a unified technical policy in the field of equipping complexes



with engineering and technical means of protection and oversight. It is important to equip correctional facilities with modern integrated security systems; the staff of the penitentiary system should use a complex of individual preventive measures to prevent offenses, including crimes committed by convicts;

11) It is necessary to introduce monitoring of the convicts' behavior using electronic control technologies (video surveillance, electronic bracelets, wireless technologies, etc.). Such measures, envisaged by the body executing punishment, should become elements of the new concept of the functioning of correctional institutions of Kazakhstan, which aims to bring the service to European standards for the containment of convicts in correctional institutions.

12) Due to the fact that entrepreneurs working in the stores in places of detention do not work in a competitive field, it is necessary to establish the price list averaged for the region for them.

13) It is necessary to put the prison canteens in a competitive field, which will undoubtedly affect the reduction of corruption factors and improvement of nutritional conditions.

14) It is necessary to carry out activities to train employees of institutions on the implementation of the Nelson Mandela Rules and the provisions of the penitentiary and executive legislation of Kazakhstan in the field of prevention of torture and cruel degrading treatment and punishment;

15) Taking into account the decision of the Security Council of the Republic of Kazakhstan dated May 25, 2011 on the construction of new power supply agencies with a measurable content, it is necessary to continue the work on modernizing housing complexes for the convict containment, repairing sanitary facilities, expanding the network of beddings and ensuring regular living conditions, corresponding to social standards of living, for convicts in custody;

16) Given the importance of medical care and the involvement of qualified medical professionals in the provision of medical services to convicts, it is important to develop a mechanism to attract doctors and other medical staff of civil health care by encouraging their work, providing various benefits and salary increases, equating working days in correctional institutions to night duty and to work days on weekends and holidays. It is necessary to take control over the situation on providing the convicts with HIV status, people with disabilities, people with epileptic and convulsive syndromes, chronic diseases, with medical preparations to give them an opportunity to receive continuous treatment. Also, it is necessary to provide the above-mentioned persons with the examination and consultation of narrow specialties (neurosurgeons, endocrinologists, cardiologists, etc.) and implement their recommendations;

17) Taking into account the high risk of torture and ill-treatment during searches

and examinations of convicts, as well as in the situations of conveying them, it is necessary to provide for video recording of actions of correctional institutions officers conducting a search and (or) examination of convicts, as well as during the process of conveying;

18) In connection with the corruption risks associated with the distribution of convicts for transferring them, it is necessary to notify NPM members in advance of the convicts who are awaiting prison transfer due to negatively characteristic. Also, these convicts may be subjected to cruel treatment, in order to prevent it, it is advisable for NPM members to have initial data;

19) In accordance with Paragraph b of the United Nations Rule 11 of the Standard Minimum Rules for the Treatment of Prisoners: "... artificial lighting should be sufficient enough for prisoners to read or work without risk to damage their eyesight", in accordance with this Guideline of Criminal Code 161/11 it is necessary to

*equip the detachment rooms with sufficient lighting;*

*20) The salary of convicts working should be brought into compliance with the Law of the Republic of Kazakhstan dated November 30, 2017 "On the republican budget for 2018-2020";*

*21) It is necessary to strengthen control over the registration procedure and to transfer timely the complaints and proposals submitted by convicts;*

*22) It is important to conduct explanatory work with convicts on legal issues, in particular on the activities of NPM.*

*23) It is necessary to strictly comply with the requirements of the Joint Order of the General Prosecutor's Office of the Republic of Kazakhstan on February 3, 2010 No.10, Minister of Justice of the Republic of Kazakhstan on February 2, 2010 No.31, Minister of Internal Affairs of the Republic of Kazakhstan on February 2, 2010 No.46, Chairman of the National Security Committee of the Republic of Kazakhstan and Chairman of the Agency of*

*the Republic of Kazakhstan on Combating Economic and Corruption crime of February 2, 2010, No.16 "On the interaction of law enforcement agencies and civil society in the inspection of complaints of torture and other unlawful methods of inquest and investigation, as well as criminal prosecution According to the facts". In particular, the materials they collect during the visit should be included in the examination materials and should be taken into account when making decisions.*

*24) It is necessary to strictly comply with the requirements of the Joint Order of the Minister of Health of the Republic of Kazakhstan dated January 29, 2010 No.56, the Minister of Justice of the Republic of Kazakhstan dated February 1, 2010 No.30, the Minister of Internal Affairs of the Republic of Kazakhstan dated February 1, 2010 No.41 and the Chairman of the National Security Committee of the Republic of Kazakhstan dated January 30, 2010 No.15 "On ensuring compulsory participation of the specialists*

*in the field of forensic medicine in conducting medical examinations for the presence of bodily injuries for persons in temporary detention facilities, pre-trial detention centers and institutions of the penitentiary system". This order provides for a mandatory forensic examination of the facts of causing bodily injuries to persons in temporary detention centers, pre-trial detention centers and correctional institutions of the penitentiary system. Timely medical examination by forensic experts should be ensured.*



# 3

## The situation of persons detained in pre-trial detention centers under the Committee of the Penitentiary System of MIA of RoK

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### **General provisions**

The pre-trial detention center is a special correctional institution designed to detain: suspected and accused of committing a crime, who receive detention as a preventive measure.

The pre-trial detention centers detain those:

1) suspects and accused, criminal cases in respect of which are taken to production by the bodies of inquest and investigation;

2) suspects and accused, criminal cases in respect of which are accepted for proceedings by the courts (accused);

3) convicted in criminal cases in respect of which the convictions have not entered into force;

4) convicted in other criminal cases in respect of which arrest was used as a preventive measure;

5) convicted in criminal cases, subject to be transferred to correctional institution, executing criminal penalties in the form of imprisonment, or to compulsory treatment in the prescribed manner;

6) convicted who have been left in pre-trial detention centers or transferred to them from the institutions executing penalties in connection with the conduct of investigative actions in cases of crimes committed by other persons, or in connection with the consideration of such cases in courts.

In their visits to the pre-trial detention facilities, NPM members were guided by the following regulatory acts governing the legal relations in this area:

1. The Constitution of the Republic of Kazakhstan.
2. The Law of RoK dated June 29, 1998 No.247-1 "On the accession of the Republic of Kazakhstan to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment".
3. The Law of the Republic of Kazakhstan dated June 26, 2008 No.48-IV "On ratification of the Optional Protocol to the Convention against

- Torture and other Cruel, Inhuman and Degrading Treatment or Punishment”.
4. The Law of the Republic of Kazakhstan dated February 11, 2009 No.130-IV “On ratification of the Optional Protocol to the International Covenant on Civil and Political Rights”.
  5. The Law of the Republic of Kazakhstan dated November 28, 2005 No.91-III “On ratification of the International Covenant on Civil and Political Rights”.
  6. The United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by General Assembly Resolution 70/175 on December 17, 2015 (Nelson Mandela Rules).
  7. The Law of the Republic of Kazakhstan dated March 30, 1999 no. 353-I “On the procedure and conditions of detention of persons in special institutions that provide temporary isolation from society” (hereinafter referred to as the Law of the Republic of Kazakhstan No.353).
  8. Criminal Procedural Code of the Republic of Kazakhstan dated July 4, 2014 No.231-V Law of RoK (hereinafter referred to as CPC RK).
  9. Correctional Code of the Republic of Kazakhstan dated July 5, 2014 No.234-V Law of RoK (hereinafter referred to as Correctional Code RoK).
  10. The Decision of the Government of the Republic of Kazakhstan dated November 28, 2014 No.1255 “On Approval of Nutritional Requirements and Living Conditions for Convicted Persons, Suspects and Accused Persons and Children in Institutions of the Penal Correction System, and Samples of Uniforms for Suspects and Accused Persons, and the Rules on Provision of Free Travel, Food or

Money to their Place of Residence or Work for Persons Discharged from Serving their Sentence of Short-term Rigorous Imprisonment or Deprivation of Liberty make a provision for the national nutritional norms" (hereinafter referred to as Decision No.1255).

11. The Rules for the implementation of the protection and supervision of persons in pre-trial detention facilities of the penitentiary system approved by the Order of the Minister of Internal Affairs of the Republic of Kazakhstan of March 29, 2012 No.182 (hereinafter referred to as the Rules of protection).
12. The Internal Regulations of the pretrial detention centers under the Committee of the penitentiary system of the Ministry of Internal Affairs of the Republic of Kazakhstan // approved by the Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated March 29, 2012 No.182 (hereinafter referred to as the Internal Regulations).
13. The Rules of organization of activities and internal regulations of special institutions implementing the execution of penalties in the form of arrest in accordance with the annex to the present order (the Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated July 26, 2017 No. 504)
14. The Order of the Prosecutor General of the Republic of Kazakhstan dated January 6, 2015 No. 7 "On the approval of the Guideline on the organization of the prosecutor's supervision over the observance of legality in the execution of punishments, detention of persons in special institutions and monitoring of those released from places of detention" (hereinafter



- referred to as the Order of the Prosecutor General No.7).
15. The Construction Standards of RoK 3.02-24-2014 "Design of pre-trial detention centers" // the Order of the Committee for Construction, Housing and Public Utilities and Land Management MNE RoK dated December 29, 2014 No.156-HK (hereinafter referred to as CS RoK 3.02-24-2014).
16. The Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated July 26, 2017 No.505 "On approval of the Internal Regulations of the pre-trial detention centers of the penitentiary system"
17. The Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated November 2, 2017 No.728 "On Amending the Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated April 7, 2015 No.314 "On approval of the Rules of providing medical care to citizens in custody, as well as to persons serving a sentence by a court sentence in custody placed in special institutions".
- An analysis of the management of these regulations on UNPM reports shows that in their practical activities, law enforcers are not always oriented in the hierarchy of these acts, and hence their legal significance.
- The hierarchy of legal acts is determined in Article 10 of the Law of the Republic of Kazakhstan dated April 6, 2016 "On legal acts". With regard to our subject after the Constitution of the Republic of Kazakhstan and international legal acts ratified by Kazakhstan, the rules of the Code of Criminal Procedure of the Republic of Kazakhstan concerning procedural issues of imprisonment and then the norms of the Law of the Republic of Kazakhstan of the Correctional Code RoK No.353 should be taken

into account. The norms of Correctional Code RoK in pre-trial detention centers regulate the procedure and conditions of detention of prisoners sentenced to custody transferred there from the colonies during the trial process of criminal cases due to newly discovered circumstances, criminal cases of other persons in which they can act as other members in the process. Further, the Standards of the Correctional Code RoK in pre-trial detention centers apply to prisoners sentenced to prison or left to work on maintenance services, as well as prisoners who arrive from institutions in accordance with Article 88 of the Correctional Code RoK.

Article 89 of Correctional Code RoK classifies pre-trial detention facilities as mixed security institutions. According to *the Law of the Republic of Kazakhstan dated April 18, 177 No.58-VI, in pre-trial detention centers such form of punishment as arrest is executed.*

According to Part 4, Article 88 of the Correctional

Code RoK, the transfer of a convicted person to a mixed security institution is allowed by decision of the authorized body of the penitentiary system in the following cases:

1) ensuring the safety of the convict in accordance with Part 5 of Article 12 of the Correctional Code RoK;

2) reorganization or liquidation of the institution;

3) industrial necessity with the consent of the convict;

4) necessity to enforce law and order in the institution.

The procedure and conditions for the execution of the arrest, along with Correctional Code RoK, are regulated by the Rules of organization of activities and internal regulations of special institutions that carry out the execution of punishment in the form of arrest according to the annex to this order (**the Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated July 26, 2017 No.504**).

The main regulatory act governing the procedure

and conditions of detention of suspects and accused persons in pre-trial detention centers is the Law of the Republic of Kazakhstan dated March 30, 1999 No.353-I "On the procedure and conditions of detention of persons in special institutions that provide temporary isolation from society" (hereinafter referred to as Law No.353).

The Orders of the Minister of the Interior, the Prosecutor General and derivative regulations in this area should not contradict with the Correctional Code RoK, the Criminal Procedure Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan No.353.

The study of law enforcement practice shows that the Law of the Republic of Kazakhstan No.353 does not regulate all public relations arising during the execution of detention in respect of suspects and accused, and this forces them to apply to the norms of the Correctional Code RoK. It seems that all issues relating to the detention of persons in special institutions,

which provide temporary isolation from society in the Correctional Code RoK, should be resolved. To this end, it might be necessary to provide a new Section 7 in the Correctional Code RoK "The procedure and conditions for the detention of persons in special institutions that provide temporary isolation from society".

In 2018, NPM members conducted 33 visits to the pre-trial detention centers, of which: 11 regular, 13 intermediate, and 9 special.

The staff of the pre-trial detention centers are generally aware of the activities of NPM and often there are no issues with unimpeded access to the pre-trial detention center. We can only note that in Kostanay oblast during a special visit on February 9, 2018 it took NPM members 40 minutes for clearance, they had to wait for permission to visit. The NPM members noted in the report that the junior staff of this institution has no idea about the NPM concept. In another case, when visiting the establishment ES 164/1 in

Petropavlovsk, the members waited a long time for the permission from the head to be able to bring a camera and a voice recorder to the institution.

In the consolidated reports on the activities of NPM in previous years, the conditions of detention were of particular concern as most of the buildings were built at the end of the 19th and early 20th centuries and carrying out current and capital repairs does not solve issues with maintenance conditions: the outdated sewage system, ventilation, insufficient window size, humidity, and such issues, unfortunately, were not solved in 2018.

Long living in such conditions in some cases can be qualified as torture or humiliation of human dignity.

### **Housing, hygiene and sanitary conditions**

Visits made by NPM members in 2018 to the institutions allow us to make a general conclusion that, despite the general issue of the decay of the buildings, their unsuitability for operational

purposes, the management of these institutions and the Department of the penitentiary system do a lot of work to meet the requirements of international standards and national legislation to create appropriate housing, hygiene and sanitary conditions for the special community.

The elimination of a number of important issues depends on the decision made at higher levels of state power and cannot be resolved by the leadership of the institution and the leadership of the Committee of the penitentiary system. Thus, due to the congestion of the establishment EC-166/1 in Astana and due to decay and unsuitability of the building, the sanitary norms of area per person are not observed. In some cells, windows do not open, in some cells there is much humidity, bedding is wet. Living in such premises may lead to the emergence and development of various diseases. During confidential meetings with the persons detained in this pre-trial detention center, complaints

were expressed about the deterioration of nutrition, cold temperature in the cells, strong humidity, rare change of bed clothes and the inability to wash in the bath because the water supplied from the battery has an unpleasant odor, there is no room for washing personal items.

Visits in 2018 also revealed a number of issues that could be addressed by the leadership of these institutions. Thus, a visit to the establishment LA-155/16 of the Department of the penitentiary system in Almaty and Almaty oblast showed such issues as windows in some cells lacking glass, and covered by cellophane film. In this institution the beds with large holes were discovered, which made the mattresses fall in, and it was completely uncomfortable to sleep on them, according to the inmates.

The conditions for privacy in the cells were not provided in this institution and a number of others. In some cells, the tenants themselves installed curtains made

from scrap materials. Such facts can be evaluated as humiliation of human dignity.

Year after year, in their reports NPM members indicate a lack of natural light in cells. The reason for this is the small size of the windows in the cells and the excessive gridding of these windows. Also for these reasons, there is poor access to fresh air. During the reporting period, such facts were noted when visiting the establishment JD 158/1 of the Department of the penitentiary system in Zhambyl oblast.

The issue of the pre-trial detention center which is annually noted also includes the unsuitability of the sanitary equipment of the premises, the poor functioning of the sewage system and the lack of hot water in most cases. These issues were noted by NPM members in 2018, in particular, when visiting the institution AK-159/1 department of the penitentiary system of Karaganda oblast.

### **Medical services**

Visits to pre-trial detention center in 2018 revealed a significant number of medical service violations. These include annual comments on the lack of medical staff in the institution, insufficient provision with medical preparations, complaints about the lack of medical support from narrow medical specialists, and ignoring the call for medical staff, lack of control over the diseases requiring continuous treatment - diabetes, HIV, tuberculosis, the poor state of the furniture in the medical wards.

All the above is confirmed by the following facts revealed during the visits to pre-trial detention center in 2018.

When visiting the establishment EC-166/1 of the Department of the penitentiary system in Astana according to the verbal complaint received from A. (cell No.317), the institution does not have a pediatrician and does not provide the necessary vitamin and medicine complex for a

newborn child who was born on 10.25.2017. According to the verbal complaint received from M. (cell No.413), who was diagnosed with a fracture of the first lumbar vertebra, admitted on January 05, 2018, the medical staff do not always respond promptly to a request for the painkillers. So, an anesthetic injection can be delivered not according to the schedule, but at any time (after 9.00 o'clock). Thus, suffering from severe pain, M. cannot move and, accordingly, does not attend planned walks. After suffering for some time from an intolerable pain, M. was forced to knock on the cell door so that the administration would pay attention to him. After that, the medical officer began to make injections 2 times a day. On February 8, 2018, he had a convulsive seizure and an ambulance was immediately called.

According to the verbal complaint received from I. (cell No.614), he wrote a request to the medical ward, but the medical officer did not examine him. According

to the verbal complaint received from S. (cell No.615), he wrote a petition to the medical ward explaining his state of health (according to him he has brain concussion), but the medical officer did not examine him. According to the verbal complaint received from M., he did not have a medical examination and there is no daily medical round. According to the verbal complaint received from A. (cell No.405), the institution has AIDS sick persons, with dental pain, the dentist only offers to remove the tooth, sanitation is not conducted properly, more than 100 people are at risk, masks for tuberculosis sick persons are not distributed. A. himself has been diagnosed with pancreatitis, but the institution lacks proper care for the sick as well as it lacks the necessary medications.

When NPM members visited the establishment LA-155/18 of the Department of the penitentiary system in Almaty on January 18, 2018, during interviews with the arrested of the latter, complaints were voiced

against the medical staff. So, the main complaints were about untimely visits after the request was sent, ignoring the calls for the medical worker, casual (formal) examinations and insufficient provision of medications. In addition, they note the absence of consultations from relevant specialists (in particular, an endocrinologist, a gynecologist, specialists from the AIDS center).

Concern is caused by the lack of control over the diseases requiring continuous treatment - diabetes, HIV, tuberculosis. Sick persons in these categories cannot and should not be left alone with their issue. There is also the issue of providing these individuals with medications. According to the arrested, receiving injection insulin replacement therapy, for a long time (according to her during 6 months) there were no consultations from an endocrinologist for the purpose of adjusting the treatment and prescribing the necessary doses of the medication. A similar issue there is with a person arrested

who has HIV-positive status, and who, staying in the institution for a long time, was never consulted by the specialists from the AIDS center for the adjustment of the treatment. It seems that a similar situation is with all chronic sick persons.

It was also revealed on basis of the medical staff explanations that at night (after 10:00 pm) there is no doctor on duty in the institution, if necessary, an ambulance is called. This circumstance cannot but be alarming, since if there is a large number of people in the institution, the risk of an emergency situation arising is very high. Duty staff who do not have medical education cannot assess the severity of the condition in time and provide proper medical assistance.

Several cases that require priority attention have been presented to the NPM members. This is the case of Z. detained at the time of the visit in cell No.54. When studying outpatient cards in the hospital of the establishment LA-155/18,

attention was drawn to the outpatient card of Z., upon studying which it was found that on October 01, 2017, during an X-ray examination of the left hand a phalanx fracture of the 4<sup>th</sup> finger was detected. Then, together with the attendant, we went to cell No.54, where Z. was detained. During a confidential conversation, according to his words, it was established that on September 19, 2017, after transfer to the Ili district police department of Almaty oblast, the investigator of the Department of Internal Affairs of Almaty oblast during interrogation by threats and blackmail demanded him to sign the interrogation protocol, and began to twist the fingers of his hands, as a result of which he felt severe pain. After the investigative measures he was returned to the establishment LA-155/18, where the staff of the establishment drafted an act of causing bodily injuries. Further, being already in the establishment LA-155/18 he wrote a complaint addressed to the special Prosecutor and the Department of Internal



Affairs of Almaty oblast. After that he was delivered to the National Research Surgery Center named after Syzganov for surgery on a fracture by the staff of the institution. At this time, Z. is not aware of what procedural measures have been taken in relation to the investigator. At this time Z. also complains about the contracture of the 4th finger of the left hand, i.e. incomplete flexion and extension of the finger, and he has a concomitant disease in the form of diabetes. Another case that requires urgent attention is the case of K., born on 02.05.1987, who was in the hospital of the establishment LA-155/18. In a confidential conversation with NPM members, K. said that on January 8, 2018, during his arrest by employees of the Zhambyl District Office of Internal Affairs in the Almaty region, he suffered injuries, which are registered in the outpatient card and the submitted certificates from the emergency room of the Zhambyl district CDH. Then, after court sanctions, he was brought to the establishment

LA-155/18, where being already in a cell he protested by swallowing a part of an aluminum spoon and, having broken a light bulb, cut his left forearm with splinters, then the staff of the institution was placed in the infirmary, where he received first aid. At present, his condition is satisfactory, he complains of minor abdominal pains in the place of localization of a foreign object. According to the medical staff, the patient received a consultation from specialists, an abdominal radiography was done, recommendations were given to conduct watchful waiting treatment. Members of the NPM team in Almaty took the complaint of A. Kovshenin against the employees of the Zhambyl District Office of Internal Affairs of the Almaty region, the complaint is attached to the annex of the NPM members report.

In the absence of medical workers (evening and weekend shifts), the reception of the transferred persons is carried out by the duty assistant officers (duty assistants to the head).

This provision is contrary to international practice, where the participation of medical staff in examinations is not ethical. "The responsibility of the doctor to provide medical assistance to the prisoner should not overlap with the duty of participation in the prison security system"<sup>1</sup>.

Also, employees conducting inspections should be trained to conduct them in a sensitive and professional manner, avoiding unnecessary penetrations and touches<sup>2</sup>.

In total, as of the beginning of the year until January 18, 2017, 67 people arrived as prison transfer.

The visit paid to pre-trial detention center UKA 168/1 in Aktyubinsk oblast on May 15, 2018 showed that the quality of medical care and the attitude of medical workers, according to the pre-trial detention center inmates, leaves much to be desired.

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1 Personal inspection. Pre-trial Monitoring Information Bulletin. APT, Penal reform international, p. 5.

2 Ibid., p. 5

Monitoring persons could personally verify this. An employee of the medical ward, doctor M., refused to answer questions, claimed to be very busy and left the medical office.

Returning to the office later, she could not give information about the reasons for the absence of medical records of convicts. She claimed that it was not her responsibility.

While monitoring the female cell, a complaint was received from the person under investigation that she needed plaster to be replaced, but doctor M. claimed that she did not know about this fact and did not consider it necessary to deal with fracture issues.

In one of the cells accused O. was discovered with traces of beatings, hematomas. At the time of monitoring, he was in the cell for 10 days. None of the medical staff of pre-trial detention center was interested in the convict's well-being. Wounds and hematomas were not treated and bandages were not changed.

Many accused complained about employees refusing to provide necessary examination in the hospital. Doctor M. stated that it depended on the head of the institution, to whom she regularly verbally reported on such a need, but the head did not take any action.

When talking with the head of the institution, this fact was not confirmed. The administration explained that a request must be submitted in writing if there is a need to bring the prisoner out for medical examination, but there were no such requests.

As a result of a visit to the RSE establishment UK 161/1 in Kostanay oblast, there were 8 vacancies out of the total number of medical staff in 20 people. There were vacancies in almost all checked pre-trial detention centers in 2018. There are such reasons for this situation, according to NPM members, as low wages, specific working conditions in pre-trial detention centers.

When visiting the establishment AP-162/1 under the Committee of the penitentiary system

MIA RoK in Pavlodar oblast on September 11, 2018 NPM members studied the "Ambulance call log" (started on January 01, 2009, inventory number 511) and noted that since the beginning of 2018 there was 21 call recorded in the log.

It was noted that the log has a record with the diagnosis "Cut wound of the anterior abdominal wall, hospitalization to the 3rd City Hospital", but the patient's full name and date of birth were missing. The staff of the institution could not give a clear explanation of this record, referring to the fact that this log is filled by ambulance staff, and in some cases they refuse to fill in the call log at all.

Also there were records in the call log: March 05, 2018 at 01.00 a.m., D. born in 1990 – cut wound; June 17, 2018 at 04.31 p.m., K. born in 1989 – fracture of the right hand; April 08, 2018 at 11.23 p.m., B. born in 1990 – cut wounds in 3 places, 1 cm each. According to the administration, these persons injure themselves for various reasons, such as

disagreement with the court sentence.

The reports of the NPM members for 2018 on medical services to the inmates of the pre-trial detention center once again confirm the need to transfer medical services in the penitentiary system sphere from the subordination of the Ministry of Internal Affairs of the Republic of Kazakhstan to the sphere of subordination to the Ministry of Health of the Republic of Kazakhstan. For an objective investigation of the circumstances of the treatment of imprisoned by the staff and investigators and the proper protection of their interests, it is necessary to make medical service independent of the control of the administration.

### **Exercise of statutory rights**

A regular visit to the pre-trial detention center of the Department of the penitentiary system in Astana (EC-166/1) on February 10, 2018 showed that violations of prisoners' rights can be observed at this facility.

In accordance with Paragraph 1 of Article 32 of the Law of the Republic of Kazakhstan No.353, to the extent possible, it is necessary to provide separate placement in the cells for smokers and non-smokers. This dispositive rule is not observed for unknown reasons. In almost all cells, smokers and non-smokers are placed together.

Respect for the rights of pregnant women and women with children is not fully implemented, as these people are not adequately provided with the necessary nutrition.

The cell doors have information sheets about the duties of the suspects and the accused attached, but there is no information about legal rights!

Separate placement in cells is also not implemented and this right is not respected. There were cases when convicted for the murder was placed together with the accused. So, in cell No.614 there are 2 people, one of whom (I.) was sentenced to 17 years, and his cellmate S.,

with no previous convictions, is under investigation.

All of the above indicates the violation of Article 32 ("Separate placement in cells") of the Law of the Republic of Kazakhstan dated March 30, 1999 No. 353-I "On the procedure and conditions for keeping individuals in special institutions that provide temporary isolation from society".

According to the verbal complaint received from A. (cell No.119), on the night of January 01, 2018, the administration officials prohibited him to get out of bed and go to the toilet. According to the verbal complaint received from S. (cell No. 615), the administration puts pressure on him, creates intolerable conditions of detention. According to the respondents, many people do not want to file a complaint because of the fear of a negative reaction from the administration. NPM members stated in their report that such actions are a violation of the Constitution of the Republic of Kazakhstan, according to which "No

one should be subjected to torture, violence, other cruel or degrading treatment or punishment".

When NPM members visited the establishment ZK-169/1 of the Department of the penitentiary system in Kyzylorda oblast on April 19, 2018, it was discovered that women, minors, sick persons and convicts, who are in the local area No. 1, convicted, who conduct general labor activities at the institution are fed from one boiler, although the nutrition rate is different for everyone. Each category has their own rate of daily consumption of food products according to the **Decision of the Government of the Republic of Kazakhstan dated November 28, 2014 No.1255 "On Approval of Nutritional Requirements and Living Conditions for Convicted Persons, Suspects and Accused Persons and Children in Institutions of the Penal Correction System, and Samples of Uniforms for Suspects and Accused Persons, and the Rules on Provision of Free Travel,**

**Food or Money to their Place of Residence or Work for Persons Discharged from Serving their Sentence of Short-term Rigorous Imprisonment or Deprivation of Liberty make a provision for the national nutritional norms”.**

**NPM members note that** in accordance with Article 88 Clause 4 of the Correctional Code RoK, a convict can be transferred from one institution to another of the same type or to **a mixed security institution** allowed by the decision of the authorized body of the penitentiary system in cases (attention – not by the court) when **the need arises to enforce law and order in the institution (Clause 4). And in many cases, why are convicts transferred? Without a disciplinary sanction, detained in normal and even relaxed security of detention.**

If such a transfer to a mixed security institution takes place, convicted persons have the right to:

1) spend monthly cash funds on the purchase of

food and basic necessities in the operating accounts of the temporary placement of money in the amount of up to two monthly calculated indices;

2) have two short visits during the year;

3) enjoy a daily walk in duration of one and a half hours.

Meanwhile, on the basis of Part 4, Article 136 of the Correctional Code RoK, they have the right to:

1) spend monthly cash funds on the purchase of food and basic necessities in the operating accounts of the temporary placement of money in the amount of up to two monthly calculated indices;

2) receive three parcels or deliveries and three packages within a year;

3) three short visits during the year;

Part 4 is supplemented by sub-clause 4 in accordance with the Law of the Republic of Kazakhstan dated July 03, 2017 No.84-VI

4) enjoy a daily walk in duration of one and a half hours.

Thus, as noted by NPM members, the situation of persons transferred to pre-trial detention center from institutions of medium security level worsens. They do not have the right for telephone conversations or the right for long visits. Moreover, in their opinion, a legal conflict arises: the authorized body cancels the decision of the court regarding the type of institution worsening the rights of convicts, and the term of the convicted person staying in the mixed security institution in local areas called "special valleys" is not regulated. A convict may stay in these institutions for years, which is contradicts:

**Rule 37 of the UN Standard Minimum Rules for the Treatment of Prisoners**, which insistently requires to regulate by the laws or regulations of the competent administrative authority:

***a) behavior that constitutes a disciplinary offense;***

***b) type and duration of the penalties that may be imposed on prisoners;***

***c) authority having the right to impose such penalties;***

***d) any measures of forced separation of detainees from the general inmates, such as solitary confinement, isolation, segregation, placement in a punishment cell or restriction of conditions of detention, whether as a disciplinary measure or to enforce order and safety, including the introduction of principles and procedures regulating the use and revision of the procedure for the petition and abolition of any measures of compulsory isolation.***

Rule 58

1. Prisoners should be allowed to communicate with their families or friends with regular intervals and under proper supervision:

a) through written correspondence and using telecommunication, electronic, digital and other means if there is such an opportunity; and

b) during the visits.

2. In cases where conjugal dating is allowed, this right should be exercised without any discrimination, and women prisoners should be able to exercise this right equally with men.

Rule 106

Special attention should be paid to maintaining and strengthening ties between the prisoner and his or her family, which seem desirable and serve the interests of both parties.

The same conclusion of the NPM members should be agreed with. We have a violation of human rights here not on the basis of a law, but on the basis of a decision of an administrative body.

### **Right for labor and education**

In mixed security institutions for convicts who are in local areas of "special valleys", there is no opportunity to work and earn money. Also the law obliging all citizens to have a secondary education is violated.

Nelson Mandela Rule 4 says:

1. The objective of a sentence of imprisonment or a similar deprivation of liberty is mainly for the protection of society from criminals and the reduction of recidivism. These goals can only be achieved if the prison term is used, to the extent possible, to ensure the reintegration of such persons into society after their release, so that they can lead a law-abiding and independent way of life.

2. In this regard, the prison administration and the competent authorities should provide appropriate and available tools for education, vocational training and work, as well as other types of assistance, including correctional, moral, spiritual, social, medical and sports nature. All such programs, activities and services should be rendered to the individual needs of prisoners' re-education.

Rule 96.

1. Convicted prisoners should be able to work and or actively participate in their



rehabilitation, provided that the doctor or other qualified medical professionals have established their physical and mental health.

2. Prisoners should be provided with useful work sufficient to complete a normal working day.

#### Rule 104

1. All prisoners who are able to benefit from this should be provided with the opportunity of further education, including religious education in countries where such is allowed. Education of illiterate prisoners and juvenile prisoners should be considered as mandatory, and the prison administration should pay special attention to it.

2. Training of prisoners should, as far as possible, be networking with the operating education system in the country, so that released prisoners can continue to study without difficulty.

**Conclusion of NPM members: It is necessary to abolish local areas in mixed security facilities, as they do not comply with the Correctional Code RoK.**

### **Connections with the outer world**

Connections with the outer world for prisoners in pre-trial detention center are carried out primarily through short and long meetings with family members. In addition, this communication is conducted through the right of prisoners to exchange correspondence, to receive parcels, the right to watch television, movies, listen to radio programs, read newspapers, magazines, the right for telephone conversations.

An analysis of the reports of visits of NPM members in the reporting year showed that all of the above mentioned rights of prisoners are mainly respected.

One of the issues that caused the concern of NPM members when they visited the establishment LA-155/18 of the Department of the penitentiary system in Almaty on January 18 was the lack of contact of prisoners with lawyers who should be provided by the state as necessary. Many prisoners said that lawyers simply did not come and, of course,

the defense of the case is reduced to a minimum. This situation was happened to the majority of detainees and they asked NPM members to pay special attention to it.

When NPM members visited the establishment RU-170/1 of the Department of the penitentiary system MIA RoK in West Kazakhstan oblast, on November 15, 2018, two women arrested on extradition were detained in the pre-trial detention center, and the staff identified them as “transit convicts” and who had no the right to meet with their relatives and could not receive any parcels, because in the opinion of the staff, such restrictions of rights are established by the norms of Clause 7 Paragraph 65 of the Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated July 26, 2017 No.505 “On approval of the Internal Regulations of the pre-trial detention centers of the penitentiary system”. It states that: “Parcels are not accepted and are returned to the visitor in the following cases: to persons

convoys by transit” – end of the quotation.

Meanwhile, the NPM members consider such actions to be unlawful and significantly violating the legal rights of individuals who are subject to extradition arrest as well as their relatives. According to NPM members, the quoted rule refers to the transit of prisoners across Kazakhstan, and not the transit through extradition to another state. Such an interpretation of the regulation seems to be correct.

NPM members believe that in this case, the rights of extradited prisoners are simply violated, and this issue requires a legislative solution or clarification of the General Prosecutor Office of RoK. At the same time, the criteria for a “transit convict” should be clearly regulated, for example, from the moment of making the decision on transferring and taking into account the exhaustion of the possibilities to appeal against the decision made. The necessity and importance of making such a decision (or clarification

of the General Prosecutor Office of RoK) is explained by the fact that persons undergoing extradition arrest may be staying in pre-trial detention centers for up to a year, and in some cases for longer. At the same time, as a rule, extradition-arrested people are essentially the same accused as everyone else, but they do not have the opportunity to receive parcels and cannot have meetings with relatives. And only in very rare cases, they may already be convicted (in criminal investigation), but in this case they also have the right for receiving parcels and for visits.

Aswenotedabove,convicts who arrived to serve their sentences in mixed security institutions under Article 88 Clause 4 of the Correctional Code RoK in local areas of pre-trial detention center are not entitled to either a short-term, or even a long-term meeting, which violates the Nelson Mandela Rule 43 Part 3, where it is indicated that:

*disciplinary or restrictive measures should not include a ban on family contact.*

*restrictions on family contacts can be established only for a short time and only if it is required to enforce safety and order.*

Those under investigation who are detained in pre-trial detention center are also deprived of the right to have a long meeting with their families. Some of them may be in isolation for months.

**Conclusion of NPM members:** it is necessary to define legally and clearly the concept and status of transit persons detained in pre-trial detention centers of the Republic of Kazakhstan. It is important to bring legislation and regulatory legal acts into conformity and eliminate contradictions that violate the rights of convicts to socialization.

### **Right for freedom of conscience**

In fact, in all the mixed security institutions, NPM members noted that convicts have the opportunity to perform religious rites, but with minor corrections. The limitation is the regime of the institution, which prohibits

reading namaz at night. In the establishment GM-172/10 of the Department of the penitentiary system in Mangystau oblast, NPM members indicated that "the right to practice one's religion is respected, but without performing rites".

When monitoring the RSE "Correctional institution RU-170/1" of the Department of the penitentiary system of the Ministry of Internal Affairs of the Republic of Kazakhstan in West Kazakhstan Oblast, NPM members indicated that "persons accompanying NPM members in West Kazakhstan Oblast explained that only such rites that do not violate the regime of detention in the temporary detention center are allowed to be exercised".

Reading prayers is allowed in the cell, but only if it does not contradict the Rules (after lock down, in public places, during an inspection, etc.).

**Conclusion of NPM members:** The constitutional right of a citizen to freedom of conscience is limited with such regulatory and legal acts as the "Internal Regulations of the Institution". It is

necessary to bring laws and regulations in compliance with the fundamental laws of the Republic of Kazakhstan.

**Right to file complaints, suggestions, requests**

Visits of NPM members to the pre-trial detention center in 2018 showed that the formal procedure for submitting complaints, proposals, petitions, almost in all visited institutions is observed. However, the level of trust in this channel for the protection of prisoners' rights is not very high. Thus, when visiting the establishment EC-166/1 of the Department of the penitentiary system in Astana on February 10, 2018, despite the fact that mailboxes for complaints were installed in the corridors of the security section of the institution, the following recipients are indicated: NPM, Committee of the penitentiary system, Prosecutor's Office, Ministry of Internal Affairs, PMC, etc., the complaint mechanism, according to NPM members, does not work, the rights of suspects and accused are

violated everywhere. Many detained persons do not believe in the effectiveness of NPM and prosecutors and, accordingly, do not write complaints. According to the persons detained, any complaint is checked by the administration and, if necessary, for unknown reasons, it may not reach the addressee. According to the verbal report received from S. (cell No.615), complaints do not reach the addressee, there is no reaction from the administration. According to the verbal report received from A. (cell No.119), A. (cell No.405), complaints about the administration, the prosecutor's office or the court may simply not be sent after the administration has read them. Envelopes for petitions or complaints to the prosecutor or the court are not provided. Each complaint is read by the administration and, after studying it, it decides whether to send the envelope or not. There is no log of outgoing petitions or complaints. These facts are a significant violation of Chapter 9 ("The procedure

for the submission of proposals, petitions and complaints of suspected and accused persons") of the Internal Regulations of the pre-trial detention centers of the penitentiary system. Article 85 states: "Proposals, petitions and complaints addressed to the prosecutor or to the court are accepted in a sealed envelope and are not subject to censorship. As they are submitted, they are immediately sent to the addressee".

Detained persons reported that a complaint against the administration may adversely affect the conditions of detention, and, accordingly, many of them are afraid to submit complaints.

According to the suspects, their complaints are simply ignored by the administration. Thus, the detainee M., born on January 10, 1991, previously convicted, repeatedly wrote complaints addressed to the head of the institution regarding the conditions of detention in the quarantine department (the petition stated that the bed clothes had never been changed

during the entire time he was placed there from January 27 till February 09, 2018, he was allowed to smoke 1 time a day, cannot get a medical examination on this health state), but no reaction from the administration followed.

The above mentioned situations with complaints in pre-trial detention centers are confirmed by the results of other visits. The NPM members report on visiting the establishment 158/1 of the Department of the penitentiary system in Zhambyl oblast on September 25-26, 2018 claims that according to the opinion of some of the interviewed convicts, their complaints do not reach the addressees, since they do not receive answers.

Apparently, due to the inefficiency of the existing complaint system, personal meetings with investigative detainees and convicts are more effective. At these meetings, being confident of their confidentiality, the prisoners speak out on painful issues. So, when visiting the establishment

LC-169/1 of the Department of the penitentiary system in Kyzylorda oblast, 5 persons were interviewed. The complaints of these persons concerned the procedural rules, namely the accused E., on newly discovered circumstances in a criminal case, was brought from Atyrau for a confrontation on February 16, 2018. She does not agree with the decision made on April 17, 2018 and wrote a petition to the city prosecutor's office, but she was not given the number of the outgoing document, on April 19, 2014, she again filed a complaint. O., who is wanted for a crime, under Article 188, Part 2 of the Criminal Code of the Republic of Uzbekistan, was detained on January 17, 2018 and placed in the temporary detention center, and subsequently in pre-trial detention center. He complains that the court hearing was held without his participation, he was given a sanction for 40 days. When the prosecutor visited him, he expressed his complaints, in particular, that he was unable to contact his relatives in

Uzbekistan either by writing or by telephone. He wrote a petition to the prosecutor on these issues, but did not receive the number of the outgoing document, nor was he given a lawyer. On December 11, 2017, during an operational procedure N. was arrested by officers of the Organized Crime Control Department for drug possession, physical violence was used to him during the arrest and he considers the actions of the Organized Crime Control Department to be illegal, there is a forensic examination report on receiving bodily injuries. I. asks for clarification of the rights of the persons detained in pre-trial detention center.

All the facts cited show that the state authorities, called upon to solve the issues of prisoners, do not always conscientiously fulfill their duties, do not show deep understanding of the situation of prisoners and show complete indifference to them.

### **Special visits**

In 2018, 9 special visits were made, in 2016 and 2017 there were 6 special visits.

Special visits by NPM members are made on the basis of complaints and other signals about torture and other cruel, inhuman, degrading the honor and dignity methods of treating the persons detained in pre-trial detention centers. As the 2018 NPM reports show, unfortunately, such treatment takes place in the observed institutions.

According to statistics, most often torture is used in the first hours of detention and during the investigative actions. But the words of prisoners are rarely heard. This is evidenced by the results of special visits in 2018.

The Ombudsman of the Republic of Kazakhstan in the framework of the current memorandum of cooperation with the Supreme Court of the Republic of Kazakhstan in order to summarize the judicial practice sent to the address of its Chairman information on the protection

of human rights and freedoms in the judicial process.

Over the past 12 months, the Commissioner for Human Rights received 329 appeals about the citizens disagreeing with court decisions, which is 26% of the total number of registered appeals. 226 complaints fall on the criminal form of legal proceedings, 91 – on civil, 12 – on administrative. Most of the complaints came from the cities of Astana, Almaty, Karaganda and Kostanay oblasts. Practice shows that the main reason for the groundless involvement of citizens in the criminal prosecution is a violation of the regulations and procedural rules at the stage of pre-trial proceedings. It is obvious that these violations were not given a timely assessment by the investigative judges, who are vested with the power of judicial control. In their appeals, the complainants often note that the basis of the sentence is usually taken as the indictment of the criminal investigating authority; the court rejects

the petition for admission to the case file of the findings of independent expert examinations, the testimony of defense witnesses; procedural irregularities are not taken into account during the investigation; indirect evidence of guilt is admitted. The above mentioned is confirmed by the data of the Prosecutor General Office of the Republic of Kazakhstan, according to which in 2018 the number of judicial acts amended and canceled in the court of appeal increased by 1.5 times. Considering protests of the prosecution authorities, the cassation court improved the situation of more than 200 convicts (12 of them were declared fully not guilty, 19 were declared partially guilty, the rest received reduced term of serving sentences and relaxed security regimes of detention)<sup>3</sup>.

Indicative in this respect are the results of a visit to the establishment ES-164/1 of the Department of the penitentiary system

<sup>3</sup> <http://www.nomad.su/?a=3-201812070027>



in North Kazakhstan oblast on February 6, 2018 in connection with letters of complaint from prisoners.

The accused K. was arrested more than 5 months ago on suspicion of committing a crime (pillage). Previously convicted, before the arrest, he was registered in the local police service by the local police restraint inspector. During the arrest, he was taken to the first police department of the Department of Internal Affairs in Petropavlovsk, where law enforcement officers, a local policeman of the zone station No. 13 of the Yubileinyi microdistrict named "Azamat" and the criminal investigator of the first police department of the Department of Internal Affairs of Petropavlovsk named "Daniyar" put psychological pressure on him, namely: he was threatened with "imprisoning" of him and his brothers, and of fabrication of a criminal case as a group case if he does not admit his guilt. Mr. K. was forced to admit his guilt, being in a strong psychological shock

and fearing that innocent brothers could condemn him in collusion with the investigation. He was held in the department for more than 6 hours, and the lawyer was deliberately brought late, when he was forced to confess. The convict also claims that during the trial the victim stated that he had no complaints against him, but the court did not take this into account. He requests to objectively solve this criminal case. No tortures were used.

The accused G. was arrested by police officers on suspicion of committing a crime. He was placed in the temporary detention center of the Department of Internal Affairs in Petropavlovsk. While in detention, according to him, he was tortured, kicked by legs in perineum, threatened with sexual violence, in the form of sodomy, he was beaten by officers named R. who is the head of the criminal investigation department, and R. who is officer of the temporary detention center and the witness to this was the deputy head of the

temporary detention center of the Department of Internal Affairs of Petropavlovsk. He was forced to plead guilty for uncommitted crimes, with such a ground that "What is the difference? One theft more, one less, you still have to be imprisoned". He was forced to admit this guilt, fearing that there would be an act of sodomy against him. However, according to the crime episodes, he reconciled with the victims. After some time, he was again called to the Department of Internal Affairs of Petropavlovsk and reinstated in the temporary detention center without being explained the reasons. They didn't carry out any investigative actions, confrontations and interrogations, they just silently transferred the accused to the establishment ES 164/1, and therefore, fearing that a lot of different episodes of theft were "hanged" on him, he turned to NPM.

B. was convicted by an inter-district court of Pavlodar region in 2013 for 17 years in prison. Then it was transferred

to the RSE Establishment AC 159/5 in Karaganda oblast, from this establishment on December 25, 2017 he was transferred to the ES 164/1. He considers the threat to his life and to the lives of other people as reason to appeal to human rights institutions and their representatives. The convict was transferred from the Karaganda region from the establishment AK 159/5, where he was serving a sentence. It all started from the moment when he and three other convicts unwittingly witnessed the murder of the convict M. So, on July 12, 2016, convicts from among activists of the voluntary organization of convicts in the amount of 15 people beat one convict, as a result of which the latter died. On this fact, the representatives from the prosecutor's office of the Abai district of Karaganda oblast arrived. B. and three other convicts were hidden away from their eyes and told to remain silent. As a threat, they put a packet on his head, wrapping it with scotch tape and strangling

it, then “hanged” the whole thing on another convict and everyone calmed down. However, soon they decided to transfer him to the establishment ES 164/1 in Petropavlovsk. In his opinion, his rights are violated here. For several days he performed namaz from December 25 to December 29 and no one made a notice to him, then on December 30, as he believes, the administration filed a violation, about which he found out only on January 8, 2018. He regards such actions of the staff as an “order” from Karaganda to make him completely silent, since he is the main witness of the murder of convicted M. in Karaganda oblast in AK 159/5. Also, in his opinion, they do not want to release him from the institution under regular conditions, inventing various penalties and forbidding him to perform religious rites without harm to the daily routine. Convict is worried about the lives of the remaining three witnesses who continue to serve their sentences in Karaganda oblast.

Convicted S. was transferred after the trial to the RSE Establishment AK 159/5, and from this institution in June 2017 was transferred to the ES 164/1. The reason for the appeal was the torture that took place within the walls of the establishment AK 159/1 in Karaganda oblast. According to S., in order to subordinate the convict to their regime, they tortured him. The convict describes the torture as follows: three officers in masks (he also had time to see service combat boots) stripped him naked, put a cloth on his head, blindfolded him, tied his hands behind his back with adhesive tape, then brought him to a dark room. They covered his mouth with a cloth and, with a strong unclenching of the lower jaw, poured water in his mouth until he began to choke. At the same time, they were shining with flashlights from lighters, and at the same time they beat him with electric current from electric shocker on his hands, on his legs, on his body and on his genitals. After these tortures,

they took him outside, took off the scotch and hung them by both hands so that his feet would barely touch the ground. And as he was in limbo, he was put under pressure and demanded that he follow all their instructions: they demanded that he must join the ranks of the activists and "work" for the institution, they also said that he should wash and clean floors and toilets of the institution. According to the convict, he had to endure all these tortures for 21 days while he was in AK 159/1. Then he was transferred to the prison in Karaganda oblast, from where a week later he was transferred to the establishment ES 164/1 in Petropavlovsk. However, in the establishment ES 164/1, too, it was not without torture, a month after receiving the stage, he was brought to the security department, where institutional operational officers forced him to take off his underwear and beat him half-naked with batons in the institutional operational office, claiming and insisting that he will obey the regime,

no matter what it costs. He was also forbidden to read namaz, without any grounds. He repeatedly tried to write a letter addressed to NPM, but the deputy head of the institutional operational office, Major of Justice O. called him and said that there was no sense from these letters, and if he wanted to live in peace, then he had to stop writing this letters, and then the head would tear the letters in front of him. All this happened about 3 times.

Convicted A. was arrested by the officers of the Department of Internal Affairs of the Petropavlovsk Department of Internal Affairs on suspicion of committing a crime (storage, distribution and sale of narcotic drugs). Previously convicted, he claimed that during the arrest he was seized some precious items (chain, watches, etc.) and these items were not returned to the present, with the claim that he made it all up. During the arrest, he was taken to the temporary detention center of the Department of Internal Affairs of

Petropavlovsk, where he was subjected to psychological pressure by a police officer, senior investigator from the Department of Internal Affairs of Petropavlovsk, police captain A.: he was threatened with violence so that he admitted the crime. He strongly disagreed with the accusation, and admits that he used and stored drugs, but did not distribute or sell them. However, DEA staff repeatedly psychologically and morally put pressure on him. As a result, detained at the establishment ES 164/1, in protest, he declared a hunger strike from January 5, 2017. On the day of a special visit to NPM members, on February 06, 2018 he was still on a hunger strike.

A special visit of NPM members to the SE EC-166/1 on June 2-3 in 2018 was carried out on the complaint of attorney M. about the alleged ill-treatment of X. and rude treatment from the head of the institution, U. According to the NPM members in Astana, as a result of the inspection the facts

indicated in the complaint were not confirmed.

The second special visit by NPM members in Astana to the establishment EC-166/11 took place on December 16 following A.'s personal complaint about the fact of physical violence from the staff of the institution and the humiliation of human dignity and cruel treatment, expressed in dragging him along the corridor and walking him without coat at sub-zero temperature 200-300 meters in the premises of the medical ward.

In their conclusions, the NPM members admit the fact of causing bodily injuries to A. by the staff of pre-trial detention center but, as they say in the report, "there is no direct confirmation of this fact", besides "there are no visible injuries on the body of A."

During a special visit to the establishment LA 155/18 of the Department of the penitentiary system in Almaty, it was established that on November 9, 2018 when D. arrived from investigative actions, there was another

person in his cell, previously D. was kept in cell No.113 alone. After that, the cellmate began to beat D. on the face, demanding to change the testimony that D. gave during the investigation. After that, as D. explained, the cell was opened and this man was taken away, and he was taken to the hospital. The second case occurred on the evening of November 13, 2018, when he was eating. As explained by D., the cell was opened, and someone broke into the camera and beat him, while demanding to change his testimony and "admit to it".

During a personal conversation, the NPM members found out that D. feared for his health and life.

NPM members received from D. a petition containing other information about the incident, which was previously sent electronically to the address of the Commissioner for Human Rights. In the opinion of NPM members, this petition should be objectively reviewed by the authorized bodies, and necessary investigative measures should be taken

to establish a picture of what happened (absence or presence of corpus delicti).

On the basis of the information published by a user of the Internet resource [www.facebook.com](http://www.facebook.com) it was reported that inadequate medical care was rendered to the investigative detainee T., detained in the establishment LA-155/18 of the Department of the penitentiary system in Almaty, which resulted in a loss of vision in his left eye.

The results of a special visit to this institution by NPM members and their conclusion on this matter showed that the administration of the institution takes all measures to provide the necessary medical care to T. He is under the constant supervision of the medical staff of the institution. Daily medical rounds are carried out and, if necessary, consultations are provided, the fulfillment of the prescription by doctors for T. is checked. It should be noted that visual impairment in the left eye is affected by the presence in T. of such concomitant diseases as "Hypertensive

disease of Grade 3", "Aorta Atherosclerosis of Cerebral Arteries", "Hypercholesterolemia", "Impaired fat metabolism". The conditions of detention comply with the requirements of international and national legislation regarding the detention of investigative detainees.

As per the appeal of the investigative detainee G., a special visit to the establishment RU-170/1 of the Department of the penitentiary system of the Ministry of Internal Affairs of the Republic of Kazakhstan in WKO was carried out on January 30, 2018. From G.'s explanations, it follows that on January 4, 2018, he wrote an appeal addressed to the WKO Prosecutor in the presence of the WKO Assistant Prosecutor U. for unlawful acts, torture, ill-treatment from the Detention Center-4 officers against the investigative detainees at RSE RU 170/1, and also about the threats against him and the fact of medications missing that were purchased by his relatives.

In a filed petition, G. indicated the names of the DC-4 officers who used torture and the names of those under investigation who were subjected to torture.

The WKO Assistant Prosecutor U. claimed that his petition and the petition of his spouse G. were registered at ERDR, and in two days the officers of the investigation department would come to conduct a pre-trial investigation. However, no one came to him until January 30, 2018, and no investigative actions were taken. G. believes that the red tape and failure to take measures to consider the petition submitted by him and his spouse allowed the staff of the institution to take action on unreasonably prosecuting him.

So, on January 25, 2018, G. was in cell No.43, when two suspects were "moved in": K. and I.

On January 26, 2018, the officers of the DC-4 brought under investigation K. who after some time returned to the cell and reported

that three employees of the institution, using threats, forced him to testify that, allegedly, G. forced him to "cut open" his stomach i.e. to commit an act of self-harm. After that, G. demanded that these DC-4 officers enter cell No.43 and that K., in their presence and in the presence of person under investigation I., confirmed the words about threats from DC-4 officers, as well as the fact of being forced to accuse G. Under such circumstances, G. appealed to the staff of DC-4 to invite the head of the institution to inform him about the unlawful actions of his subordinates. However, he was deceived by the DC-4 officers, and the head of the institution did not accept him for a personal reception.

Accused G., in order to attract attention to himself, did not see another way to restore law and punish those responsible than to cut his stomach on the left side and refuse to eat on January 28 at about 11 o'clock.

Earlier, G. filed a petition addressed to the WKO prosecutor about the failure

to take action on his initial appeal, three times he appealed verbally to the DC-4 officer named Timur and asked him to assist in inviting the representative of the prosecutor's office. However, all his attempts to solve the issue by legal means were not crowned with success, and G. used extreme measures because of his hopelessness. G. indicates that he was illegally placed in cell No.73 alone in connection with the announcement of a 15-day stay in disciplinary cell.

On the night from January 29, 2018 to January 30, 2018, G. was fastened with handcuffs "on a stretch" to the bed from 21.00 to 00.00 a.m. and for the second time from 01.00 to 03.00 a.m. At the same time, G. was lying down on his back with his hands apart. In this position, he was left alone, although according to his illness, claustrophobia, he should not be left alone. At the same time, daylight is lit in the cell around the clock, and two DC-4 employees are sitting at a very close distance to him around the clock.



The WKO NPM members interviewed B., a medical officer, for a medical examination and permission to place A.G. Gaponov in disciplinary cell. The medical officer informed me that, due to existing diseases, G. cannot be placed in the disciplinary cell, and also said that he had not conducted a medical examination. He did not know that G. was in disciplinary cell.

The institution does not have a log on the use of special means, however, a copy of the Act "On the use of physical force and special means" dated January 29, 2018 was provided to the WKO NPM members by the head of DC-4. However, it was not clear whether the prosecutor was subsequently notified. Also, it is not indicated for what period the special means were applied. At the same time, G. is not aware of this Act. The administration of DC-4 did not submit any documents regarding the issuance of the relevant decision of officials on the use of special means.

At the end of the interview, G. wrote a petition addressed to the Commissioner for Human Rights in the Republic of Kazakhstan.

The head of DC-4 was warned by NPM members in WKO about the need to save video recordings for cell No.73 for the period from January 29, 2018 to January 31, 2018.

On the same day, as part of the collection of information, there was an interview with B., who confirmed in writing that on the night of December 30-31, 2017, the DC-4 officers handcuffed him and kept him in the "swallow" position for two hours as he asked the surgical treatment of his left hand, since he has a broken radius.

The WKO NPM members made photographs of B.'s broken arm. During the interview, the accused B. reported that he experienced severe physical pain during the use of special means without any reason. At the time of the visit, the arm was broken, but he did not receive medical any assistance.

At the end of the interview, B. wrote a petition addressed to the Commissioner for Human Rights in the Republic of Kazakhstan regarding his ill-treatment.

NPM members recommended conducting a quick, independent, impartial, effective investigation of the petitions of G. and B. and ensure the protection of victims of torture in order to prevent pressure from the DC-4 staff.

A special visit to the RSE Establishment UK 161/1 of the Department of the penitentiary system in Kostanay oblast on February 9, 2018 was made on the basis of the petition from the relative of L. who was kept in cell No.23 from the beginning of January 2018, before that petition, in the cell where he stayed there was a persistent smell of damp; there were leaks and mold on the walls. It was cold in the cell; he constantly felt chills. He feared for his health in connection with the diagnosis of inguinal lymphadenitis on the right side.

before the arrival of NPM all complaints were filed by relatives to the head of the establishment UK 161/1, but there was no action from the administration. Further complaints were sent to the Department of the penitentiary system in Kostanay, consequently a senior inspector, sanitary doctor X. was appointed and sent there. In addition, when the complaint from Mrs. S. was received, a commission from the NPM members was created.

The conclusions of the NPM members are as follows: The systematic failure to comply with the recommendations led to the fact that today in the institution, due to the poor quality of the ventilation system, thermal insulation creates condensation in the cells. As a result of this, moisture is collected on the walls, a fungus is formed, which leads to discomfort and deterioration of the health of those staying in the cells. Due to such conditions, detained in pre-trial detention center are forced to stay in warm (outdoor) clothes. There

were no facts of imposing a penalty for being in outdoor clothes.

NPM members regard the fact of violation of the temperature regime as cruel treatment of prisoners who are detained. In addition, according to relatives and the prisoners themselves, medical assistance is not provided at the proper level in the institution. On weekends there is no medical officer, without whose consent an ambulance cannot be called and there is no access to medications.

The NPM group believes that the lack of a temperature log in the cells also indicates a lack of control over compliance with the norms of the temperature regime in the institution. There is also the fact of confirmation for the complaints from other relatives of persons who are detained in the institution.

### **Housing, hygiene and sanitary conditions**

**Conclusions:** NPM members noted in their reports that many premises of the pre-trial detention centers were

unsuitable for use. They do not have artificial ventilation and there is no possibility to provide natural ventilation in connection with which, in residential areas there is high humidity, there is a persistent smell of feces. These old buildings need decommissioning and demolition.

Sanitary equipment in cells is in need of maintenance and, in some cases, replacement. It is noted that almost all cells lack hot water. Sanitary inspection rooms are not everywhere working. Furniture in many rooms of the pre-trial detention center is in an inappropriate, outdated condition, there are not enough bedside tables for storing personal belongings of prisoners. Due to the lack of the necessary amount of furniture, in some institutions (UK 161/1 in Kostanay), the detained persons eat food in turn.

In some cells, bunk metal beds are installed, mostly old-fashioned, requiring replacement. The beds themselves are located close to each other, which can

provoke unwanted contacts of those serving sentences (UK 161/1 in Kostanay). In some cells, the rules of privacy are not respected (AP-162/1 in Pavlodar).

Prisoners' prolonged stay in the above conditions can be described as torture, humiliation of human dignity and cruel treatment of prisoners.

### ***Recommendations:***

All Departments of the penitentiary system and the Committee of the penitentiary system MIA RoK should make efforts to eliminate all the above mentioned issues.

### **Medical services**

***Conclusions:*** In recent years, NPM members have noted serious issues in the medical care of individuals detained in pre-trial detention centers. They are connected to the insufficient staffing of the medical wards, inadequate medical care, and subordination of the medical wards to the pre-trial detention center administration. The latter creates conditions for the

physical violence from administration, either directly or with the help of other prisoners, with persons who reasonably and consistently defend their rights and legitimate interests and who wish to achieve justice in higher and supervisory bodies. Dependent doctors cannot give an objective conclusion on the physical condition of persons subjected to violence from the administration. As a result, during special visits NPM members could only state torture and physical abuse, according to the words of victims, due to the lack of a doctor's opinion at the time of the incident. Subsequently, when the facts of ill-treatment are registered by the relevant authorities to investigate and punish the perpetrators, the case again rests on the absence of a doctor's opinion on the fact of violence. Thus, the guilty persons escape responsibility for torture and ill-treatment of prisoners.

The main issue is the transfer of the medical service in pre-trial detention

centers from the authority of the Ministry of Internal Affairs of the Republic of Kazakhstan to the Ministry of Health of the Republic of Kazakhstan. In the event of such a reorganization, it will be possible to solve both the issues of salary increase for medical staff and the issue of vacancies for health workers in pre-trial detention centers.

### **Recommendations:**

It is necessary to transfer the medical service in pre-trial detention center from the authority of the Ministry of Internal Affairs of the Republic of Kazakhstan to the Ministry of Health of the Republic of Kazakhstan.

### **Exercise of statutory rights**

**Conclusions:** Separate placement in cells is not observed. There were cases when the convict for the murder was placed together with the accused. Thus, in cell No.614 there are 2 people, one of whom was sentenced to 17 years, and his cellmate has not been convicted before, he is under investigation (EC-166/1).

All of the above mentioned indicates violation of Article 32 ("Separate placement in cells") of the Law of the Republic of Kazakhstan dated March 30, 1999 No. 353-I "On the procedure and conditions of detention of persons in special institutions that provide temporary isolation from society".

When a convict is transferred on the basis of Paragraph 4 of Article 88 of the Correctional Code RoK to the pre-trial detention center, he loses **the right for telephone conversations, the right for long visits** that he had before the transfer based on Part 4 of Article 136 of the Correctional Code RoK. In this case, the transfer is carried out on the basis of the decision of the authorized body of the penitentiary system in cases when **there is a necessity to enforce law and order in the institution (Clause 4 of Article 88 of the Correctional Code RoK)**.

Thus, as noted by NPM members, the situation of persons transferred to pre-trial detention center from institutions of medium

security worsens. They do not have the right for telephone conversations, the right for long visits. Moreover, in their opinion, a legal conflict arises here: the authorized body, by its decision, cancels the decision of the court regarding the definition of the type of institution, which worsens the rights of convicts. The same conclusion of NPM members should be considered. A restriction of human rights not on the basis of the law, but on the basis of a decision of an administrative body can be observed.

It is necessary to thoroughly study the issue under consideration and make appropriate adjustments to the legislation.

**Recommendations:**

it is necessary to direct efforts to further improve the legislation on the execution of sentences and the prisoner welfare in the institutions of the Ministry of Internal Affairs of the Republic of Kazakhstan.

**Connections with the outer world**

**Conclusions:** According to Paragraph 3 of Article 13 of the Constitution of the Republic of Kazakhstan everyone has the right to receive qualified legal assistance. In cases provided by law, legal assistance is provided free of charge. One of the issues that caused the concern of NPM members when they visited the establishment LA-155/18 of the Department of the penitentiary system in Almaty on January 18 was the lack of contact of prisoners with lawyers who should be provided by the state as necessary. Many prisoners said that lawyers simply did not come and, of course, the defense of the case is reduced to a minimum. This situation was happened to the majority of detainees and they asked NPM members to pay special attention to it.

Paragraph 65 of the Internal Regulations of the pre-trial detention centers of the penitentiary system approved by the Order of the Minister of Internal Affairs of the Republic of Kazakhstan

dated July 26, 2017 states that: "Parcels are not accepted and returned to the visitor in the following cases: persons conveyed by transit" - end of quotation. In practice, this restriction is spread by DC officers in relation to persons who are in an institution on an extradition.

By the meaning of the quoted regulation, it refers to the transit of prisoners across Kazakhstan, and not to the transit on extradition to another state.

In this case, the rights of persons arrested on extradition are simply violated, and this issue requires a legislative decision or clarification of the Prosecutor General of RoK.

### **Recommendations:**

1. The administration of pre-trial detention center needs to ensure the constitutional right of prisoners to qualified legal assistance.
1. It is necessary to define legally and clearly the concept and status of transit persons held in

detention centers of the Republic of Kazakhstan.

### **Right to file complaints, suggestions, petitions**

**Conclusions:** Visits by NPM members to pre-trial detention center in 2018 showed that the formal procedure for submitting complaints, proposals, petitions, almost in all visited institutions is observed. However, the level of trust in this channel for the protection of prisoners' rights is not very high. Despite the fact that everywhere there are mailboxes for complaints, the addressees are indicated, but as NPM members note, the complaint mechanism does not work, the rights of the suspects and the accused are being violated everywhere. Many detained persons do not believe in the effectiveness of NPM, prosecutors and, accordingly, do not write complaints.

When visiting, NPM members should often have personal meetings with prisoners and, if their rights are violated, immediately collect their petitions.

***Recommendations:***

NPM members should strengthen control over the implementation of the right to submit complaints and petitions by prisoners. When visiting it is necessary to conduct personal meetings with inmates more often.





# 4

## The position of persons held in temporary detention facilities and other institutions of the Ministry of Internal Affairs of the Republic of Kazakhstan

Prepared by: Gusakov Yuri Anatolievich  
Mukha Aleksandr Viktorovich

The National Preventive Mechanism for the Prevention of Torture in the Republic of Kazakhstan as a matter of priority considers visiting special institutions of the Ministry of Internal Affairs of the Republic of Kazakhstan that are not part of the Committee of the penitentiary system. In total, in 2018 NPM members visited 118 temporary detention centers, 26 remand houses and 24 special reception centers, and 1 special visit was made in Shymkent.

Training and certification of staff for employment in these institutions, presumably is at the proper level. There are some questions on training managers. The aspects to be studied when NPM members visit these institutions: respect for human rights, the eradication of cruel and degrading treatment, employees' knowledge of the national legislation norms, international law, the UN Convention against Torture. The activities of the mentioned institutions are subject to daily supervision by the Prosecutor's Office,

the agencies carry out departmental inspections.

In 2018, as in previous years, the members of the National Preventive Mechanism for the Prevention of Torture in our country carried out regular and intermediate visits to had regular and intermediate visits to temporary detention centers TDC (TDCs), remand houses (RHs), special reception centers (SRCs), police stations (PSs) (selectively).

The recommendations received as a result of the visits mainly assess the situation in the institutions as satisfactory. There is a slight decrease in the responsibility of the management of institutions in implementation of the recommendations sent by the members of the National Preventive Mechanism based on the results of visits to institutions. Failure to comply with the recommendations is usually due to a decrease or lack of funding for current and capital repairs, lack of funds for the development of design and estimate documentation (design estimates) for reconstruction

to bring institutions in line with national standards, as well as the inability to carry out reconstruction due to the design features of buildings and structures, built on the residual principle using non-standard building structures and materials. It is for these reasons that the problematic issues raised by NPM members in 2015, 2016, 2017 and 2018 remain open to this day. These are the issues, the solution of which will contribute to the improvement of the situation on the maintenance of human dignity in temporary detention centers, remand houses and special reception centers of MIA RoK.

Positive trends in the response of state bodies and administrations of institutions to the recommendations on bringing the conditions of detention in compliance with national standards are minimized today. As per the systematic approach in an objective assessment of buildings and structures, the design features of which do not allow to fulfill the required standards in institutions, such

approach is absent at the ministerial level.

Temporary detention centers of the MIA RoK system (TDCs) are special institutions designed to detain persons arrested on suspicion of committing criminal offenses.

The temporary detention facilities of the internal affairs bodies are the places of detention for the following persons:

- suspects detained in accordance with Article 132 of the Criminal Procedure Code of the Republic of Kazakhstan;
- suspects, accused with cases under Articles 142, 150.

In compliance with the Criminal Procedural Code of the Republic of Kazakhstan, a preventive measure that is chosen is the arrest.

Almost always in the reports of NPM members the cases of placement in the temporary detention center of persons subjected to administrative arrest are described. In order to enforce the rulings of administrative courts, the temporary detention center does indeed detain persons who

are subject to administrative arrest. As of 2018, in the Republic of Kazakhstan there is no regulatory and legal framework governing the security, municipal, material and technical, medical and sanitary support of administratively-arrested persons. The trend is alarming, as the number falling under the administrative arrest, as a type of preventive measure, is growing.

In total, NPM members made 118 visits to the temporary detention centers (including regular and intermediate) during the period under review.

NPM members continue to complain about living quarters, cases of inadequate medical care, especially on weekends, absence or lack of complete first aid kits for urgent medical care, access to drinking water and its quality, unequipped sanitary facilities, and lack of an effective complaint mechanism as well as the issues associated with the arrangement of courtyards.

According to the results of the visits made in 2018, for

the range of the temporary detention centers NPM members recommended eliminating significant faults noted in the comments on residential premises, recommending not only to eliminate the existing issues, but to construct new buildings since the existing ones do not meet the requirements of national legislation and international standards.

Among them:

- range of temporary detention centers of the Police Department in Zhambyl oblast;
- range of temporary detention centers of the Police Department in Karaganda oblast;
- temporary detention center of the Department of Internal Affairs in Arkalyk, Kostanay oblast

Not all temporary detention facilities are subject to mandatory reconstruction or closure. As before, the insurmountable circumstances associated with the design features of some buildings do not allow for reconstruction (semi-basement rooms, the

absence of windows or their small size) and for elimination of the noted issues reported by the NPM members at each visit. Nevertheless, the issues of these temporary detention centers are well known, especially by the supervisory authorities. Preventive visits to such institutions make it impossible to predict the possibility of bringing these temporary detention centers to the minimum standards in the next 2-3 years, or even in the next decade.

Up to 50% of the visited temporary detention centers have repeated comments and recommendations on provision of natural (day) light in the TDC cells, which, at a minimum, should not lead to damage to the health (vision) of the detained, and in some the cells it is enough to remove the grids or to bring them into compliance with the required standards. It should also be noted that in a number of institutions it was possible to take some measures in the regard to the recommendations of the past 2018.

However, as in previous years, by conducting their visits to the temporary detention center, the NPM members address systematic unsolved issues related to detention facilities, but remaining outside the scope of attention of the supervisory authorities. As an example: in accordance with Paragraph 2 of Rule 73 of the Mandela Rules for "Transportation of prisoners in conditions of insufficient ventilation or lighting or in any other physically unnecessarily harsh conditions shall be prohibited". The conditions of transportation of people in a paddy wagon in a metal closed unventilated compartments, with an area of 0.4 square meters per person constitute violations of the constitutional right of prisoners to be free from torture and other cruel or degrading treatment, as well as to Article 7 of the International Covenant on Civil and Political Rights and the United Nations Convention against Torture ratified by Kazakhstan.

In this regard, the NPM team again recommends that the Ministry of Internal Affairs brings the conditions of transportation of all categories of persons in custody in line with international standards. To do this, it is necessary to develop regulations for the transportation of prisoners, which should establish the conditions for transporting people, including standards for space, installation of the seats, standards for temperature, lighting, etc.

As in the past reporting year, an unresolved issue for all institutions of the Ministry of Internal Affairs of the Republic of Kazakhstan is the right of persons in custody to communicate with the outer world (media, periodical literature, library facilities, telephone calls, visits). The issue is systematic and it must be solved not at the local or regional level. At least several copies of periodically published media (newspapers, magazines) in the Kazakh and Russian languages should come to the institutions by subscription.

Library literature should be systematized and purchased not at the expense of employees and relatives of those arrested, but at the expense of the state.

In some institutions, as before, humidity, deficiencies in the isolation of sanitary facilities, non-compliance with sanitary and hygienic standards for lighting, ventilation, space standards in residential premises (cells), and non-compliance with temperature conditions are noted. There is a need for timely current and major repairs.

The issues associated with medical care deserve special attention. Most of them are associated with business planning: the lack of a sufficient number of medications for specialized kits: anti-shock, first aid. There are issues in the qualifications of health workers, lack of internal control over the state and maintenance of medical logs and other documentation, the shelf life of medications, the temperature in the rooms. There is a lack of necessary

medical equipment and the simplest blood pressure monitors, thermometers.

In general, the reaction of officials to the recommendations of NPM members is satisfactory without any negative manifestations and it deserves a positive assessment. However, when visiting the TDC, NPM members continued to encounter employees who did not know the regulatory material on NPM, and in some cases even who could not correctly produce the name of this institution.

I would also like to note positive feedback from NPM members on the temporary detention centers:

So the members of the National Preventive Mechanism note the good condition of such institutions as:

- in North Kazakhstan oblast, Bulaevo;
- in South Kazakhstan oblast, Kentau;
- in Akmola oblast, Esil;
- in Karaganda oblast, Karaganda.

There are certain issues in the temporary detention facilities of these cities, too, but NPM members note the desire of the administration of these institutions to create the necessary conditions of detention that meet the standards.

Considering the creation of conditions for the TDC staff: the members of the National Preventive Mechanism point to the absence of leisure spaces for staff in some institutions, outdated equipment and the lack of the opportunity to receive psycho-emotional relief.

Open manifestations of humiliation of human dignity, cruel treatment, punishment, torture in these institutions during the visits were not revealed. At the same time, one should not forget about the negative manifestations against the people arrested on investigation from police investigators, traffic police officers, inspectors and interrogating officers who are not TDC staff.

Remand houses are intended for the reception and detention of persons who

do not have a specific place of residence and (or) identity documents, in the absence of signs of administrative offenses and crimes in their actions and the inability to establish their identity by other means.

Remand house staff in relation to the persons detained are obliged to take measures to establish their identity, identification with the persons wanted and having committed crimes, hiding from the bodies of inquest, investigation, and the court, missing persons and then transfer them to the relevant authorities and institutions.

The main regulatory legal acts governing the procedure and organization of the activities of remand houses of internal affairs bodies, as well as the maintenance regime are:

1. The Law of the Republic of Kazakhstan "On the Procedure and Conditions of Detention of Persons in Special Facilities Providing Temporary Isolation from Society";

2. The Order of RoK Minister of Internal Affairs dated May 23, 2011 No. 233 "On the Approval of Rules, Organization of Activity of Internal Affairs Bodies".

3. The Order of RoK Minister of Internal Affairs No. 11 dated January 9, 2011. "On the approval of Internal Regulations in Holding and Processing Centers of Internal Affairs Bodies";

4. The Order of RoK Minister of Internal Affairs dated May 23, 2011 No. 231 "On the Approval of the Identification Procedures in Holding and Processing Centers of Internal Affairs Bodies".

5. The Joint Order of the Minister of Justice of the Republic of Kazakhstan dated May 6, 2010 No. 157, Minister of Health of the Republic of Kazakhstan dated May 18, 2010 No. 350 and Minister of Internal Affairs of the Republic of Kazakhstan dated June 14, 2010 No. 272 "On Approval of the Regulations for Providing Medical Assistance to Citizens, subjected to restriction of liberty, as well



as serving court sentences, placed in special facilities”.

When citizens are detained in these institutions, there is a risk of violation of their rights, such as authority abuse by police officers, unsatisfactory detention conditions, which may lead to negative manifestations of humiliation, cruel treatment, punishment or torture and violation of human rights.

During the period under review, NPM members organized 26 visits in total to remand houses. Based on the results of these visits it is possible to conclude that the Ministry of Internal Affairs is taking measures to improve the situation with human rights in temporary detention facilities, new buildings are being constructed to maintain detainees, detention conditions, sanitary and hygienic conditions are being improved, restoration, old window blocks are being replaced, etc. a number of recommendations are being implemented to improve detention conditions. The NPM teams note that in majority of institutions of

this type, recommendations received as a result of previous NPM visits are being implemented, but, as in previously, these are basically recommendations implementation of which depends on local MIA RK units and do not require additional spending. At the same time, there are recommendations that require systemic changes and adoption of regulations at the state level.

Positive change tendency in remand houses are noted by the local police service of the Taraz and Ust-Kamenogorsk Departments of Internal Affairs. In the opinion of the NPM group members, work of this institution in medical care, food system, leisure activities organization, sanitary conditions of all premises, arrangement and condition of bathrooms and etc. are to be appreciated and disseminated as an example in other such institutions. Particular attention is paid to the documentation completeness and quality, the established system of professional and psychological training of

employees meets the highest requirements and can serve as an example not only in these regions but throughout the Republic of Kazakhstan.

For instance, for several years now NPM team members of West Kazakhstan oblast indicate that Uralsk remand house using the building of the Department of Internal Affairs, where cells space does not correspond to the established by law norms, the concrete floor in the bath that does not match the sanitary norms and rules, is a potential spreading source of dangerous diseases and infections. There is no toilet in the courtyard.

Having visited remand house in Almaty the NPM group once again came to the common opinion that institution's closure would be the best possible solution in this situation. The institution does not comply with elementary international standards as well as standards of national legislation. These standards allow to organize and reorganize institutions of this type and continue their activities in the territory of

the Republic of Kazakhstan (for instance, the order of the Minister of Internal Affairs of the Republic of Kazakhstan dated 23 May 2011 No. 233 "On the Approval of Rules, Activity Organization of remand houses of Internal Affairs Bodies" clearly states that operation of RHs is allowed only if there are rooms meeting sanitary and hygienic standards and fire safety requirements for safe containment of persons without specific place of residence and/or identity documents. The NPM participants noted not only inattentive, but also heartless attitude towards detained persons. Detention of persons in this institution is degrading, inhumane, related to ill-treatment.

Analysis of the reports submitted by NPM participants showed that up to date, not all staff members of RH are aware of NPM, mechanism and authority, there are still issues of lack of medical workers, movement of disabled people, lack of periodicals, books, radio, and phone calls.

Also the degrading factor of human dignity not isolated toilets, lack of drinking water in cells, which is also noted in the NPM groups reports. The above mentioned conditions are contrary to international and national legislative treatment norms.

NPM group reports also revealed that when recent visits were organized, none of the visited RHs could be marked as meeting requirements and standards, according to the current National and International legislation.

### **Conclusions and recommendations.**

The NPM participants based their conclusions and recommendations on the norms of the current national legislation and established international norms and standards. For the most part, the recommendations presented specific proposals to administration of institutions and the Ministry of Internal Affairs of the Republic of Kazakhstan and were sent immediately after

NPM group visits, to the institutions' administration and leadership of the regional Departments of Internal Affairs.

Nevertheless, a number of recommendations requiring special attention should be highlighted:

At the legislative level:

The members of NPM EKR consider that the institute of remand houses in Kazakhstan currently plays more of a penitentiary (prison) function, although, in our opinion, such centers should incorporate in their activities the functions of detainees' re-socialization. For this, the functional belonging of the institution should be reviewed with the possibility of its civil transfer. Instead of cells there should be hostel-like rooms, with staff members of psychologists and social workers.

Also there are a number of significant difficulties faced by the former Soviet Union citizens after they leave RH. So, after release citizens of these states receive a document mentioning they were kept in custody,

however this document does not allow them purchasing a train ticket. Thus, in order to restore identity documents they need to travel to the respective embassies in Almaty or Astana without documents, along the way they can also be detained and placed in RH. It is necessary to create a mechanism for documents restoration for citizens when they are released from RH.

### **To the Ministry of Internal Affairs of Republic of Kazakhstan:**

- Continue regular information work among employees about NPM activities, their mandate, goals and objectives;
- Evaluate technical conditions of buildings where RHs are located;
- Close those institutions which do not meet basic hygiene standards and allocate (in the first place) financial means for their repair or construction of new buildings;
- Consider taking a full-time physician, thereby creating conditions for

accessing medial help at any time;

- It is necessary to introduce a social insurance system for RH employees;
- Develop and implement a mechanism for handling complaints about violations of rights and interests in places of temporary isolation from society;
- Pay attention to improvement of working conditions and social security of RHs employees.

### **To regional Departments of Internal Affairs:**

- Review and update information stands on NPM activities, on the rights and duties of detained persons;
- Create conditions for the duty officers, to receive video surveillance information. At the moment, such information goes directly to the central point, and only then, if requested, goes to the duty officer;
- Place the legal information on stands or on cell doors with complaints examples, appeals in two languages – Kazakh and Russian. In cells place information on

the procedure for filing complaints and addresses of human rights organizations, attach examples of appeals to national human rights institutions in accordance with Paragraph 2 of Article 20 of the Constitution of the Republic of Kazakhstan;

- Seek the possibility of increasing medical care funding;

- When having tenders for the supply (purchase) of bed clothes, pay attention to the quality of bedding, specifically mattresses.

A special reception center is an institution of internal affairs bodies, designed to receive and detain persons under administrative arrest. The placement in special RCs of persons who are subject to administrative arrest is carried out on the basis of the court decision. In special RCs a regime is established that provides round-the-clock duty and excludes the possibility of unauthorized leaving of the detainees outside institution.

In 2018, the members of the National Preventive

Mechanism visited 24 special reception centers. NPM members note that in almost all institutions there are issues related to living quarters, medical care, poorly equipped exercise yards, access to drinking water and its quality, the provision of bed clothes and hygiene products, living space standards are not maintained. Financial investments and systemic changes are necessary, of course, for their elimination, but at the same time NPM members in Taraz note that the experience of this Taraz institution can be recommended as an example of a positive experience.

### **Police stations**

NPM has the written permission of the Ministry of Internal Affairs of the Republic of Kazakhstan for unhindered visits to DIA police stations in different regions. It is difficult to assess the situation there from the point of view of compliance with the standards for preventing violations of the constitutional principle of integrity of human dignity.

Nevertheless, even now, on the basis of selective visits, one can speak about the shortcomings in the logistics of police officers, police departments in rural areas and in cities of regional significance.

NPM members noted the awareness of the police stations personnel about the NPM activities in the Republic of Kazakhstan and the provision of unimpeded access to NPM participants for the performance of their duties.

### **Conclusions and recommendations:**

The conclusions and recommendations of NPM members who visited the MIA institutions in the period under review are based on the norms of the current legislation of the Republic of Kazakhstan, including those of departmental by-laws. Also, the Standard Minimum Rules for the Treatment of Prisoners (hereinafter referred to as SMRs or Mandela Rules) were used to

assess the situation in these institutions.

The recommendations of the NPM participants are specific proposals to the special RHs administration and the leadership of the Ministry of Internal Affairs to eliminate inconsistencies in living spaces, sanitary and hygienic conditions, medical care, food, conditions for sport and communication with the outside world (access to media, visits, telephone calls). The set of such proposals should be taken for control by the staff of the General Prosecutor's Office of the Republic of Kazakhstan for the adoption of the prosecution response measures provided by law.

This report should reflect some of the recommendations directly related to the integrity of human dignity and the prevention of ill-treatment, punishment, as well as the prevention of torture in the MIA RK institutions.

1. The Ministry of Internal Affairs of the Republic of Kazakhstan in 2019 should develop

step-by-step measures (a program, a roadmap) for the shut down and re-profiling of institutions, where bringing them to the norms ensuring the rights of persons in custody, is not feasible due to the design features of the buildings used. Among the measures include a plan for the phased shut down of institutions, including those that are impractical to use due to limited number of detained persons, as well as the construction of new buildings for state institutions, which cannot be used due to poor conditions;

2. The Ministry of Internal Affairs of the Republic of Kazakhstan should take on special control issues of medical services, sanitation and hygiene of section institutions (TDF, RH, SRC), reflected in the recommendations of NPM participants based on the results of visits held in 2017 with mandatory informing the Commissioner for Human Rights in the Republic of Kazakhstan on taken measures.

3. Within the framework of martial and service training with the personnel of the Ministry of Internal Affairs of the Republic of Kazakhstan, guarding the outer perimeter and escorting, as well as acting inspectors, employees of institutions executing punishment and investigative isolators, employees of SAD, MRS – regularly organize sessions on legal regulatory acts on NPMs, international and national standards for detention conditions, as well as criminal law and other issues relevant to prevention of torture and integrity of human dignity.

4. The Prosecutor General's Office of the Republic of Kazakhstan and its subdivisions – organize working meetings with NPM participants, members of the NPM Coordination Council at the national and regional level, inviting heads of state institutions and departments to discuss recommendations and possible solutions to issues in the regular course of work.



# 5

## The situation of persons held in institutions subordinated to the National Security Committee (NSC) of the Republic of Kazakhstan

Prepared by: Rakhimberdin Kuat Khazhumukanovich



In accordance with the List of State Institutions of the National Security Committee of the Republic of Kazakhstan (NSC RK), there are four pre-trial detention centers (PTDC) in the country; they are located in the cities of Astana, Almaty, Karaganda and Shymkent.

During the period from January to December 2018, the National Preventive Mechanism (NPM) members made 3 visits to the pre-trial detention centers of the National Security Committee of the Republic of Kazakhstan, among which regular and intermediate visits took place.

1. 29.01.2018 – PTDC of the NSC RoK in South Kazakhstan Oblast (SKO), an intermediate preventive visit;
2. 23.06.2018 – PTDC of the NSC RoK in Astana, a regular preventive visits;
3. 15.10.2018 – PTDC of the NSC RoK in Almaty and Almaty oblast, an intermediate preventive *visit*.

The pre-trial detention centers of the NSC RK in the

cities of Almaty, Shymkent are located in basement or semi-basement premises. The PTDC of Almaty is located in a building that was built in 1936. The detention center of the National Security Committee of Astana is located in the adapted building of 1975, in which a major overhaul was carried out in December 2016 (plumbing was replaced, linoleum was installed, walls were stopped). The PTDC of the National Security Committee of Astana city is located in the accommodated building that was built in 1975, where major reconstruction (plumbing fixtures, the floors were covered with linoleum, the walls were painted) was carried out in December 2016.

The NPM members in the city of Almaty and Almaty Region say that in pre-trial detention center of the National Security Committee Department of the Republic of Kazakhstan (PTDC NSCD RK) in Almaty there was a need for sewage in each cell. Earlier, there were no sewers in the cells and the prisoners were taken to the toilet 2

times a day. There were buckets for stool in the cells.

In 2018, the recommendations of human rights defenders were implemented and at the time of the visit "the cells were repaired and the Genoa bowls and wash basins were installed in each cell, fluorescent lamps were replaced with diode ones, which are much lighter, and forced ventilation was installed in the cells; at the time of the visit with no connection urban centralized heating it is warm and dry in cells". NPM members note that "there are no wicket doors in the cells in front of the Genoa bowls, which degrades human dignity when relieving the natural need".

In accordance with the legislation of the Republic of Kazakhstan, the suspects and accused should be kept in the premises, based on the norm of sanitary area per person not less than two and a half square meters. The NPM members say that "in some PTDC cells in Astana, where in 2017 these standards are not complied with (in cells 10

and 8 there are 4 individual beds), in 2018 the cells were redesigned into double rooms and now the area of the cells comply with national and international standards.

In the PTDC cells of Astana Paragraph 5.4.2.9.2. of the Sanitary Standards of the Republic of Kazakhstan 3.02-24-2014 is not observed, according to which all of the equipment in the cells (beds, tables, benches and stools, etc.) must be securely attached to the floor or walls by welding them to pre-installed embedded fittings. The sharp corners of the cell equipment should be rounded. For example, stools have sharp angles and are not fixed to the floor by welding them to pre-installed embedded fittings.

Members of the NPM group note that in the PTDC NSC RoK in Astana does not comply with Paras. 5.4.2.9.3-5.4.2.9.4 of SS RK 3.02-24-2014, according to which there should be a cell equipped for temporary isolation of suspects, accused or convicts who experienced a nervous collapse (a cell for

isolation of violent inmates), in which a window opening is not provided.

In general, the situation regarding the medical support of the inmates of the PTDC NSC RoK is in line with national legislation and international standards for the treatment of prisoners. In each PTDC NSC RoK there is a medical ward, where medical assistance is provided by a paramedic. For example, members of the NPM team in Almaty and Almaty oblast note that "the medical ward of PTDC NSC RoK includes three offices: reception, procedural and administrative. The equipment of a pre-medical office complies with the norms. If there is a necessity to consult specialists, the hospital or clinic of the National Security Committee is contacted. In emergency cases of medical care, a paramedic using the institution car will immediately take the patient to the hospital of the National Security Committee". The same practice in the field of organizing medical care is available in PTDC NSC

RoK in Astana and South Kazakhstan.

According to the NPM team members in SKO "a paramedic at the time of the visit did not have a specialist certificate for exercising medical activities", which is a serious violation of the requirements of the legislation of the Republic of Kazakhstan.

None of the PTDC NSC RK has created the proper conditions for persons with disabilities who are held in detention there. To improve the living conditions, social and medical support for the remand detainees held in the PTDC NSC RK, it is necessary: 1) to equip the toilet areas with sinks and toilets with handrails for wheelchair users, to ensure privacy conditions; 2) to equip the shower rooms with separate places with flexible hoses and stools for convicted persons with disabilities; 3) to create and install gently sloping platforms for movement to the walking yard, i.e. create a barrier-free environment for persons with disabilities

from among the remand detainees.

An acute issue remains, according to the NPM members in the PTDC NSC RK in the city of Almaty, the organization of the walks of detainees, instead of the 1-hour walk of the remand detainees, they take a walk only for 25-30 minutes. The administration of PTDC explains this by the fact that the building of the institution is old and there are not enough walking yards to organize an hour's walk for the remand detainee (the 2017 recommendation was not implemented).

The NPM members in Astana, Almaty and South Kazakhstan Oblast note that the PTDCs NSC RoK have mailboxes for submitting complaints to the prosecutor's office, NPM and other human rights institutions, and, as a rule, these boxes are located in the corridors of the PTDCs.

An analysis of the NPM members' reports on the situation in the PTDCs NSC RoK shows that the leadership of the National Security Committee of the Republic

of Kazakhstan has done a lot of work to implement the recommendations of the RoK NPM members and to bring the conditions of the inmates in accordance with the international UN standards.

However, the following recommendations set forth in the Consolidated Reports for 2016 and 2017 remained unfulfilled:

- 1) Transfer the PTDC cells from basements or semi-basements to standardized buildings that would comply with the UN Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules") and the national legislation of the Republic of Kazakhstan;

- 2) Taking into consideration the existence of a problem with the conditions of detention of detainees and their sanitary-and-hygienic provision, to find resources for major reconstruction of the PTDC NSC RoK, for bringing their premises in proper sanitary condition, actually providing the necessary conditions for keeping persons with disabilities;

- 3) Provide a barrier-free environment for persons with disabilities (equipment of toilets with handrails, shower rooms with flexible hoses and stools, etc.);
- 4) Ensure observance of the remand detainees' rights to a daily one-hour walk in the PTDC in Almaty;
- 5) Create sports gyms or equip walking yards with sports equipment;
- 6) Include a psychologist in the PTDC staff to work with both the inmates and the staff of the institution;
- 7) Introduce in the training process for the training and professional retraining of the PTDC NSC RK staff, special courses to study the recommendations of the Nelson Mandela Rules, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the national legislation on NPM in connection with the prevention of torture and cruel degrading treatment and punishment and other fundamental violations of human rights;
- 8) Formulate the practice of holding training seminars in the training format, on effective interaction of the PTDC NSC RK staff and NPM members in the process of public control.



# 6

## The situation of persons detained in facilities subordinated to the Ministry of Defense of the Republic of Kazakhstan

Prepared by: Ibrayeva Anara Nurlybayevna

Amendments to the Law on the military detention centers took place in 2017. It has been 1.5 years, but some NPM reports still contain references to legislation that is no longer in force.

Only the NPM group in Aktobe noted, "in the Rules for Serving Administrative Arrest, the form, methods and time of restriction of visits are not defined, as are the methods of telephone communication, the order of their provision and restrictions". In the absence of such an assessment in the reports, it cannot be excluded that this right is either not exercised at all by the persons detained in the military detention centers, or is significantly restricted, or "anarchy rules", since there is lack of the procedure for visits established by a legal act (since there is no regulation: what should be provided and undertaken).

Three NPM teams conducted visits in Aktobe on February 2 (regular visit), in Astana on July 14 (regular visit) and in Shymkent on September 7, 2018 (intermediate visit) to the

military detention rooms of the military police of the Ministry of Defense of the Republic of Kazakhstan. NPM groups on average spend from two to three hours for a visit.

At the time of the visit to the military detention centers in Aktobe, Astana, military personnel were not detained, in Shymkent there was 1 administratively arrested man (serving under contract). For 6 months of 2018, 58 persons were detained in the military detention center of the capital, an average of about 10 people per month (the number of prisoners is unknown from the Aktobe report). For 8 months of 2018 14 military staff were detained in the military detention center in Shymkent.

The recommendations of the NPM groups are partly repeating in comparison with 2017. In order to avoid duplication, we emphasize the importance of ensuring such conditions, and they should be inversely proportional to the following remarks.

As per the report of the NPM team in Aktobe there is no:

- access to self-opening of windows in cells from inside;
- access to the certification log (due to the absence of a medical nurse as she was on sick leave);
- anti-shock medications.

In Astana, with the exception of re-design of the cell for the medical office, nothing has changed in the conditions of detention in the military detention room. Still there is:

- concrete floor in cells;
- bathroom “with a drain on the cord drawn from the drain tank through the wall”;
- insufficient natural lighting through small gridded windows “under the ceiling”;
- information on the rights of military personnel (as well as the inscriptions on the premises, with the exception of the blackboard with the daily routine and two legal acts) only in the state language;

- no radios in cells, no access to television;
- no access to the mailbox for submitting complaints to the military prosecutor;
- no mailbox for submitting complaints to NPM (Commissioner for human rights).

As follows from the report of the NPM team in Shymkent, the administration of the military detention center made 2 of 3 recommendations (“the partition on the shower stand is not installed”). Meanwhile it was noted that:

- floors in 10 cells are cement;
- there are no radios;
- a visit to the bathroom (toilet) is made at the request of the detainee, since it is not in the cells (except for the women’s cells);
- rubber rags in the shower are absent;
- “hygiene products for women are not provided for by the Charter” and are absent;



- there are no detergents, not provided for by the Charter;
- food is delivered from a military unit to employees under the Ministry of Defense, and separately to those under the National Guard - to military personnel assigned to this department. However, if there are differences, the report does not show them.

In its response to the National Center for Human Rights, the Ministry of Defense indicated that the recommendations of the NPM teams were accepted in 2017 "for implementation, medical offices were equipped, exercise yards were provided with sports<sup>4</sup> equipment, artificial lighting was provided in the military detention rooms of 5 regions".

Meanwhile, the Ministry continues to ignore the need to create a uniform approach to the conditions of detention

and to respect the rights of detainees and prisoners. Thus, if in the city of Aktobe in the military detention center it is forbidden to read namaz, in the capital there are no such restrictions (despite the fact that the previous consolidated report reflects an analysis of the provisions of law in this part with a definite conclusion). Unlike Aktobe, there is an equipped room for visits in the military detention rooms of the other two regions. If the list of rights in Aktobe and Astana is placed in cells, then in Shymkent it is "on the board on the wall".

For NPM teams in general, it is important to monitor the implementation of recommendations made on the results of a previous visit to the military detention centers (not on every recommendation in 2017 there is information on its implementation in reports), as institutions, in turn, have a very superficial approach to their implementation (since there are recommendations repeating from year to year, such as in Astana).

<sup>4</sup> Akmolinsk, Almaty, Aktyubinsk, Taldykorgan, Shymkent, Karaganda military posts.



# 7

## The situation of persons detained in the institutions subordinated to the Ministry of Health of the Republic of Kazakhstan

Prepared by: Molchanov Sergey Nikolaevich  
Idigeyeva Gulnur Ergaziyevna

## General provision

One of the main human rights is the right of citizens to the protection of health and medical care. The Constitution of the Republic of Kazakhstan stipulates these rights and guarantees the protection of health and the provision of free medical care, and the Code of the Republic of Kazakhstan "On People's Health and Healthcare System" specifies this right more fully.

Fulfillment of the constitutional rights of the citizens of Kazakhstan to the protection of health, quality medical care and state benefits is one of the main streams of the state healthcare policy.

In 2018, the NPM members organized 79 visits to healthcare organizations in the regions of Kazakhstan, including:

TB dispensaries, hospitals and TB offices – 22;

psychiatric hospitals – 37;

narcological hospitals – 20.

Compared to 2017, when 107 institutions were visited, the number of institutions visited decreased which is

associated with the reduction in funding. And in 2016 there were 167 visits, i.e. for 2 years the number of visits decreased by more than 2 times.

79 reports with recommendations developed by NPM members from 15 regions of the Republic of Kazakhstan were studied, summarized and analyzed. The conducted analysis of the reports uncovers and shows a real picture of the situation with human rights in institutions under the mandate of NPM, reporting to the Ministry of health.

## Assessment of the situation

NPM members in the course of preventive visits to healthcare institutions in 2018 did not discover any specific (proven) cases and facts of torture in these institutions. At the same time a number of issues related to the violation of human rights were identified.

NPM members noted that one half of the institutions reporting to the Ministry of health, visited by the

NPM members, were located in buildings and premises in need of major reconstruction or of a transfer to generic purpose-built medical buildings. Minor refurbishment is needed in 80% of the visited institutions. A large portion of the visited institutions are located in the buildings built in the second half of the previous century, and are not in line with the contemporary sanitary and epidemiological norms for patient residency in medical institutions.

One of the most widespread problems of closed institutions are the unsatisfactory sanitary and hygienic conditions. Most managers of treatment and prevention institutions are in no hurry to apply the provisions of the sanitary rules "Sanitary and epidemiological requirements for healthcare institutions" dated May 31, 2017 No.357. At the same time it is important to understand that the insufficient number of sanitary facilities and sinks, lack of personal hygiene resources, presence of outside toilets in anti-

sanitary condition and other limitations of the normal sanitary and hygienic conditions are one of the forms of cruel and degrading treatment.

Despite numerous petitions to the MoH RoK, the issue of extra pay for psychological and emotional pressure remains unresolved - healthcare personnel continuously works in immediate contact with patients, whose alcoholism and drug addiction are exacerbated by psychological disorders, but the healthcare professionals receive no mark-ups to the salaries. It is necessary to re-initiate the request to the Ministry of health to introduce extra pay for psychological and emotional pressure for healthcare personnel.

It is also important to note such a tendency as a violation of the product procurement to the established norms of nutrition, approved by the Order of the Minister of Health and Social Services of the Republic of Kazakhstan dated April 1, 2015 No.197. There is a substitution of

natural products, for example, instead of sour cream "sour cream containing product", instead of juices there is a soft drink with an apple flavor, instead of milk "milk containing product", instead of cheese - "melted cheese sausage", etc.

There are some positive changes in the equipment of healthcare institutions with infrastructure for people with special needs: separate rooms were equipped and routes were established for wheelchair users. At the same time healthcare institutions in the majority of cases have not responded to the recommendations of NPM members on the establishment of a relevant entity for people with special needs.

### **Narcological organizations for mandatory treatment**

Overall the situation with medical services in this type of institutions is considered satisfactory.

Monitoring of narcological institutions, conversations with the personnel and the patients make is possible

to conclude that there are systemic problems in the treatment approaches to people with dependencies.

There is no individualized approach to the treatment of patients, and the psychological treatment approach is a formality. Priority attention is given to drug-based treatment. It is necessary to expand the application of ergotherapy, psychotherapy, social work with the patients, in other words, rehabilitation activities, as it was noted in the recommendations of 2017, but the situation still did not change for the better. In 2018 the process of combining psychotherapy and drug treatment has begun, centers for the rehabilitation of people with mental health issues are starting to be established, which ultimately should lead to a new level in working with patients.

Based on the comments, the following narcological institutions may be noted: City Narcological Center of Social and Medical Correction, Almaty. As before,

NPM members note that in CNCMSC the recommended area norm per bed is not always observed. As in the previous visit, the concern of NPM members was caused by the psychological state of the patients in the mandatory treatment unit. At the time of arrival, all the women sat on chairs along the walls in the hall. Due to the daily monotony, in the absence of the opportunity to be engaged in occupational therapy, except for rare beadwork, which not enjoyable by everyone, or sports, women in conversation again confirmed that during the day, except for time for daytime sleep, they cannot use the beds, but have to be in the hall (corridor). In fact, there is nothing to do. Smoking in the women's section is allowed

according to the schedule in a special cabin equipped with an exhaust system. Women were not happy with smoking on schedule. The head of the department carries out punishments in the form of a ban on smoking for a period of several days to three weeks (according to patients). One of the women was beaten (!) by the deputy head for smoking in the toilet.

NPM members visited the disciplinary cell. The room, fenced in with a metal grill, contains one bed made of metal, the second was in the corridor. At the time of the visit, there were no persons detained in disciplinary cell. When studying materials on the placement, there were cases of placement in disciplinary cell (according to materials) of 4 people at the same time.



Picture of the disciplinary cell in City Narcological Center of Social and Medical Correction, Almaty

The disciplinary cell is located in the room next to the security room. Conditions in disciplinary cell do not meet sanitary and hygienic standards: a room with a concrete floor with an area of about 3 square meters has no windows and no bathroom, it is locked with a gridded door. A window of 0.3 square meters in size visually is available behind the disciplinary cell door in the same room with it.

In the women's department, the hours for showering are strictly allowed on schedule: once a week at certain hours. The rest of the time, the shower rooms are locked. As per intimate hygiene, women, according to their words, conduct as needed, in the toilet with the help of improvised containers filled with water (usually plastic bottles). Personal hygiene products are not allocated to women and are purchased by them independently.

In winter, there are no outdoor walks: patients indicate various reasons such as lack of warm clothing, quarantine (on influenza),

etc. The absence of walking is one of the main violations of the rights of patients. Patients should be kept in fresh open air every day and the arguments for cold weather should not affect the right to take daily walks.

### **SPE REM "Oblast Narcological Dispensary" of the Almaty oblast.**

Despite the fact that the department is designed for 90 beds, the wards were overcrowded, the beds of the patients are placed almost end-to-end with each other, and the area standards per patient in the wards are not observed. Wards do not have doors, i.e. they are not isolated, according to the staff, it is provided for by the situation, for the safety of patients. Bed clothes and bedding are in very poor condition (the mattresses are worn out, with bulging out, and in some places and springs come out, sheets and duvet covers have unrecognizable color, dirty or faded). In connection with which the administration is forced to lay sheets of plywood under the mattresses. Previous reports

indicated that the building of the narcological dispensary is old and, according to sanitary standards, is not designed for such a number of people (90 people), and the administration of the institution is forced to place patients in the corridors, there are no conditions for care of the patients, as well as their health state improvement. For 90 people, men, there is only one shower room with one shower and two washbasins.

**“Shiely Department of the Center for Temporary Adaptation and Detoxification” of the Kyzylorda Oblast Health Department.**

At the entrance to the building there is no ramp for people with disabilities of impaired mobility. Indoors there is no natural ventilation, forced ventilation or air conditioning.

Water supply and heating are centralized. There is no sewerage. There is a general septic tank, where waste from the district hospital, infectious diseases hospital, laboratory and mental

hospitals is drained. From the general septic tank is overfilled, the used water spreads throughout the territory in front of the Shielyi Department of the Center for Temporary Adaptation and Detoxification building, evaporation pollutes the air, which is an open source of infection, creating a threat to the life and health of all employees, patients, visitors and the entire population of the district.

**SPE REM “Zhambyl Oblast Narcological Dispensary”.**

According to the staff of the center, people in a state of intoxication delivered to **the Center for temporary adaptation and detoxification (sobering-up station)** are released as they become sober, however, for example, people detained for family scandals under Article 73 “Illegal actions in the sphere of family and domestic relations” of the RoK Code “On Administrative Offenses”, are detained in the center for one day, waiting for the court proceeding. During this time, except for water, no food is



provided for them, which can be regarded as a violation of the principle of humanism, provided by in the Code of the Republic of Kazakhstan "On Administrative Offenses". In Article 13, "Principle of Humanism", it is stated: "An administrative penalty applied to a person who has committed an offense cannot be aimed at causing physical suffering or degrade human dignity". In Article 14.5, "Personal Integrity" it is stated: "None of the persons involved in an administrative offense case may be subjected to torture, violence, cruel or degrading treatment".

Paragraph 7 of the same article states: "The detention of a person in respect of whom administrative arrest has been chosen as a measure of administrative punishment, as well as a person subjected to administrative detention must be carried out under conditions that exclude a threat to his life and health".

Based on all the above mentioned, the RoK NPM members recommend that the Ministry of Health of the Republic of Kazakhstan

allocate funds for catering for people who are forced to stay in the center for more than 8 hours. It is recommended to develop a special menu providing light food (kefir, tomato juice, bread, broths, and so on), which should contribute to improving health after alcohol or drug intoxication.

Basically, all the violations identified by NPM members concerned patients' nutrition, the right to daily walks, lack of sanitary conditions (shower, toilets, ventilation, area standards for 1 bed, flooring in wards, lighting), and staff attitudes towards patients.

For 2018 there was a need for two special visits and these visits were carried out to narcological organizations.

**SPE REM "Almaty Mental Health Center", Narcological Department, Almaty, Makatayev St. 10, Radostovtza 279.**

The fact of death of the patient G. G. A., born in 1971, based on the appeal received from the representative of the Association of Legal Entities "KazSoyuzLZHV" Oksana Ibragimova, the

case of the patient's suicide in the "Almaty Narcological Center of Medical and Social Correction", as well as information appeared in the media is the gross violation of patients' rights in this institution.

No prerequisites for suicide of G.G.A. in the form of torture, humiliation and insults were found.

The second special visit was to **SPE REM "Regional Narcological Dispensary" of the Health Department of the West Kazakhstan Oblast.**

Based on the telephone call received from the patient, M.A.Zh., born in 1975, who reported on the facts of him being beaten by his guard as well as two other patients.

When visiting, the facts were confirmed, a petition was sent to the General Prosecutor's Office of the Republic of Kazakhstan from the National Center for Human Rights.

Other violations in this medical institution should be noted in addition to indirectly confirmed beatings: on the outside, the

building of special wards is more like the inner prison of the penitentiary system. The temperature regime in the building where two special wards are located is not controlled, it is very cold in the wards. According to the patients in the premises of special wards, they sleep and stay in winter outerwear, because the temperature is very low. One of the patients reported that he had high blood pressure of 190/90 mm Hg, but he was still held in a special ward. The adjacent territory of the local zone is littered with household waste and feces (confirmed by photographs), the door to the outdoor toilet is frozen and does not close. The outhouse toilet is in an unsanitary condition. The windows are partially broken out, they are tightened with plastic wrap and lined with cardboard, there are bars on the windows, and there is one window in each room of the special wards. Artificial and natural lighting is insufficient for reading literature, there is a twilight in the wards.

Beds are made (welded) of shaped pipes in the form of couch and are covered with ten-millimeter plywood. Some of the mattresses are rolled up and placed in special wards, some of them are stored in the corridor on the rack. Mattresses are dirty, with dark and yellow stains,

have unsanitary condition, represent a potential threat of infection for patients. Sanitary units and sinks for washing in special wards are absent, there are no personal hygiene products, there is no drinking water tanks, there is no air ventilation.



Toilet for patients in WKO



Special ward for violators

## Psychiatric hospitals

As in the past year, **Municipal State-Owned Public Enterprise “East Kazakhstan Psychiatric Hospital of Novo-Kanayk”** makes the most depressing impression. Since this hospital is located in an unsuitable room of a barrack type, it is not possible to provide decent conditions for treatment there. At the same time, the hospital staff is doing everything possible to

improve the conditions and eliminate inconveniences for patients.

It was decided to build a new hospital by decision of Akimat EKO in 2014. In 2014, new buildings and premises of the hospital were designed to meet modern requirements. The design of the hospital is reviewed by the State Expertise. Start of construction has been postponed indefinitely,

the issue has not yet been resolved.

At the time of the visit, the plumbing system was unfrozen; there was water supplied only in one women's compartment. In other compartments, water is drawn into containers through the hoses from the water source.

The toilet is equipped as a ventilated pit latrine (three cesspits in the floor for 30-45 people). In the part of the compartments where the toilet is located there is a persistent unpleasant odor.

In the compartments there is one sink for 30, or even 45 people, there is no soap. Water, as mentioned above, is absent in all compartments except one. Women in women's compartments complained that they couldn't always perform sanitary procedures without having access to water.

Many patients are not registered; they do not have any identity documents. Hence the question of the legality of their stay in the hospital. Registration of the patients, according to a

nurse who deals with social issues, is not possible, since the Public Service Center refuses to register patients at their place of residence (in the hospital), and due to the absence of any social connections with relatives, the issue becomes insoluble, as in order to obtain an identity card, a citizen must be registered at the place of residence. But if the patient is in the department for 17 years, where is his or her place of residence?

There are patients in the hospital who have reached retirement age and can apply for an old-age pension; however, due to the lack of identity documents, due to the impossibility of their registration at the hospital, their right to receive an old-age pension cannot be implemented. A man has been in a hospital for so many years, where he is provided with a minimum of social guarantees, he is deprived of the possibility of simple human joys. Patients complained that due to lack of benefits, they could not afford to buy sweets for tea,

fruit, they could not afford to buy something from clothes. There are general issues with providing patients with clothes and shoes in the hospital.

The conditions in this medical institution such as collapsing buildings, toilets in the form of cesspits inside the compartment, absence of water, lack of books, sports equipment, necessary clothing and footwear, overcrowding with patients are cruel and degrading treatment themselves.

**SPE REM “Mental Health Center” (hereinafter is referred to as MHC), Almaty, Kablukova neglected, 117a**

Patients are not provided with the necessary hygienic accessories, namely toilet paper, soap for personal use, toothpaste and brushes, women are not provided with sanitary pads, women are provided with strips made of sheets instead of sanitary pads.

In the wards, patients are practically deprived of the right to privacy, given the overcrowding of departments.

The right to work according to the law is very poorly implemented (according to the staff there is no possibility). Psychological care for patients is not widespread. Such patients require individual and group psychological counseling and training. According to the head sister staffing foresees 2 psychologists. One is supposed to work in the dispensary in the city, one in the hospital (the psychologist does not conduct classes according to the head nurse).

Patients complained that they did not have access to the phone, and their personal cell phones were seized at the time of hospitalization. If necessary, patients have the opportunity to contact their relatives by phone, but in the presence of staff. The same situation has remained since 2016.

There are no complaint channels available in practice, patients do not have access to paper and pen according to security measures, existing mailboxes for complaints are regularly checked by the administration, but

complaints written to higher authorities are monitored by the administration, which gives a reason to doubt that they are being sent.

Patients are not sufficiently informed about their rights, in particular, about the right to appeal their diagnoses in the court, the right for freedom from torture, personal freedom, integrity, respect for dignity, etc.

**“Republican Scientific and Practical Center for Mental Health”, Almaty.**

the NPM members during their visit, like in the past visit, did not see a single patient on the walk. Patients still complained that during the whole period of hospitalization they were not allowed to go outside. The exceptions were 3-5-minute smoke breaks and cases of occupational therapy (assistance in transporting patients for examinations and food delivery from the kitchen to the office). There are no walks in the winter. The administration explains the lack of walks in the winter time by the risk of getting

colds and the lack of warm clothing for patients.

Not all patients are provided with toilet paper, it was not found in the toilet either. Instead of toilet paper, the water from the bottle is used, sometimes relatives bring toilet paper from home. The waste tank does not work, therefore, the water in the toilet flows constantly. Soap in the toilet room was not found, but later the staff put a piece of laundry soap. There are no toilets and urinals for children in the children’s department. There is a washbasin in the bathroom, but there is no soap and towels.

In the children’s department, there are children of different ages, and they cannot constantly be educated. They spend almost all the time in a playroom, where there is no entertainment, except TV. Children are not taken out on the neglected, the reason stated for that is that it is cold.

The results of the visit showed that the RSPC patients are limited in

contacts with the outer world and do not have access to newspapers.

There are some patients in the hospital who need to be transferred to psycho-neurological boarding schools.

It must be remembered that the RSPC is a leading institution, called upon to show the best practices in the treatment and rehabilitation of people with mental health issues. But the lack of systematic treatment and follow-up rehabilitation of patients leads to regular exacerbations of the disease, followed by another hospitalization.

**State Enterprise  
“Republican Psychiatric  
Hospital of a Specialized  
Type with Intensive  
Supervision”, Aktas village,  
Almaty region.**

The NPM members came to the following conclusions after visiting this institution:

1. National legislation on the protection of the rights of persons with mental disabilities (mental) and disabilities does not comply with the Convention on

the Rights of Persons with Disabilities.

2. The Ministry of Health of the Republic of Kazakhstan should comprehensively change the attitude towards this institution. It is necessary to develop and approve regulatory documents governing the activities of this institution, in accordance with international standards. It is important to improve housing conditions and legal guarantees for patients. It is necessary to revise the cash content and social guarantees for employees.

3. A mechanism has not been developed for appealing court decisions when the person is placed for compulsory treatment/extension of compulsory treatment, especially for persons deprived of legal capacity.

4. The decisions of the courts do not spell out the conditions of treatment and discharge rules.

5. Courts do not make a decision on transferring a patient to an outpatient observation mode.

6. The legislation does not develop rules for visits of patients by their relatives.

7. The period and duration of stay of patients in the observation ward are not registered. The patient may be placed in the observation ward repeatedly during his or her stay in the institution.

8. Social protection agencies do not develop individual rehabilitation programs for people with disabilities who are on file with the psychiatrist.

9. Courts refuse to transfer to outpatient treatment the persons who were previously under compulsory treatment in a specialized psychiatric hospital with intensive supervision.

10. In modern psychiatry, treatment is not limited to medications, but is embedded in the patient's life and involves his or her full resocialization. During the visit it turned out that the process of reintegration and rehabilitation in treatment is absent. Patients are kept in hospital for years.

11. The psychiatric hospital is funded on a "residual basis," which cannot but affect the conditions of patients staying in it, the respect for other rights and freedoms. This violates the principles of equality and accessibility, on which the public health policy should be based.

12. There are no complaint channels available in practice, patients do not have access to paper and pen according to security measures, the mailboxes for complaints are regularly checked by the administration, but complaints written to higher authorities are monitored by the administration, which gives reason to doubt that they are being sent.

13. Patients are not sufficiently informed about their rights, in particular, about the right to appeal the diagnosis in the court, the right for freedom from torture, personal freedom, integrity, respect for dignity, etc.

14. It is necessary to conduct major reconstruction of the buildings, to provide



the necessary medical and household equipment. It is important to think about the opening of similar, modern institutions in other areas. It is also important to reduce the limit of admission in these institutions.

### **TB institutions**

The NPM members visited 22 institutions for the treatment and prevention of tuberculosis in 2018. As in the past year, there were violations in the areas of sanitation and hygiene, nutrition, decay of buildings of medical institutions, etc.

#### **Municipal State-Owned Public Enterprise “Pavlodar Regional TB Dispensary”.**

On the fifth floor of the department (patients with a persistent form of MDR with recurrent cases, preserved sensitivity BK+) an employee (hospital attendant) in the workplace did not have a special robe (special PPE). In the registration log of PPE change for employees, at the time of NPM visit out of 10 employees of the staff PPE were changed only by

7 employees. The log for disinfecting of dishes is also not properly filled.

At the information board there is no information with contacts for submitting complaints. In a formal response to the recommendations of NPM members, the management denies the existence of these violations, which indicates a formal attitude towards their work by the head of this medical institution.

#### **Department (No.11, 12) Municipal State-Owned Public Enterprise “Regional TB Dispensary”, Temirtau.**

the patients complained about sanitary and hygienic conditions during the conversation, namely: according to the patients, gowns and poor quality pajamas were distributed. After several washes, they tear and the paint fades off.

Also there were complaints from employees: according to their words, disposable masks with a high degree of protection (respirators) are used for up to five days due

to the insufficient number of such masks.

**SPE REM “Interdistrict TB Dispensary” of the Department of Health, Almaty**

At the time of the visit, there were 9 people in the department for compulsory treatment. One of which is a woman (she lived in a private ward). NPM members conducted personal conversations with patients and studied all the personal files of patients. In each case there is a court order on the use of compulsory treatment in relation to the patient in the clinic. After examining the decisions of the courts, NPM members noted that during all of the court proceedings the person against whom the question of the use of compulsory treatment arises is not present. Thus, in fact, the court proceeding takes place in the presence of the applicant (as a rule, this medical institution), the prosecutor (not in all cases). A conclusion can be drawn from this that the opinion of the person himself or

herself regarding the use of compulsory medical measures against him or her is not heard and the right to access the protection is not granted. So this situation may suggest that the courts, by issuing orders for compulsory treatment, violate the procedural rights of a citizen sent for compulsory treatment.

Thus, the current Civil Procedure Code of the Republic of Kazakhstan clearly states in Paragraph 2 of Article 347 “Consideration of an petition for the compulsory treatment of a citizen suffering from tuberculosis and evading treatment” establishes the participation of a citizen to be compulsory hospitalized, namely “The case is considered with the presence of the person sent for compulsory treatment in the courtroom, or at the location of the tuberculosis institution that provides medical (dispensary) monitoring of this patient”.

**SPE REM “TB Dispensary” under Akimat of North Kazakhstan Oblast.**

There are no rooms for smoking, according to the head physician, the hospital is a public place, and the second reason is the specificity of the medical institution that is patients should not stay together in close spaces. For the same reason, there is no library, a gym. Patients are free to play sports on the neglected, there is a volleyball court for this. Many patients neglect the ban on smoking in public places and medical contraindications and they smoke in the toilets.

The condition of the sanitary facilities in the adult compartments is unsatisfactory: there is no floor covering in the toilets, ceramic tiles are broken, walls and plastic partitions are covered with brown patina (probably from tobacco smoke). Washbasins do not work in some latrines.

The number of sanitary appliances does not always comply with the sanitary rules "Sanitary-epidemiological requirements for health facilities" dated May 31, 2017 No.357, there is one shower or bath for 40 patients,

according to the rules there should be one shower for ten people.

## **Conclusions and recommendations**

The conclusions and recommendations of the NPM members who visited health care institutions in the period under review are based on the norms of the current legislation of the Republic of Kazakhstan and international standards.

Most of the recommendations of NPM members are specific proposals to the regional level administration, administration of institutions and management of departments on elimination of deficiencies in living quarters, sanitary and hygienic conditions, medical care, food conditions, conditions for sports and communications with the outer world (access to the media, visits, phone calls), etc.

It seems that a set of such proposals (recommendations) in oblasts should be taken under the

control of the Ministry of Health, staff of the General Prosecutor's Office of the Republic of Kazakhstan for taking prosecutorial response measures provided for by law.

Most of the issues in the visited healthcare institutions are related to the lack or underdevelopment of the rehabilitation direction in the treatment of patients. This is especially true in psychiatric hospitals where the system of psychiatric care, despite significant improvements at the legal level, nevertheless, adheres to the historical situation, in which it performs the functions of control, deterrence, restriction and isolation of patients. Lack of classes hobby clubs, passive pastime leads to further degradation of the personality, loss of social, daily and life skills. To the present moment, very few measures have been taken to create alternative types of mental health services, as well as to deinstitutionalize the existing system.

The national legislation on the protection of the rights of persons with mental (psychic)

defects and disability does not comply with the Convention on the Rights of Persons with Disabilities, as it establishes an obvious conflict of interest: a medical or social institution provides social services.

Social protection authorities do not develop an individual rehabilitation program for people with disabilities that are on file with a psychiatrist.

## **MINISTRY OF HEALTH AND ITS LOCAL DEPARTMENTS:**

1. It is necessary to continue constant information work among staff of both central authorities and subordinate, territorial, local units and institutions on the importance and significance of the national preventive mechanism for combating torture and degrading treatment. It is necessary to take administrative measures to the heads of medical institutions who do not comply with the provisions of regulatory and legal acts of the Republic of Kazakhstan

and allow themselves not to fulfill/ignore the provisions of the Code "On the Health of the People and the Health System";

2. The management of medical institutions should strictly observe the rights of patients (Article 91 of the Code "On the Health of the People and the Health System"), the current SanPiN norms for providing patients with hospital linen and equipment, observe food standards, issue soap, detergents and other hygiene products. Furthermore, the management and medical institutions should not infringe patients' right to daily walks and communication with the outer world, especially in psychiatric institutions where patients do not have the opportunity to communicate freely with relatives by telephone;

3. Administrations of medical institutions should bring the hospitals in line with the sanitary rules of "Sanitary and Epidemiological Requirements for Health Facilities" approved by order No. 127 of the acting Minister

of National Economy of the Republic of Kazakhstan dated 24 February 2015, especially sanitary units, plumbing communications and devices (both in quality and quantity);

4. The Ministry of Health should immediately consider the issue of including the elements of occupational therapy, psychotherapy, social work with patients, i.e. rehabilitation, in the treatment process. The Ministry should also increase the number of social workers and lawyers to strengthen the rehabilitation and help patients in case of violation of their rights (property, civil, etc.). It is known that people with intellectual disabilities and mental illnesses cannot often organize their lives, protect their civil, economic, educational, housing and other rights. Therefore, they need comprehensive support, including socio-legal, socio-pedagogical and other types of services. The services that people with mental disabilities and psychiatric illnesses need include life escort and protection of rights, ensuring safety and,

if necessary, household services, hygiene, technical aids and means of care. These services are important and should be included in the rehabilitation and patient care at the inpatient stage;

5. Medical institutions that have received the recommendations of the NPM members after a preventive visit should take all possible measures within the available budget to eliminate all deficiencies in the conditions of keeping and treatment of patients;

6. Conditions for wheelchair users should be provided in all hospitals;

7. Administrations of medical institutions shall provide patients of psychiatric institutions with the right of patients to privacy. This right is enshrined in the Principles for the Protection of Mentally Ill Persons and the Improvement of Mental Health Care adopted by the UN General Assembly in resolution 46/119 dated 17.12.1991: "Any patient in a psychiatric institution has the right to privacy";

8. The Ministry of Health shall submit proposals to the Republican budget for the construction of new buildings and premises for medical organizations located currently in unfit buildings that do not meet the profile requirements.

9. The Ministry of Health shall consider the issue of establishing a pay raise for the staff of psychiatric organizations for psycho-emotional stress.

10. Rules should be developed for meetings of patients with their relatives in institutions of compulsory treatment in a psychiatric hospital of a specialized type with intensive supervision.

11. Employment for persons placed in a psychiatric hospital should be provided for the petition of compulsory medical measures of Paragraph 3 of Article 121 of the Code of the Republic of Kazakhstan "On people's health and health care system".

**12. The Supreme Court of the Republic of Kazakhstan** shall analyze court cases concerning the sending

the persons suffering from tuberculosis for compulsory treatment. It is important to develop a common practice of making decisions with an indication of the duration of compulsory treatment. The existing risk of infection of others when in contact with the accused with open tuberculosis, as well as the development of awareness, makes it possible to consider the possibility of holding on-line court sessions when a person suffering from open tuberculosis participates in a trial remotely.

13. A mechanism for appealing court decisions should be developed for situation when the persons are placed for compulsory treatment/extension of compulsory treatment, especially for persons deprived of legal capacity. The UN Special Rapporteur on the Rights of Persons with Disabilities, Katalina Devandas, on the basis of her visit to Kazakhstan in

September 2017 encouraged the State to bring national legislation in the field of legal capacity in line with international human rights standards. She highlighted the fact that the provisions of the law governing the coercive placement in a psychiatric institution, as well as forcing people with disabilities to undergo medical treatment without their consent, are contrary to the provisions of the Convention on the Rights of People with Disabilities.<sup>(Link)</sup>

Bind the courts to specify the terms of treatment and the rules for discharge of patients. Oblige the courts to allow the continuation of the treatment of the patient in outpatient monitoring without the need to undergo treatment in the hospital, taking into account the patient's condition.



8

## The situation with minors in institutions subordinated to the Ministry of Education and Science of the Republic of Kazakhstan

Prepared by: Akyzbekova Roza Maksatbekovna  
Baisakova Zulfia Mukhamedbekovna



This section seeks to determine the situation of children in closed institutions under the mandate of the National Preventive Mechanism, in order to determine the necessary measures to improve the situation in the area of the implementation of the rights of children and protection of their interests in closed institutions. NPM members on Prevention of Torture during the monitoring of the data from the institutions of the Ministry of Education and Science of Kazakhstan studied the situation with respect to the rights of children in these institutions from the point of view of maintaining human dignity, the constitutional principle of its integrity, consequences or conditions of cruel or degrading treatment, punishment or torture.

This section was prepared on the basis of written reports on the visit in the form approved by the NPM Coordination Council under the Commissioner for human rights. The report is signed by all members of the team who

have carried out a preventive visit. NPM members use various methods of collecting information about the conditions of stay and the attitude of the staff towards minors in the institution, primarily paying attention to the respect for human dignity. Conversations are conducted with persons contained in institutions and organizations subject to preventive visits, and (or) their legal representatives without witnesses, as well as with the staff; observance of the behavior of minors is done; case study documentation (case study) is reviewed, messages and complaints about the use of degrading treatment and punishment are received; responses of the Ministry of Education and Science of the Republic of Kazakhstan on the implementation of the developed recommendations of NPM members on the creation of favorable conditions for the stay of minors in closed institutions and the friendly attitude towards them are being studied.

The Decree of the Government of the Republic of Kazakhstan No. 266 dated March 26, 2014 defines the rules for preventive visits by groups formed from members of the national preventive mechanism, as well as the types of preventive visits (regular, intermediate, special).

NPM members attending childcare institutions show respect for minors who are in institutions and organizations, as well as the staff of these institutions and organizations. NPM members maintain confidentiality and do not disclose personal data of persons whom they got acquainted to during preventive visits. When visiting, NPM members are guided by the legislation of the Republic of Kazakhstan governing the NPM mechanism and act in the best interests of the child.

Based on the content of the Optional Protocol (Article 4), the NPM regular visiting system should cover all spots under the jurisdiction and control of the state, "where persons in custody are

deprived or may be deprived by order of the state body or upon its instruction or with its knowledge or acquiescence (hereinafter referred to as places of detention)". At the same time, "custody" means any form of detention or imprisonment or placement of a person in a public or private place of detention, which this person does not have the right to leave on his or her own will, by order of any judicial, administrative or other authority". Therefore, this section will present the situation in the institutions of the Ministry of Education and Science of the Republic of Kazakhstan, namely the Center for Adaptation of Minors (hereinafter referred to as CAM), Specialized Educational Organizations for Children with Deviant Behavior and the Educational Institution with Special Treatment Regime.

When visiting closed childcare facilities NPM members act in accordance with the legislation of the Republic of Kazakhstan in the field of the protection of children's rights: the

provisions of the Constitution of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan "On the rights of the child in the Republic of Kazakhstan", as well as the Code "On marriage (matrimony) and the family", RoK Laws "On social and medical-pedagogical correctional support for children with disabilities", "On the prevention of juvenile delinquency and the prevention of child neglect and homelessness", "On education" and other legal documents.

The republic is working to implement the provisions of international legal instruments in the legal sphere and put them into practice. About 60 international instruments relating to human rights have been ratified, 15 of which concern the protection of children's rights: the UN Convention on the Rights of the Child; The UN Convention on the Elimination of All Forms of Racial Discrimination; The ILO on the prohibition and immediate action to eradicate the worst forms of

child labor; UN Convention on the Rights of Persons with Disabilities; "On Combating Discrimination in Education" and others.

### **Decrees and Resolutions in the field of protection of children's rights:**

1. *Resolution of the Government of the Republic of Kazakhstan dated 18.09.2013 No.983 "On Approval of the Register of Public Services"*

2. *Resolution of the Government of the Republic of Kazakhstan dated March 3, 2017 No.102 "On Amendments to Resolution of the Government of the Republic of Kazakhstan No.754 dated July 20, 2005 "On Approval of the List of Technical Auxiliary (Compensatory) Means and Special Means of Travel Provided to the Disabled"*

3. *Resolution of the Government of the Republic of Kazakhstan dated April 6, 2017 No.176 "On Amendments and Additions to Resolution of the Government of the Republic of Kazakhstan dated October 23, 2014 No.1131 "On Approval of the Rules for Providing Socio-*

*Legal Assistance to Persons who are Registered with the Probation Service”.*

**NLAs in the field of protection of children’s rights:**

1. *The Order of the Ministry of Education and Science of the Republic of Kazakhstan dated February 24, 2017 No.84 “On Amendments to the Order of the Minister of Education and Science of the Republic of Kazakhstan dated April 13, 2015 No.198 “On Approval of Standards of Public Services Provided in the Sphere of Family and Children”.*
2. *The Order of the Ministry of Education and Science of the Republic of Kazakhstan dated February 6, 2017 No.48 “On Amendments to the Order of the Minister of Education and Science of the Republic of Kazakhstan dated September 10, 2015 No.557 “On Approval of the Minimum Social Standard of “Ensuring the Protection of the Rights and Interests of Children”.*
3. *The Order of the Ministry of Education and Science of the Republic of Kazakhstan dated May 29, 2017 No.251 “On Amendments and Additions to the Order of the Minister of Education and Science of the Republic of Kazakhstan dated June 30, 2016 No.412 “On Approval of the Rules for the Acquisition of Goods and Services of Organizations that Perform Functions to Protect the Rights of the Child”.*
4. *The Order of the Ministry of Education and Science of the Republic of Kazakhstan dated July 15, 2017 No.285 “On Amendments and Additions to the Order of the Minister of Education and Science of the Republic of Kazakhstan dated April 13, 2015 No.198 “On Approval of the Standards of Public Services Provided in the Sphere of Family and Children”.*
5. *The Order of the Ministry of Education and Science of the Republic of Kazakhstan dated February 6, 2017 No.51 “On Amendments to the Order of the Minister of Education and Science of the Republic of Kazakhstan dated August 13, 2015 No.528 “On Approval of Regulations of Public Services*

*in the Sphere of Education and Science”.*

6. *The Order of the Ministry of Education and Science of the Republic of Kazakhstan dated February 13, 2017 No.60 “On Amendments to the Order of the Minister of Education and Science of the Republic of Kazakhstan dated September 17, 2013 No.375 “On Approval of the Standard Operating Rules by Types of General Education Organizations (Primary, Basic Secondary and General Secondary Education)”.*

7. *The Order of the Minister of Health and Social Development of the Republic of Kazakhstan dated April 27, 2015 No.272 “On Approval of Standards of Public Health Services”.*

8. *The Order of the Minister of Civil Service Affairs of the Republic of Kazakhstan dated February 16, 2016 No.35 “On Approval of the Rules of State Control over the Quality of Provision of Public Services”.*

9. *Appendix 6. Model rules for the activities of the Juvenile Adaptation Centers*

*dated January 11, 2018 No.8 to the Order of the Minister of Education and Science of the Republic of Kazakhstan dated June 18, 2013 No.229<sup>5</sup>*

10. *On approval of Sanitary Regulations of “Sanitary and Epidemiological Requirements for Educational Facilities”. The Order of the Ministry of Health of the Republic of Kazakhstan No. 61. Registered in the Ministry of Justice of the Republic of Kazakhstan dated September 13, 2017 No. 15681.*

The National Preventive Mechanism members visit the centers for adaptation of minors, special educational organizations and educational institutions with special treatment regime in accordance with the Law of the Republic of Kazakhstan “On the prevention of juvenile delinquency and the prevention of child neglect and homelessness”. For the entire reporting period, all NPM members

5 [https://online.zakon.kz/Document/?doc\\_id=31420627&doc\\_id2=31420702#activate\\_doc=2&pos=3;-98&pos2=7;-99](https://online.zakon.kz/Document/?doc_id=31420627&doc_id2=31420702#activate_doc=2&pos=3;-98&pos2=7;-99)

in the country assessed the visited institutions under the jurisdiction of the Ministry of Education and Science of the Republic of Kazakhstan as satisfactory.

In the education system for the period, NPM members are to visit 19 centers for the adaptation of minors and 7 educational institutions for children with deviant behavior and 1 educational organization with a special treatment regime.

During 2018, NPM members made 23 visits to all the institutions listed above.

### **CENTERS FOR ADAPTION OF MINORS OF MOES ROK**

The situation in CAMs is assessed as satisfactory, however, the conditions in which the children live are cruel or degrading. In the education system for this period, NPM members are to visit 19 Centers for Adaption of Minors (hereinafter referred to as CAMs), of which 11 are in oblast centers, 6 are in the cities of Astana, Almaty, Semey, Zhezkazgan, Temirtau, Shymkent and 2 in the rayon centers (Zyryanovsky rayon

and the city of Ridder in East Kazakhstan Oblast).

The order of activities of CAM is regulated by Appendix 6 to the Order of the MES of RoK dated June 18, 2013 No.229 "On approval of model rules for activities of educational organizations for orphans and children left without fosterage" and "Model rules for keeping minors in Centers for Adaptation of Minors" dated January 11, 2018 No.8.

The main goals of CAM are to ensure the reception, short-term stay, adaptation and further arrangement of homeless and neglected children, children left without fosterage, minors sent to special educational institutions, as well as children in difficult life situations, as a result of ill-treatment that led to social maladaptation and social deprivation. CAM provide reception and temporary maintenance of homeless and homeless minors aged from 3 to 18 years.

According to the Committee on the Protection of Children's Rights of the

Ministry of Education and Science of the Republic of Kazakhstan for only 9 months of 2018, 5600 minors passed through CAMs, of them:

- Left without parental care
- Neglected and homeless
- Sent to special educational institutions for children with deviant behavior and with a special treatment regime
- Minors in difficult life situations

From the number of admitted minors 5113 children were accommodated, of them:

- Accommodated to families
- Sent to organizations for orphans and children left without fosterage
- Under custody
- Under fosterage
- Sent to special boarding schools
- Transferred to Center for adaption of minors in other areas

- Sent to organizations like Center for adaption of minors in other countries
- Transferred to the guest family

Family support services operate in the CAMs, whose activities are aimed at providing counseling, psychological, reference, information and social and legal assistance to the pupils of the CAN<sup>6</sup>.

During 2018, NPM members made 15 visits to CAMs, including in Mangistau oblast, the city of Aktau; CAM Almaty; CAM of Almaty oblast, Taldykorgan; CAM in Astana; CAM in Atyrau; CAM in Kostanay oblast, Kostanay; CAM in the North Kazakhstan oblast, Petropavlovsk; visited twice CAN in East Kazakhstan oblast, Ust-Kamenogorsk; CAM in East Kazakhstan oblast, Semey city visited twice; CAM in Zhambyl oblast, Taraz city visited twice (at different addresses); CAM in South Kazakhstan oblast, Shymkent and CAM in West

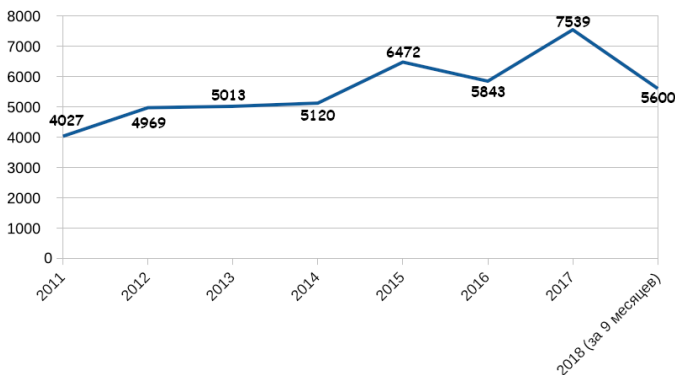
<sup>6</sup> Source: Committee on protection of rights of children MOES RoK, 2018

Kazakhstan oblast, Uralsk. All visits were intermediate.

In 2017, 7,539 children were accommodated in the centers for adaptation of minors. Most of them – 6,306 people (83.6 percent) are neglected children or those left without fosterage, 937 were left without parental

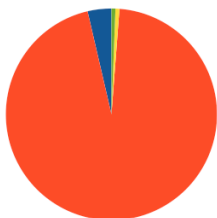
care, 207 were sent to special educational institutions for children with deviant behavior and with a special treatment regime, 89 minors were in difficult life situations.

Neglected children and teenagers admitted to CAMs from 2011 to 2018 (only for 9 months)



**CAM in Mangystau oblast, Aktau,** the building is relatively new (constructed in 2010).

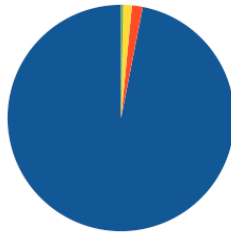
In the Center for adaption of minors in Aktau for 2018 (from 01.01.2018 till 30.12.2018) 330 minors were accommodated.



Of them:

- Left without parental care – 12
- Neglected and homeless – 314
- Sent to special educational institutions – 2
- Minors in difficult life situations – 2





Total departed – 324  
Of them:

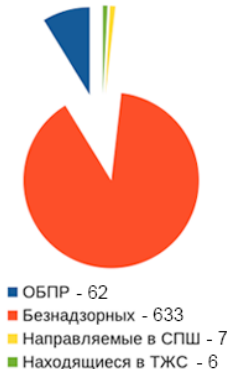
- Returned to the family – 314
- Sent to Children’s Village – 5
- Transferred to custody – 4
- Transferred to special boarding school – 1

Torture and cruel or degrading treatment were not found by the NPM members team. No complaints from NPM members regarding the conditions of nutrition, medical care and the realization of the rights provided for children were noted. The lack of space for sports, the library was only reported, due to lack of space, but, however, fiction and textbooks are available.

**CAM in Almaty** has been working since 2011. In the Center for adaption of minors for 2018 since 21.12.2017 there were 708 minors accommodated including those left without parental care – 62, neglected – 633, Sent to special educational institutions – 7, minors in difficult life situations – 6. Total departed – 701

Of them:

Прибыло: 708 человек



- ОБПР - 62
- Безнадзорных - 633
- Направляемые в СПШ - 7
- Находящиеся в ТЖС - 6

Убыло: 701 человек



- Переданы родителям или законным представителям - 645
- Переданы в колледж - 4
- Переданы в гостевую семью - 0
- Определены в организации образования - 28 для детей сирот
- Переданы под опеку - 7
- Дети направляемые в СПШ - 10
- Переданы сотрудникам ЦАНов с выездом в учреждения других областей - 2

Transferred to parents or legal representatives – 645 children

Transferred to college – 4 children

Transferred to the guest family – 0

Transferred to the educational organization for orphans – 28 children

Transferred to custody – 7 children

Children sent to special educational institutions – 10 children

Transferred to the staff of the Center for adaption of minors with departure to institutions in other areas – 2 children

Transferred to the institutions like the Center for adaption of minors of other states – 5 children.

At the time of the visit there were 39 children (15 boys and 24 girls), from different regions, including 10 children from Uzbekistan, 5 from Tajikistan. NPM members noted that bedrooms, game rooms, classrooms are fairly light, clean, warm, comfortable and the flowers on the windowsills in the

living rooms make positive impression.

As for the toilet rooms for boys and girls, they are dirty, there is unpleasant odor, there is no toilet paper, paper towels, a soap piece is in a soap box (it should be in dispenser). Water taps are in good condition, cold and hot water is running under good pressure.

In addition, attention is drawn to the fact that the booths in the toilet rooms for boys do not have doors. Children in this institution are of different ages, and these are degrading conditions.

One of the rights that are exercised in CAM is the full right to education. In accordance with the standards of education, the educational process is organized as a small-class school in the Russian and Kazakh languages.

Teaching is conducted by 10 teachers from school No.78, of which 9 teachers have an academic hours only in CAM. The team of teachers is stable, there is no turnover, which was confirmed by Ms. B. Asylova, Vice-Minister of

Education and Science in her letter (ref: 3722-3-4772/15-3 dated: 31.07.2018). There is an agreement with an entertainment center «Balauza», which carries out work on the organization of leisure for pupils.

Psychologist and tutors of CAM work with children according to the approved plan with the use of modern approaches, besides, according to the memorandum with the public fund Mother's Home, "Janja" Adoption Support Center provides individual socio-psychological assistance to pupils and their family environment in overcoming difficult life situations.

There is a separately equipped room for meeting of children and their parents in CAM. Meeting duration is not limited. During the meetings, social educators, a psychologist conduct advisory, legal, and informational and psychological work.

There is an informational and legal board with hotlines, numbers of Prosecutors' Office, Office of the Commissioner for Human Rights and public organizations.

At present, the building is being repaired for the sum of 1.5 million tenge (whitewashing, painting, replacement of the heating system and doors, repairs to the elevator).

According to NPM members, the previous recommendation on training employees is already being implemented with the involvement of an expert from the Union of Crisis Centers of the Republic of Kazakhstan.

**CAM in Almaty oblast, Taldykorgan** – according to the report of the NPM members in Almaty and Almaty oblast and the response of Ms. B. Asylova, Vice Minister of Education and Science (ref: 3722-3-4772/15-3 dated: 31.07.2018) State Enterprise "Center



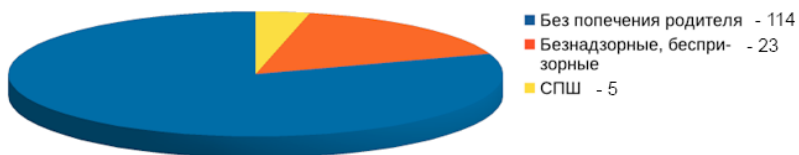
for Adaptation of Minors” of Almaty oblast is located at: Taldykorgan, Eastern industrial zone, Centralnaya street, 1, which is **3-5-minute walk** to the nearest public transport stop, which is not confirmed by NPM members to the present. According to NPM members, the implementation of the recommendation on the transfer of the CAM to the residential well-organized district of Taldykorgan depends entirely on the Department of Education of the Almaty region.

*The response of the Ministry of Education and Science of the Republic of Kazakhstan states that “Currently, the Akimat of Almaty region is working on the issue of providing*

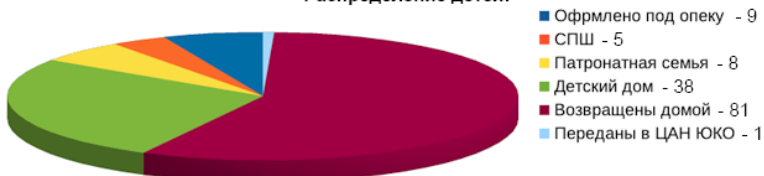
*the relevant building to CAM. In the new 2018-2019 school year, it is planned to train children in general educational institutions of the city of Taldykorgan. A plasma TV and a Karaoke-DVD are available in the game room for children’s leisure. Mini-gym with sports equipment is provided. In the game rooms there are enough toys, constructors aimed at the development of children, which is currently the situation according to NPM members in the region.*

142 children were admitted to the Center from July 1, 2017 to July 1, 2018. The social status of minors: there are 114 of those left without parental care, 23 neglected and homeless,

Всего было оформлено 142 ребенка



Распределение детей:



5 were sent to special educational institutions. Of these, 9 of them are under custody, 5 were sent to special educational institutions, 8 were transferred to foster family, 38 were transferred to orphanages, 81 of them returned home, 1 was transferred to CAM SKO.

At the time of the visit, there were 17 children in CAM, including 5 girls and 12 boys.

Children communicate with each other by name, there are no conflict situations. According to the children, no one offends anyone.

According to the report of the NPM members it follows that there have been positive changes in the situation for all the years from 2014 till 2018. But, there is an acute issue of dislocation of the

premises of CAM, since it is still difficult for parents to get there, since the bus stop is 30 minutes away by walking, and parents pay about 600 tenge from the city to travel.

A total of 10 recommendations were given, 1 of which could not be considered; 5 were implemented; 1 was not implemented; 3 were partially implemented.

**CAM in Astana**, the total capacity of the institution is designed for 40 people, almost no overcrowding, 724 children passed through the institution for the last 2017, 48 in January of 2018. At the time of the visit, there were 15 children in CAM, including 5 girls and 10 boys. From conversations with children, they are taken care of in the Institution, the food is satisfactory, and the caregivers are attentive. The teenagers were calm, they answered all questions willingly. The children noted that relatives visit at the weekends. Due to the fact that working relatives cannot visit at a fixed time, it is necessary



to revise the hours of the schedule for visits, and also to devote more hours to the weekend. Also, on Saturdays and Sundays, volunteers from urban public funds, such as Non-Governmental Foundation "Pravo", Children's Village "SOS", on a permanent partnership, also the student organization "MOST-Kazakhstan", are engaged in cultural leisure of children, students regularly visit children and spend time entertaining them, conduct trainings and conversations, play games, etc. The student audience represented by ENU representatives, ACU colleges, KazGUU, humanitarian colleges undergo professional practice as social teachers on the basis of this Institution. There is no torture or abuse. However, due to the lack of premises the Institution does not have various kinds of hobby clubs for self-expression, the work of the defectologist is not organized (although there are children with speech disorders). There is no specially equipped psychologist's room in

the institution for working with children, including play therapy. The existing office of a psychologist is at the same time used for organizational work. There is no separate office for staff, either for organizing work or for recreation in CAM. The latter is necessary due to increased emotional stress. It is impossible to implement individual social adaptation programs for minors, which include psychological, vocational, educational and cognitive components. In addition, Article 4 of the Law is indirectly violated, which is the consideration of the principle of children equality. At the same time, these issues can be eliminated due to the separate re-location of the State Institution "Evening (shift) school No.39" of the Astana Department of Education, which occupies the educational part of the Institution. The management of the Institution has repeatedly appealed to the Akimat of Astana, so far the issue has not been resolved. In this regard, it is necessary to contact the Commissioner

for Human Rights of the Republic of Kazakhstan to assist in resolving this issue.

**CAM in Atyrau.** in their report NPM members noted that it is planned to install 5 surveillance cameras in bedrooms, and it is just unacceptable, it is enough to install 2 outdoor cameras and 2 indoor. At the time of the visit, there were 16 children in CAM, including 8 girls and 8 boys. In order to increase the effectiveness of CAMs in preventing re-entry into them, Family Support Service operates in CAM. Also there is a call center in CAM that operates against the exploitation of child labor. Plastic windows in the sleeping rooms do not have a handle, and in order to avoid the escape of children from the institution, there are no handles on all windows. Children are placed in bedrooms according to age and related features. It is necessary to add a later dinner at 20.30, as the last one takes place at 19.00. There are no rooms for single stay of children to be used

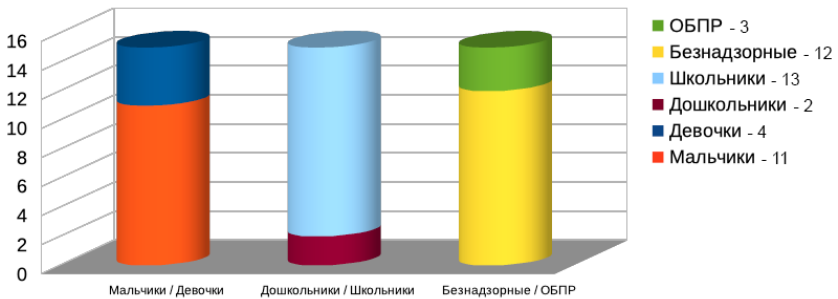
as a disciplinary measure. Children stay in the center before being transferred to orphanages or the paperwork is completed by parents or guardians. There are photo reports upon the delivery of the child/children in the family on the hard disks. In general, friendly relations have developed among the teachers and pupils in CAM. The administration of the center pays great attention to work with parents, child and youth counsellor, departments for juvenile affairs of the departments of internal affairs, centers for temporary isolation, adaptation and rehabilitation of minors.

**CAM in Kostanay oblast, Kostanay.** 28 people were sent to the institution in 2018. At the moment there are 15 people. 13 people from the CAM institution were transferred as follows: 3 people sent to a special educational institution, 9 people returned home to their parents, 1 person went to custody. 1 person conducted unauthorized leave.

At the time of the visit, there were 15 children, including 4 girls and 11 boys, of which:

12 people were left unsupervised, 3 people were left without parental care, 0

were in difficult life situation; there were 2 preschoolers, 13 students. 6 children arrived from Rudnyi, 5 from Kostanay, 2 from Altynsarinsky district, 1 from Kostanay district, and 1 from Mendykarinsky district;



NPM members noted that all bedrooms are bright, clean, equipped with beds, bedside tables, which are in good condition. Each room looks like home: there are books, toys, crafts. The windows in the rooms are accessible for opening, equipped with plastic frames. The information on the daily schedule is posted in the corridor. There were no computers in the class, according to the administration, there are 13, in the same place children

can be creative, read, since the classroom serves as a library. The game room has a sofa, TV (cable TV), toys. There is a nature corner, a health corner, in the absence of free space, there is sports equipment here. In the usual mode of operation of the Center, minors are divided into 2 groups: "Balapan" which is for children from 3 to 7 years old, from 7 to 13 years old, and "Arman" for teenagers from 13 to 18 years old. The senior children have six meals a day.





According to the leadership there were no complaints from the children reported. The ways to influence a child are as follows – conversations, psychological tests, and trainings are used. Conditions created for

children are favorable. The rooms are bright, clean, warm. It is evident that the children are surrounded by care and attention. There were no complaints of mistreatment when talking to children.

**CAM in North Kazakhstan oblast, Petropavlovsk**, for 2018 from December 20, 2017 there was 61 underage child placed in CAM (including 6 left without parental care, 52 left unsupervised, 0 sent to special educational institutions, 3 in difficult life situation).

Total departed – 65

Of them:

Transferred to parents or legal representatives – 49 children.

Transferred to legal representatives including college – 0 children.

Transferred to the guest family – 0 children.

Transferred to the organization of education for orphans – 11 children.

Transferred to custody – 3 children.

Children sent to special educational institutions – 2 children.

Transferred by CAM staff to the institutions of other areas – 0



In general, CAM makes a good impression: clean, warm, bright, friendly and attentive staff, children are well-attended. At the time of the visit there were 10 children, including 4 boys and 6 girls. Work with children is ongoing. The management of the institution does everything possible in its

work, the main tasks of the Center are carried out in all directions, interaction with the internal affairs bodies,



the guardianship authorities and other state bodies is in progress. However, this building is not fully capable of ensuring the implementation of the Main Tasks of the Center indicated in the "Model Rules for Activities of Educational Organizations for Orphans and Children Left Without Parental Care", since the building was redone from a closed-type security institution. That is why there windows are located high up from the floor, rooms are small, etc. The housing and living quarters of the CAM unit should consist of bedrooms, a classroom for classes, a game room, a cinema hall, a library, and a hygiene room. In this institution there is a very small class, designed for three desks and a teacher's table. The rules provide for the development and implementation of individual programs for the social adaptation of minors, which include components of vocational, educational, cognitive, physical education and recreational activities. In this institution, it is not possible to carry out

vocational, physical training and recreational activities due to the lack of free premises and funds for its organization. All the main issues are connected with the fact that the building is not typical. It is necessary to add a later dinner at 20.00, as the last one is at 18.00. 25 recommendations were given, of which 18 were implemented; 4 were partially implemented and 3 were not implemented.

The gym is in emergency condition (there is a threat of wall collapsing on the playground). Here, on the photo there is a playground shown, that was built at the expense of the Charitable Foundation "Saby" in Almaty.





CAM in East Kazakhstan Oblast, Ust-Kamenogorsk, 244 minors were accommodated in Center for adaption of minors starting 2018, of which:

- Unsupervised and neglected children – 181 people;
- Children left without parental care – 60 people;
- Minors sent to special educational institutions – 2 people;
- Children who are in a difficult life situation – 1 person

At the time of the visit, there were 16 children, including 3 girls and 13 boys.

Всего в ЦАН ВКО поступило 244 человека



- Безнадзорные и беспризорные - 181
- Дети, оставшиеся без попечения родителей - 60
- Несовершеннолетние, направляемые в специальные организации - 2
- Дети, находящиеся в трудной жизненной ситуации - 1

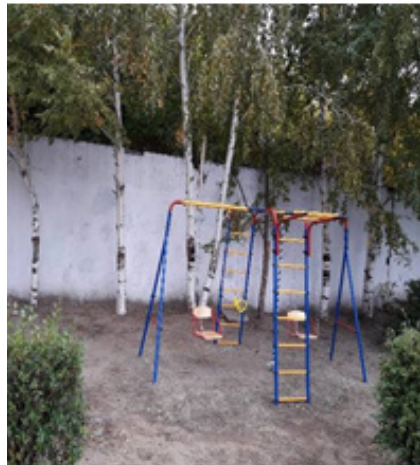
It should be noted that in the response of the Ministry of Education and Science, unfortunately, only rooms and classrooms are listed, but it does not reflect how many toys were purchased for children in these game rooms. The building and living quarters have not changed much since the time when



an occupational therapy detox center was located in this building in Soviet times. NPM members in WKO note that the dining room is not cozy, there is no proper decoration for children. There is no washbasin in the dining room. There are no special rooms for family visits in CAM. For this reason, visits are conducted in the free room of CAM. The child's right to rest and leisure, the right to participate in games and recreational activities appropriate to the age, and to freely participate in cultural life and engage in art are absent in CAM. There is a game room in CAM, but there are no toys, games, children or teenage books, pencils, paints, play dough, albums for drawing, colored paper, etc. There are chequers, lotto and several books, soft toys in the psychologist's office, but even those few games and books that are available are kept out of the children's free access. It is necessary to understand that for children left without parental care, the situation of their withdrawal from the family is very stressful, it is necessary to work very thoroughly with them. It is necessary to call their attention off the heavy thoughts, to give them such conditions in which the stressful situation will be somewhat mitigated. And, of course, the presence of toys, children's books, board games, accessories for after-school activities and the free access of children to them will significantly ease the difficult situation for children. The CAM has developed a plan for educational work, but educational activities are not systematic. Activities do not consider the factors of different ages of children involved in educational activities. The plan does not provide for the involvement of children in systematic work, there are no organized interest groups. Degrading human dignity, cruel treatment, punishment or torture was not recorded in the CAM of Ust-Kamenogorsk. The staff of the institution provided free access to all premises and provided documentation. Employees were respectful,

open and polite with NPM members in WKO. Also from the previously given 13 recommendations, 6 were not implemented; 3 were implemented and 4 were partially implemented.

**CAM in East Kazakhstan Oblast, Semey**, since the beginning of 2018, CAM in East Kazakhstan Oblast, Semey contained 392 children, of which 374 were returned to their families, 12 were set up in organizations for orphans and children left without parental care, 4 were transferred to special educational institutions, 2 were granted asylum from ill-treatment. The largest number of minor children returned to their parents. At the time of the visit, 9 children were placed in CAM and 1 child was placed in the children's tuberculosis dispensary. According to the recommendations of NPM members in EKO, work on creating a personal space for children has begun. Personal belongings are in different places, in special lockers. As part of the implementation of



the recommendations from NPM members, 22 bedside tables were purchased, and tableside lamps have not yet been purchased. As part of the implementation of the recommendations of NPM members in March 2017, CAM administration purchased new furniture in the game room. Also, a new sofa (instead of a large corner sofa), convenient for children,



was purchased. There were curtains also installed in the 3 rooms of the medical ward, in the mother and child room, and also in the corridor on the 1st floor. In the spring of 2017, two dispensers (water dispensers) were purchased and installed in the corridor on each floor. Now children have access to drinking water whenever it is convenient for them. The rooms are clean, tidy. The toilets are clean and neat. According to the recommendations, dividing partitions were installed in the toilet rooms (possibility for a child's privacy). Toilet paper, liquid soap in dispensers were present in each toilet. The washing room is equipped with separate sectors for storing individual towels, toothbrushes, and paste. There is a place for washing in the toilet for girls. There is a shower room on the first floor: there are 3 shower cabins in the same room. There is no privacy for children. Six meals are provided during the day (as was recommended by the NPM group).

According to the recommendations of the NPM members in EKO, CAM administration added two additional meals for children such as the second breakfast at 11.00 and the second dinner (fruit, kefir, etc.) at 21.00. We believe that



the implementation of the recommendations made by the NPM members is a good example of the effectiveness of the activities of the NPM team in protecting the rights and freedoms of children. Now children receive meals 6 times a day. No facts of torture or ill-treatment were found during the visit. Children can use the telephone to contact their relatives. Out of 6 recommendations, 3 were implemented and 3 were partially implemented.

**CAM in Zhambyl region, Taraz city,** in April this institution was located in the 14<sup>th</sup> microdistrict, on the land piece No.31, and already on September 14, 2018 by the Decree No.167 of the Akimat of Zhambyl oblast "On reorganization by merging the municipal state institution "Orphanage No. 1 named after Sarymoldayev" under the Education Department of the Akimat of Zhambyl oblast and municipal public institution "Center for minors adaptation" under the Education Department of the Akimat of Zhambyl oblast and in October NPM members visited Municipal Public Utilities Institution "Center for support of children in difficult life situation" of Zhambyl Regional Education Department.

Prior to the reorganization, the Center for adaptation of minors was located in the 14<sup>th</sup> microdistrict, on the land piece No.31, where it was located from March 2018 to September 10, 2018 in a specially built new building with sports facilities. The

limit of its capacity was 40 children aged from 3 to 18 years. After the merger of two state institutions, according to Saltanat Kulbayeva, the capacity limit for that category of children who were previously accommodated in the "Center for Adaptation of Minors" was limited to twenty-five beds.

According to the Director Togzhan Tatayeva, the capacity limit in the new center is 75 beds. For the permanent residence of children up to the age of majority 50 beds are provided. From the "Center for the adaptation of minors" 16 boys and 9 girls aged from 3 to 18 years came to live in the building of the former orphanage No.1. **At the moment, children from the Center for adaptation of minors are actually located in the two-story building of the orphanage No.1 at the address: Taraz, 9th microdistrict, houses No.22, 23.** Due to the reorganization and re-registration of the institution, there is no technical passport of the building. At the time



of the visit, the children transferred have been living there for a month. Here they were assigned to three groups: in the first one there are boys aged from 3 to 10 years old and there are 8 children, in the second group there are boys older than this age up to 18 years old, in the third group there are girls, and there are 9 of them.

**Boarders of the former “Center for adaptation of minors” live somewhat apart from the boarders of the orphanage, although in fact their groups are located in the neighborhood. According to the old rules, the children in the “Center for adaptation of minors” could stay there for 3 months, according to the new ones for 6 months. However, due to the reorganization, it is still unclear how this mechanism will work in practice.**

About 440,000,000 (four hundred forty million) tenge was spent on the construction of the institution and for at

least 3 years it was to be used for the purpose of a typical building. Thus, the Center was located in the new building only for 7 months, there is an improper use of budget funds. The new typical building took into account all the needs of the institution for this category of children. In May, the institution was visited by experts of an international organization who expressed the opinion that this institution is one of the best institutions for children in difficult life situations in the post-Soviet countries. In the department for girls there is no division by age groups and all girls stay together. girls should be divided into two groups, the younger age group from 3 to 10 years, and the older age group from 11 to 18 years. This situation is most likely caused by the lack of space for children in the institution.

The letter of the Ministry of Education and Science gives a strange response that *“In order to eliminate the violations found, in March 2018 the Center for*

*Adaptation of Minors was relocated to a new building built in 2017 at the address: Taraz, 14th microdistrict, land piece No.31. Total area of the institution is 2344, 87 sq.m."*

*In CAM there are: 12 bedrooms, 5 classrooms, a computer class, workshops for girls and boys, a medical office, an isolator, offices for psychologist and sociologist, a library with a book data base, an assembly hall (cinema), a gym, a canteen. Football and volleyball courts are also equipped.*

**CAM in South Kazakhstan Oblast, Shymkent**, in the Center for adaption of minors as of 20.12.2018:

1017 people accommodated by the Center for adaption of minors –

61 children left without parental care

13 children sent to special educational institutions

43 children left unsupervised

0 children in difficult life situation

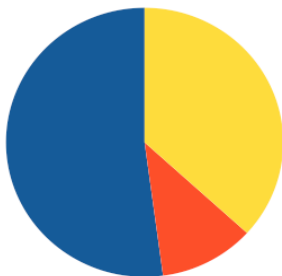
Of them: 936 people returned to their parents;

11 sent to special educational institutions;

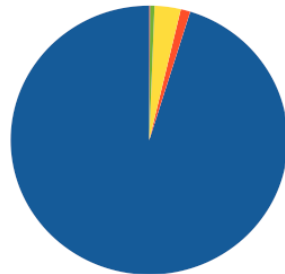
30 children left without parental care sent to an orphanage and 5 children sent to custody;

1 child sent to another area in Almaty.

At the time of the visit, there were 20 children, including 13 girls and 7 boys.



■ ОБПР - 61  
 ■ СПШ - 13  
 ■ Безнадзорных - 43



■ Выбыло к родителям - 936  
 ■ СПШ - 11  
 ■ В детский дом - 30  
 ■ В опеку - 5  
 ■ Выезд в другую область - 1

In the view of NPM members in CAM, all rooms are clean, living spaces meet standards, there is carpeting in bedrooms, there are



plastic windows without bars installed in window openings that are large enough for normal lighting and ventilation which open inside, allowing children to independently ventilate the room. But there are no surveillance cameras. However, in the bedrooms there are two-storey metal

beds, which is a violation of children's rights for personal space. Also, the bedrooms are not divided by age. There are wardrobes for outerwear in the bedrooms, that require replacement. According to the menu, children eat 4 times a day, which is not enough. It is necessary to add an later dinner at 20.30. On the territory of CAM there is a small swimming pool for children in the summer. Sports field and sports equipment is available. However, there is no room for children to play sports during the cold season. There are no restrictions to meet with relatives, taking into account the regime of the day. In the premises of the housing unit there are information boards indicating the rights of children, enshrined in the "Convention on the Rights of the Child" and Chapter 3 of the Law of the Republic of Kazakhstan "On the Rights of the Child", as well as information about the National Preventive Mechanism in the Republic of Kazakhstan aimed at preventing torture and other

cruel, inhuman or degrading treatment or punishment. There are 2 mailboxes for complaints, addressing the director of CAM and the prosecutor's office. There are also informational stickers about the work of the helpline of the Commissioner for children's rights in the Republic of Kazakhstan. The boiled water for drinking with glasses is present in the bedrooms. No

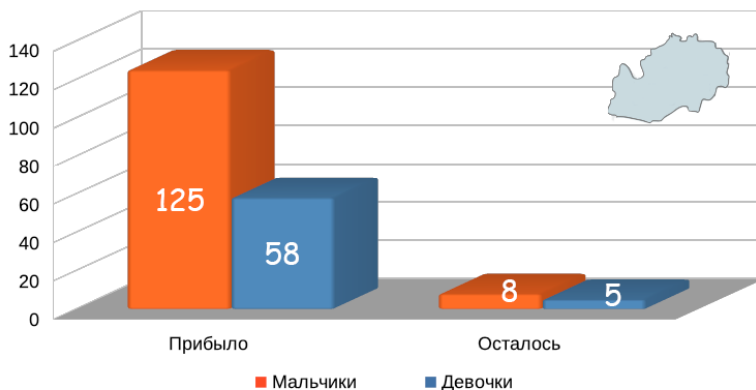
complaints were received from the children on the use of torture and cruel or degrading treatment when NPM members visited CAMs in Shymkent and in Turkestan oblast. The children at the time of the visit were neatly dressed, cheerful and confident. Out of the 5 recommendations, 3 were implemented; 1 was partially implemented and 1 was not implemented.



**CAM in West Kazakhstan oblast, Uralsk**, for the period of 2017, the total number of children admitted is 183, including: 58 girls, 125 boys. At the time of the visit, there were 13 children in the institution. Out of them there were 5 girls and 8 boys. There were 3 preschoolers and 10 schoolchildren.

According to the results of the visit to the SPE Center for adaption of minors in WKO, NPM members state that in this institution the administration exercises the rights of minors in the institution in full. There are communications with the outer world: there are regulars of the media, books, television. Children

ЗКО, г. Уральск  
Количество детей в ГККУ ЦАН



are provided with everything necessary. All children of school age must attend high school. Care, upbringing, treatment is carried out at an appropriate level. Visits of parents and relatives are conducted at any time without hindrance. The building of the Center for adaptation for minors is typical, where all the premises and conditions are provided for the upbringing and care of minor children left without temporary care of their parents or persons replacing them. Parcels and deliveries for children are accepted without restriction.

***Conclusions and recommendations of the Ministry of Education and Science in the Republic of Kazakhstan on the Center for adaption of minors***

Before summarizing, it is important to remind that children who get into the Center for adaption of minors, educational organizations for children with deviant behavior and educational organizations with a special regime of detention are all children who find themselves in a difficult life situation. Kazakhstan showed political will back in 1994, having

signed the Convention on the Rights of the Child and later two Optional Protocols to it. It was the first country report to the United Nations that was approved for the implementation of the norms of this Convention in 2003.

The situation and problems of specific institutions described in this report should be carefully considered and measures should be taken to eliminate them. In general, the main recommendations of NPM members were reduced to the need for more skilled work with children, creating conditions conducive to the livelihood of minors, ensuring separation of minors by age, and increasing funding. Practically everywhere, there were issues of creating an effective complaint mechanism for children, improving the situation with sports halls and libraries were critical.

1. It is necessary to develop a Strategic Plan to improve the quality of life of children of Kazakhstan, based on the policy of the best

interests of the child, providing for the establishment of effective mechanisms for its implementation, provided with adequate human, technical and financial resources with the mandatory inclusion of issues of improving juvenile justice.

2. It is necessary to consider the possibility of analyzing the situation on the rights and legal interests of minors in a specialized boarding school and schools for children with deviant behavior (the grounds for placement, including the judicial procedure, the delivery and distribution of the persons to the institution).

3. It is necessary to create living conditions close to the family type model: sleeping rooms for 2-3 children, increase the number of social educators, introduce best practices in the best interests of the child.

4. When deciding on the placement of a child in a specialized educational organization, the court must take into account the place of residence of family members or legal representatives in

order for minor to maintain contact with close persons, relatives, family members.

5. It is necessary to ensure the exercise of the right to communicate with parents and the outer world through video calls, skype conferences and other communication forms.

6. It is necessary to continue working on the plan for conducting classes with personnel on this topic: not all institutions have employees informed about NPM activities, its goals and objectives, there is no systematic training and professional development of specialists working with children, development of communication skills, identifying victims of cruel and degrading treatment.

7. It is necessary to conduct work on informing minors about their rights and duties, institution regime, disciplinary requirements, procedure for submitting proposals, petitions and complaints, number of the National Helpline 150 for children and young people in two languages, about the

procedure for submitting complaints and giving in sample petitions to the appropriate authorities, helplines, prosecutors, the Commissioner for Human Rights and public organizations, NPM, placing information boards in places that are accessible to the daily viewing of children and parents.

8. It is necessary to train staff to prohibit torture and other cruel, inhuman and degrading treatment or punishment, to identify and respond to specific cases of torture and other cruel or degrading treatment to which children in institutions can be subjected (involving human rights experts).

9. It is necessary to conduct surveys to identify the level of knowledge of minors when enrolling in such institutions and adjust the programs in accordance with the identified educational level, as well as provide education according to the programs of general education institutions and the system of control

of knowledge and skills according to the standard.

10. It is necessary to carry out child-friendly policies for facility security personnel.

11. It is necessary to review the norms relating to the distribution of the provision of clothing, footwear, and textile bed clothes to the needs of the given number of children in this Institution.

12. It is necessary to conduct surveys to identify the level of knowledge when placement in such institutions happens to identify the level of knowledge and adjust training programs in accordance with the identified level of education.

13. In order to implement Paragraph 6 of the Order of the Minister of Education and Science of the Republic of Kazakhstan dated June 18, 2013 No. 229, it is necessary to provide sections consisting of bedrooms, classrooms, play rooms, a cinema hall, a library, hygiene rooms for girls, as well as office rooms for employees in the amount necessary to accommodate 40 children according to age and gender peculiarities.

14. In order for children to maintain social connections, it is necessary to review the schedule hours of the visits, and also add more hours on weekends for visits.

15. In accordance with Article 29 of the Convention on the Rights of the Child, the child's education should be aimed, inter alia, at the development of the child's personality, talents and mental and physical abilities to their fullest extent. In this regard, it is necessary to ensure that children receive education in full and of such quality that is available to children from full families.

It is necessary to organize various hobby groups for the self-expression of children and for the development of their creative potential.

In order to fully implement Paragraph 20 of the Order of the Minister of Education and Science of the Republic of Kazakhstan dated June 18, 2013 No. 229, it is necessary to increase the number of psychologists (possibly at the cost of children's correctional defectologist), since it is difficult for 1 psychologist



to organize work on the adaptation of children to the upcoming conditions of living in a special educational organization, taking into account the degree of pedagogical neglect, age, family and living conditions of each child.

It is necessary to conduct preventive conversations to identify the causes and conditions of unlawful behavior, explaining the social and legal consequences of the offense and convincing of the need for law-abiding behavior.

### **Special organizations for children with deviant behavior MES RoK**

7 educational organizations for children with deviant behavior (Almaty, East Kazakhstan, Zhambyl, Karaganda, Kyzylorda, Mangistau, South Kazakhstan oblasts), 1 educational organization with a special regime of treatment (village Ulken Boken, Kokpekty district, East Kazakhstan oblast) are subject to the visit of the national preventive mechanism members in the

education system for the present moment.

In Kazakhstan, special organizations for children with deviant behavior operate and are under the jurisdiction of local executive bodies. In these organizations, on the basis of a court order, minors aged from 11 to 18 years old who systematically committing offenses entailing administrative measures; systematically avoiding primary, basic secondary and general secondary education; systematically committing unauthorized withdrawals from the family and children's educational organizations; committing other antisocial actions are placed for a period of one month to one year.

For the period of 2018, the NPM members made 8 visits to special educational institutions. For special organizations for children with deviant behavior, the NPM members noted that torture and ill-treatment were not detected. Conditions and educational process can be evaluated as satisfactory.

According to the results of visits conducted by NPM members to special educational organizations for children with deviant behavior (hereinafter – SEOCDB), the following situation has been discovered.

- *SEOCDB in Almaty* is based on monitoring the implementation of previous recommendations of the NPM members and on the results of group and individual confidential meetings with the SEOCDB minors. NPM members note that connection and communication with relatives is not prevented, but given that children come from different parts of the country, relatives are unlikely to have the opportunity to come from other regions of Kazakhstan. NPM recommendations are the same.

- *Municipal Public Utilities Institution “Mangustau regional special boarding school for children with deviant behavior”* has been functioning since 2001, the building is accommodated, the estimated capacity is 25

places, the average annual population for the last three years is 10 children. The building is located in conjunction with the Center for adaptation of minors. At present, it has been decided to relocate the special boarding school to another building on the basis of the decision of the oblast Akim as of May 24, 2018, preparatory works are being carried out to repair the building.

- *Municipal Public Utilities Institution “Regional boarding school for children with deviant behavior” of the Education Department of Kyzylorda oblast*, located in an accommodated building of 1958 (the last time the building was repaired in 2013). In 2018, plumbing was partially renovated, paper napkin holders were installed, air conditioning and a TV set were installed in the sleeping rooms. Improvement of the sports ground has been carried out, there are football and volleyball courts. But the situation regarding the absence of ventilation and exhaust systems in the rooms is not solved. The furniture

is still outdated, boarders do not have enough chairs, wardrobes for clothes and shoes. There is no gym, no sports simulators. Pupils of the boarding school do not have access to computer equipment and the Internet.

- *Municipal Public Utilities Institution "Boarding school for children with deviant behavior" in Kentau, Turkestan region.* The boarding school has been operating since 2003, the building has been accommodated in 1980, with the estimated capacity is 40 places. Heating and water supply is centralized. Water is heated by water heating devices. There is a bath and laundry complex. There are two isolation wards for the primary examination of children. The population of children as of July 19, 2018 is 17 children. Maintenance repairs were carried out: doors in bedrooms, flooring, tiles in the household and toilet rooms and in the dining room were replaced. New plumbing and hand dryers were installed, dining chairs were purchased. Furniture

and computer equipment was purchased.

- *Special Boarding School* in the village Belousovka was relocated on December 01, 2017 to the settlement Ulken Boken of the Kokpekty district on the basis of the Order of the Education Department of the East Kazakhstan oblast dated October 10, 2017, No.507. The total area of the boarding school is 681.4 square meters; the estimated capacity is 50 places. The material and technical base consists of a bedroom and educational building, there is a backyard. As of July 19, 2018 there are 15 boarders in the specialized school, the duration of stay is from 2 months to 2 years.

In Municipal Public Utilities Institution "Regional special boarding school for minors who have committed criminal offenses before reaching the age of criminal discretion", minors from all over Kazakhstan, within the jurisdiction of the institution, are sent. Given the large distance due to the size of the territory of Kazakhstan,

many families do not have an opportunity to maintain socially useful relations with the child.

According to NPM members of EKO, children are kept in a closed institution, mail messages are written only in the presence of a caregiver or a psychologist. Cell phones, piercing and cutting items are prohibited. The reason for the prohibition of cellular phones in the institution is explained by the fact that parents, acquaintances, relatives with their messages destabilize the psychological state of the boarders, which leads to a violation of discipline, provoking shoots and suicidal tendencies. Given that children come to this institution from different parts of the country and they need to exercise their right to communicate with the outer world, an individual approach is necessary when allowing or prohibiting the use of a cell phone.

Secondary general education of students at the Institution is carried out according to their age and individual characteristics,

socially useful work and a diverse network of hobby clubs. For students with a great pedagogical neglect, an alignment program is applied.

Boarders who leave the institution ahead of schedule or due to the expiration of a period determined by the court are sent to the place of their further placement accompanied by their parents or persons replacing them, and in case of impossibility of their arrival accompanied by the staff of the institution at the expense of the institution.

### **Conclusions and recommendations of MES RoK on special educational organizations for children with deviant behavior**

1. It is necessary to conduct training for managers, accountants, and public procurement managers on budget planning and drawing estimate documentation for major, current repairs, and improvements in conditions for minors in the institutions.

2. It is necessary to conduct training for the staff of institutions on respect of the legal rights and

interests of the boarders, and maintaining connections with their families.

3. It is necessary to consider the possibility of analyzing the situation on the rights and legal interests of minors in a specialized boarding school and schools for children with deviant behavior (the grounds of the placement, including the judicial procedure, the delivery and distribution of the persons to the institution).

4. When deciding on the placement of a child in a specialized educational organization, the court must take into account the place of residence of family members or legal representatives for minors to maintain contact with close persons, relatives, family members.

5. It is necessary to ensure the implementation of the right to communicate with parents and the outer world through video calls, skype conferences and other communication forms.

6. It is necessary to continue work on the plan for conducting classes with personnel on this topic:

not all institutions have employees informed about NPM activities, its goals and objectives, there is no systematic training and professional development of specialists working with children, developing their communication skills, identifying victims of cruel and degrading treatment.

7. It is necessary to conduct work on informing minors about their rights and duties, institution regime, disciplinary requirements, procedure for submitting proposals, petitions and complaints, number of the National Helpline 150 for children and young people in two languages, about the procedure for submitting complaints and giving in sample petitions to the appropriate authorities, helplines, prosecutors, the Commissioner for Human Rights and public organizations, NPM, placing information boards in places that are accessible to the daily viewing of children and parents.

## CONCLUSION

2018 was the fifth year of NPM work. During this time, algorithms of interaction with government agencies, internal principles and procedures, financial logistics issues and procedural features have been tested. That is why, in 2018, the funds allocated to compensate for the transportation costs of NPM members, for the first time during the operation of NPM, were disbursed in full (99.9%).

However, the issues on sustainability of the NPM work are still relevant: 1) the allocated funds are still not enough to visit all the sites where violations have been detected; 2) in the light of the expansion of the NPM mandate for children's institutions, an increase in the number of visits will be required, hence it will result in an increase of compensation for the transport costs; 3) response to the facts of torture and ill-treatment remains unsatisfactory. In general, the reports of

government agencies on NPM recommendations are incomplete, they are full of references to laws and regulations, instead of stating issues, and do not contain resolutions to the issues posed. NPM reports and recommendations are always detailed, specific, associated with the elimination of obvious practices, but we do not see the proper level of response from the authorized state bodies, often the responses of state bodies are general in nature and do not respond to the identified needs.

Each year, NPM members devote most of their attention to penitentiary institutions: in some regions, colonies and pre-trial detention centers are visited up to 3-4 times a year, 24 of 27 special visits are made to penitentiary institutions. This is due to the long non-implementation of recommendations and repeated reports on torture in these institutions. Analysis of the results of visits in 2018 raises even more concern about the situation

in penitentiary institutions. There is a persistent tendency to abuse and disproportionate exposure in places of isolation from society. Doctors formally fill out medical documents, as a rule, this is an incomplete fixation of the forms, nature, extent of damage, their number, places of dislocation, characterizing the nature of the injuries. According to the inspection and the photographs attached in the reports, the injuries are located predominantly on previously forcibly exposed parts of the body, which indicates the actions that are not aimed at overcoming the resistance of convicts, but show the obvious purpose of punishment, which according to the UN Convention against Torture indicates ill-treatment. Usually in the plot of the case, common terms are used: "he fell from the ladder", "he did harm to himself", "he had a fight" and so on, thereby knowingly turning the scale against the convicts.

Despite the unequivocal reports on torture supported by photo or video recording which was detected by NPM members, investigations of such incidents are delayed, forensic examinations are appointed for later, and as a result criminal cases are terminated without even reaching the court. On 176 appeals to the General Prosecutor's Office of the Republic of Kazakhstan received in 2018 from the National Center for Human Rights, the prosecution authorities conducted 101 checks, made 8 submissions, and brought to justice 8 persons. 31 facts are registered in ERDR, of which 29 have been discontinued and 2 are in production. Persons convicted – 0. Obviously, the most important thing at this stage is to adjust the response to the facts of torture discovered by NPM. In this regard, we reiterate the repeated recommendation on the need for a special form of public reports by the Prosecutor General's Office to investigate the facts of torture discovered by NPM and to

analyze systematic issues leading to torture which were generally described by NPM.

The second problematic issue of penitentiary institutions is search activities involving the use of special equipment. In documents, injuries are not recorded, the records themselves in medical documents are made formally: the dependence of the medical staff on the prison administration has its effects. During one of the visits, the doctor refused to answer questions from NPM members.

Third, but no less important in the work of the penitentiary institutions is the question of sewage. This issue has been raised repeatedly in NPM reports, but this year we decided to devote special attention to this problem in conclusion, because we believe that ignoring this issue leads to serious violations of prisoners' rights and can be equated to cruel punishment. Buildings where prisoners are detained reach decay, in

many institutions the issue of access to water and toilets has not been resolved.

Throughout 2018, we worked on further strengthening the NPM institute. One of the recommendations of the UN Subcommittee on Prevention of Torture was to ensure the sustainability of the work of the NPM members, therefore it was recommended to extend the mandate of the NPM members. In this regard, the regulations have been amended, and the term of office for the NPM members has been extended to 2 years. At the end of 2018, the Coordination Council selected NPM members with a term of up to the end of 2020. This will reduce the number of introductory training events and will help to concentrate on improving the efficiency and systemic character of NPM work.

Another measure to strengthen the systematic work of NPM will be a new joint project of the Office of the Commissioner for human



rights and the United Nations Development Program on the activities of NPM. During 2018, the activities and budget of the project were coordinated, and they were ultimately supported and approved for funding by the Government of the Republic of Kazakhstan. The project will be implemented within 3 years (2019-2021) and will allow to analyze big data volumes obtained during the five-year NPM activity, update and sharpen reporting forms, digitize the reporting procedure, and, therefore, target further visits for NPM members.